



## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Matt Jesick, Case Manager  
*JL for JK*  
Joel Lawson, Associate Director for Development Review

**DATE:** June 9, 2022

**SUBJECT:** BZA #20636 – 4509 Foxhall Crescent, NW – Request for relief to construct a single family dwelling

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### **I. BACKGROUND**

The subject property was a wooded site that included, among numerous other trees, a 47-inch diameter tulip poplar (*Liriodendron tulipifera*), classified under District law as a Heritage Tree. Section 104a of the Tree Canopy Protection Act of 2016 (“the Act”) states that *“It shall be unlawful for any person or nongovernmental entity, without a Heritage Tree removal permit issued by the Mayor, to top, cut down, remove, girdle, break, or destroy any Heritage Tree.”* Staff from the Urban Forestry Division (UFD) at DDOT informed the applicant on multiple occasions about this law and that the tulip poplar, as well as another heritage tree on the site, could not be removed and would need to be protected in accordance with the Act. In addition, they informed the applicant that the proposed location for the house (at that time as shown in the original plans at Exhibit 6) was not possible and that the site plan should be revised to meet the requirements of the Act.

Nevertheless, on or about Thursday, February 24, 2022, the applicant had the tulip poplar and other trees on the property cut down. The District will be issuing fines in accordance with the penalties described in the Act, but the applicant is continuing with this Board of Zoning Adjustment application. After discussions with the Office of Zoning Legal Division (OZLD) it appears, as removing the tree was not a zoning matter, that the zoning process can proceed. Although the Office of Planning disapproves of any violation of District law, we must review the application against the relevant criteria and base our assessment on the current, denuded state of the property.

### **II. RECOMMENDATION**

The Office of Planning’s (OP’s) first report at Exhibit 29 presented a number of items that needed to be addressed by the applicant. And at that time, because of the lack of necessary information, OP was unable to make a recommendation on the requested special exception. The present report is based on the original application materials as well as the supplemental information added to the record by the applicant, up to and including Exhibits 54 through 54G.

Because some of the previously-raised issues remain unanswered, and because of ongoing reviews by District agencies relevant to the review criteria of the Zoning Regulations, OP **cannot make a recommendation** regarding the following requested special exception relief:

- C § 305, pursuant to X § 901 – More than one building on a record lot permitted by special exception; New dwelling proposed on existing vacant theoretical lot.

Subtitle C § 305.5 states that “Before taking final action on an application under this section” the Board “shall refer the application to the Office of Planning for coordination, review, and report, including [...] The environment relating to water supply, water pollution, soil erosion, and solid waste management”. Because the key analyses of the Department of Energy and the Environment (DOEE) and the Department of Transportation’s Urban Forestry Division (DDOT UFD) are not yet complete, OP recommends that the Board cannot yet take final action on this application.

Should the Board consider approval of the above special exception, OP would recommend **approval** of the following area variance relief:

- C § 305.3(b), pursuant to X § 1000 – Vehicular access from 24 ft. wide accessway required; 16 ft. existing.

### III. SUMMARY OF OP COMMENTS

The following list summarizes OP’s comments from this report.

1. The Department of Energy and the Environment (DOEE) and the Department of Transportation’s Urban Forestry Division (DDOT UFD) are in the process of reviewing tree preservation, stormwater management, and erosion and sediment control plans for the property. Once those reviews are complete, OP can provide further feedback on whether the project would successfully address the criteria of C § 305.5, which seek to minimize impacts related to water pollution, soil erosion, and potential related impacts on neighboring properties;
2. The applicant should confirm the pervious surface calculation, and whether all hardscape would be composed of pervious materials;
3. Make all exhibits consistent, especially in regard to placement of the exterior stairs;
4. The design should be revised to conform to the maximum height, or the applicant should request a height variance;
5. As required by C § 305.4(a)(5), the applicant should submit a proposed grading plan;
6. To address C § 305.5(a)(2), the applicant should explain in the record the water and sewer connections for the project, as well as how trash will be retrieved from the property;
7. The applicant should describe how deliveries would be made to the site.

### IV. LOCATION AND SITE DESCRIPTION

Applicant	Penguin, LLC
Address	4509 Foxhall Crescent, NW
Legal Description	Square 1397, Lot 960
Ward / ANC	Ward 3, ANC 3D
Zone	R-1-A – Low density single family detached residential
Historic District / Resource	None

Lot Characteristics and Existing Development	Slightly irregular, roughly square-shaped lot; 13,755 square feet in gross land area; Slopes up steeply from west to east; Lot is vacant and was wooded prior to the recent non-lawful removal of trees on the site; A few trees remain around the periphery; Access from existing Foxhall Crescent.
Adjacent Properties and Neighborhood Character	Single family residential to the west; Diplomatic / Residential to the east; Neighborhood is characterized by single family residential; Also a few institutional uses.
Subdivision History	<p>The proposed house would be located in Foxhall Crescents 1, the first phase of the multi-phase Foxhall Crescents development. The development of Foxhall Crescents 1 began in the early 1980s, prior to the adoption, in 1989, of § 2516 of the 1958 Zoning Regulations, the theoretical subdivision provisions, now contained in Subtitle C § 305.</p> <p>At least one subsequent phase of Foxhall Crescents was reviewed under § 2516, as were infill houses not built at the time of initial construction. For example, the Board approved, pursuant to § 2516, construction of a home at 4818 Foxhall Crescent in case number 17697.</p> <p>The subject property was reviewed by the Board in 1993/4, in case number 15882, in which the Board approved the construction of a single family home, but it was never constructed. Similarly, in 2014 the Board approved case 18708 for a single family home on this property which, again, was never constructed.</p>
Proposal	Construct a single family detached house.

## V. ZONING REQUIREMENTS AND RELIEF REQUESTED

Item	Regulation	Existing	Proposed	Relief
Lot Width D 302	75 ft.	113 ft.	No change <sup>1</sup>	Conforming
Lot Depth	n/a	109 ft.	No change <sup>1</sup>	Conforming
Lot Area D 302	7,500 sq.ft.	13,629 sq.ft.	No change <sup>2</sup>	Conforming
Height D 303	40 ft. 3 stories	n/a	42 ft. <sup>3</sup> 3 stories	None requested – Height should be made to conform

<sup>1</sup> Exhibit 54A, Plans.

<sup>2</sup> Exhibit 54G, Self Certification.

<sup>3</sup> Exhibit 54G, the Self Certification, states that the height would be 35.5'. Based on Exhibit 54B, the Elevations, the applicant appears to have created a building height measuring point (BHMP) at what appears to be the previous grade of the land before excavation. However, Subtitle C § 305.3(c) requires that building height be measured from the finished grade at the middle of the building façade. OP, therefore, calculated the height based on the finished grade and the midpoint of the sloped roof indicated on Exhibit 54B.

Item	Regulation	Existing	Proposed	Relief
Lot Occupancy D 304	40%	n/a	15% <sup>2</sup>	Conforming
Rear Yard D 306	25 ft.	n/a	41.25 ft. <sup>1</sup>	Conforming
Pervious Surface D 308	50%	100%	85% <sup>4</sup>	Assumed Conforming
Side Yard D 206.2	8'	n/a	30' – North <sup>1</sup> 28'8.5" – South	Conforming
<b>More than one bld. on a record lot C 305</b>	<b>More than one bld. on a record lot permitted by spec. ex.</b>	<b>n/a</b>	<b>One new dwelling on an existing theoretical lot</b>	<b>Requested</b>
<b>Access width C 305.3(b)</b>	<b>24 ft. access width required</b>	<b>16 ft. existing</b>	<b>No change</b>	<b>Requested</b>

## VI. ANALYSIS

The applicant proposes a new single family home on a theoretical lot, relief that the Board can grant as a special exception subject to the criteria of C § 305. The applicant also requests variance relief from the accessway width requirement of C § 305.3(b). The relevant special exception criteria and the variance test are reviewed below.

### **Special Exception for More Than One Building on a Record Lot – Subtitle C § 305, pursuant to X § 900**

#### *305 THEORETICAL SUBDIVISIONS*

*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 applicant has applied for relief under this section.

*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.*

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<sup>4</sup> Exhibit 54F, Attachment 2. Given that the application states that the lot occupancy is 15%, and pervious surface is 85%, the applicant should confirm that all areas not counted toward lot occupancy will be pervious, including driveways, walkways and patios.

In this instance, the theoretical subdivision was approved previously. Relief is required to add one single family dwelling to a vacant lot within that subdivision.

*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;*

Based on OP's review of the plans at Exhibit 54A, the proposed house would appear to meet side and rear yard requirements of the R-1-A zone. The Self Certification, Exhibit 54G, seems to have a number of errors regarding yard dimensions, lot width and building height; OP calculated those factors using information from Exhibits 54A and 54B. Related to yard dimensions is the placement of the exterior side stairs. Exhibit 54A shows the stairs on the south side of the house; Exhibit 54B shows the stairs on the north side. The application exhibits should be corrected to be internally consistent.

- (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 subject site is accessed by an existing 16 foot-wide private street, and the applicant has therefore requested variance relief from this section.

- (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*

Exhibit 54B shows that the applicant measured building height from a point in mid-air, apparently based on the existing grade of the site. This section, however, requires height to be measured from the finished grade. Based on that rule, OP calculated a height of approximately 42 feet, more than what is permitted in this zone. The design should be revised to conform to the maximum height, or the applicant should request a height variance.

- (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 proposed height would not conflict with the Height Act.

*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;*

The record contains the information required by this subsection, other than a proposed grading plan.

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

Exhibit 28A includes floor plans for the proposed house.

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

The application includes a self certification at Exhibit 54G.

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;*

This application was referred to FEMS and MPD at Exhibit 20. As of this writing the record does not contain comments from those agencies. OP separately reached out to FEMS and MPD, but as of this writing has not heard back.

- (2) *The environment relating to water supply, water pollution, soil erosion, and solid waste management;*

The applicant provided to the record plans addressing tree preservation, stormwater management, and erosion and sediment control. Those plans are currently under review by the appropriate agencies, including DOEE and DDOT. Once their reviews are complete, OP can provide additional feedback on the impacts of the development on water pollution and soil erosion.

As to water supply and solid waste management, the application was referred to DC Water and DPW at Exhibit 20. No comments from those agencies have yet been entered into the record. But the applicant should explain in the record the water and sewer connections for the project and how trash will be retrieved from the property.

(3) *Public education;*

It is not anticipated that the addition of one single family dwelling would have an unacceptable impact on public school capacity.

(4) *Recreation;*

It is not anticipated that the addition of one single family home would have a detrimental impact to the District's recreation amenities. There are several parks within one mile of the property.

(5) *Parking, loading, and traffic;*

OP defers to DDOT to assess transportation impacts, but it is not anticipated that the addition of a single dwelling unit would have unacceptable impacts in terms of parking, loading and traffic.

(6) *Urban design; and*

Based on the proposed footprint and elevation drawings, the proposed house would appear to be similar in scale to the existing homes in the neighborhood.

(7) *As appropriate, historic preservation and visual impacts on adjacent parkland;*

The subject property is not in an historic district and is not adjacent to any 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 open space; and the location, design, and screening of structures;*

The burden of proof, Exhibit 54F, does not address these criteria. It is not anticipated that an item like the bearing capacity of a driveway would be of concern here, but the applicant should provide information as to how deliveries would be made to the property, especially given the narrow street and the lack of a turn-around area for trucks.

Exhibit 54C is identified in IZIS as an "Updated Landscape and Tree Plan". It shows the trees that have already been removed from the site, and identifies other trees for preservation or, where they are in severe decline, for future removal. It also indicates new plantings for the site, including cedars and witch hazels near the driveway, New Jersey Tea shrubs near the front walk, and black walnuts in front

of the house. These plants should help integrate the new development into the mature, landscaped look of the rest of the neighborhood.

In terms of density, the proposed development would complement the existing development in the subdivision, and would appear to have front, side and rear yards consistent with other homes in the neighborhood.

- (c) *Considerations of traffic to be generated and parking spaces to be provided, and their impacts;*

OP defers to DDOT for analysis of transportation and parking impacts, but notes that the proposed house would have a two-car garage as well as turn-around space in the driveway.

- (d) *The impact of the proposed development on neighboring properties; and*

The burden of proof, Exhibit 54F, does not address these criteria. The applicant has submitted tree preservation, stormwater management, and erosion and sediment control plans. Those plans are currently under review by the appropriate agencies, including DOEE and DDOT. Once their reviews are complete, OP can provide additional feedback on the impacts of the development on water pollution, soil erosion and tree preservation.

As noted above, the submitted landscaping plan should provide some screening of the new house and integration into the mature, landscaped look of the rest of the neighborhood.

In terms of neighborhood character, the home would seem to match the established character of the community. Given the large setbacks, the house should not have much, if any, impact on light and air available to neighboring properties.

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

As of this writing the record does not contain comments from other District agencies.

*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.*

It is anticipated that eventual approval of the stormwater management, tree preservation and erosion and sediment control plans should result in the impacts from the development being minimized. Because the surrounding subdivision is already developed, construction of this home should not impact development within the community or in the broader neighborhood.

*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.*

Given the ongoing reviews by relevant District agencies, OP cannot at this time state whether the Board should impose any particular conditions about development on the site. “Exhibit C” of Exhibit 28B-E is a list of conditions proposed by the applicant. OP supports the goals of the conditions, but most of the conditions appear to relate to non-zoning matters.

**Variance from Accessway Width – Subtitle C § 305.3(b), pursuant to X § 1000**

*i. Extraordinary or Exceptional Situation or Condition Resulting in Peculiar and Exceptional Practical Difficulties To the Property Owner*

*a. Extraordinary or Exceptional Situation*

The subject property presents an exceptional condition in that the existing private street to access the site is only 16 feet wide.

*b. Exceptional Practical Difficulties*

The exceptional condition results in a practical difficulty in that the street cannot be widened, and therefore the applicant would have no way to meet the letter of the regulation. Widening the accessway would require purchasing portions of, or all of, nearby properties and widening the curb to curb width of the street – an impractical solution, especially given the shallow front yards and driveways on nearby properties.

*ii. No Substantial Detriment to the Public Good*

Granting relief for accessway width should not result in a detriment to the public good. The plan for the original subdivision always anticipated that a house on this lot would be accessed by the 16-foot-wide private street. This application was referred to FEMS and MPD at Exhibit 20, and OP separately reached out to these agencies. As of this writing the record does not contain comments from those agencies.

Deliveries and servicing of the site should also be considered when evaluating impacts to the public good. In Exhibit 29, OP suggested that the applicant should describe in the record how deliveries would be made to the site and how trash would be removed from this site. As of this writing it does not appear that those points have been addressed.

*iii. No Substantial Impairment to the Intent, Purpose, and Integrity of the Zoning Regulations*

The Regulations intend to provide for adequate access to all homes for, it can be presumed, normal residential access and emergency access. Granting the requested variance should not result in impairment to the intent of the Regulations to provide access to residential properties, provided FEMS and MPD have no objections.

## **VII. COMMENTS OF OTHER DISTRICT AGENCIES**

As of this writing, the record does not contain comments from other District agencies. OP is aware that DOEE and the UFD of DDOT are reviewing stormwater management, landscaping, erosion control and tree preservation plans.

## **VIII. ANC COMMENTS**

Exhibit 39 is an ANC memo addressing the application.

## **IX. COMMUNITY COMMENTS**

The record contains previously filed party status applications, which the Board considered at their May 25, 2022 public meeting. The record also contains two new party status applications at Exhibits 57 and 58. The Foxhall Crescents HOA submitted comments at Exhibit 55.

