

June 13, 2022

Via Email to dcoz@dc.gov
Frederick L. Hill, Chairman
Board of Zoning Adjustment
441 4th St NW, Suite 210S
Washington, D.C. 20001

**RE: BZA Application No. 20636 - 4509 Foxhall Crescent, NW
(Square 1397, Lot 960)**

Dear Chairman Hill and Members of the BZA:

At the request of the applicant in the referenced case, I am enclosing the attached letter from the Foxhall Crescents Homeowner Association Board regarding their concerns with ANC 3D's handling of this matter.

Thank you for your consideration.

Sincerely,



Cynthia A. Giordano

Attachment

CERTIFICATE OF SERVICE

I certify that on June 13, 2022, an electronic copy of this submission was served to the following:

1. **D.C. Office of Planning**
Matthew Jesick, AICP, Development Review Specialist
via email: matthew.jesick@dc.gov

2. **District Department of Transportation**
Mr. Jonathan Rogers, DDOT
Mr. Aaron Zimmerman, DDOT
via email: jonathan.rogers2@dc.gov
aaron.zimmerman@dc.gov

3. **Neighborhood Commission 3D**
via Email: 3D@anc.dc.gov

4. **Advisory Neighborhood Commissioner SMD Chuck Elkins**
via Email: 3D01@anc.dc.gov

5. **Jody Westby, Party in Support**
via Email: westby@globalcyberrisk.com

6. **Andrea Ferster**
via Email: aferster@railstotrails.org



Cynthia A. Giordano
Saul Ewing Arnstein & Lehr, LLP

FOXHALL CRESCENTS HOMEOWNERS ASSOCIATION

BY EMAIL

June 10, 2022

Mr. Benjamin Bergmann
Chairman
Advisory Neighborhood Commission Ward 3D
4201 Cathedral Ave., NW
#123E
Washington, DC 20016

Dear Commissioner Bergmann:

This letter is written to follow up on the ANC3D Meeting held on May 11, 2022, and to address the Commission's handling of the matter on its agenda entitled "BZA application for 4509 Foxhall Crescents (*Commissioner Rao*)". For the reasons discussed below, we believe that the manner in which this matter has been handled and the action taken by the ANC3D raise extremely serious legal and ethical issues and concerns.

ANC3D's Recommendation Amounts to Aiding and Encouraging Illegal Retribution Against a Homeowner and is a Willful Violation of the Law

Mr. Elkins's letter and recommendation, which was approved by the ANC3D and has been filed with the D.C. Board of Zoning Adjustment ("BZA"), asks the BZA to take an action that is patently illegal. With respect to the applicant's cutting of a Heritage Tree, his letter states that, "[c]onsistent with the general concept of 'clean hands', it is the position of ANC3D that where an applicant seeking relief from the District has, in association with the same property and with the objective to construct a house requiring a special exception and a variance, such an applicant should not be afforded the benefit of the BZA's services and instead should have the requested relief denied."

The ANC has no authority to devise remedies to recommend to the BZA, and such a position is in violation of the D.C. Code and U.S. Constitution. The D.C. Code on Heritage Trees, D.C. Code §8-651.04a (c) provides for a fine for removal of a Heritage Tree without a permit of \$300 per inch of circumference of the Heritage Tree. Subparagraph (d) provides that, "The Mayor may increase the fine described in subsection (c) of this section by regulation." The Mayor has not taken such action, thus, the maximum penalty for cutting the tree is the amount per subsection (c). There is no remedy allowed by law for the ANC or the BZA to deny approval to build a home based on a violation of § 8-651.04a.

The action recommended by the ANC is outside the bounds of D.C. law and amounts to no less than aiding and encouraging an agency of the D.C. government to engage in an illegal taking in violation of Mr. Zumot's property rights protected by the U.S. Constitution.

Indeed, for the reasons set forth below, if there are any grounds here for applying the doctrine of unclean hands, it is with respect to the ANC3D, the manner in which Commissioners have conducted themselves, what it is proposing the BZA do, and the manner in which it has catered to a minority of members of the Foxhall Crescents community opposing Mr. Zumot's application and whose interests it is promoting. Commissioner Jason Rao, for example, trespassed on the applicant's property, took inflammatory photographs of his daughter standing with arms outspread, and called numerous D.C. agencies to investigate the alleged issues of water run-off from the on the property that in fact do not exist.

The Biased and Discriminatory Manner in Which the FCHOA and 4509 Property Owner has Been Treated

First, one question that should be answered is, "Who influenced Mr. Elkins in preparing the ANC's letter to the BZA regarding this application?" The Foxhall Crescents Homeowners Association (FCHOA) has repeatedly asked for copies of communications sent to the 3D Commissioners regarding 4509. We have received couched responses, but no documents were produced, even though Commissioner Elkins admitted to us that he had been in touch with and had had communications with minority members of the FCHOA about this application.

We assume that it is the former Board members who have sought Party status in opposition to Mr. Zumot's BZA application – namely the Godleys, the Sharkeys and Mr. Fox. Their BZA motion reflects the interests of only those few individuals in the Foxhall Crescent neighborhood who have for many years engaged in an effort to prevent a house being built on this lot by the prior owner and now the current owner, Mr. Zumot. Mr. Elkins, the Commissioner who is solely assigned to the 4509, did not give the owner of the lot the courtesy of a meeting or conversation. Mr. Rao represents the rest of the FCHOA community, but refused all of our outreaches for a call or meeting prior to the ANC meeting on this matter. *ANC Commissioners are elected to represent their constituents, yet this seems to have been forgotten by ANC 3D.*

Second, as Ms. Giordano, Mr. Zumot's counsel pointed out during the hearing, Mr. Zumot did present to the prior FCHOA Board alternative plans for siting the house that would have preserved the heritage tree that he cut down (the "Heritage Tree"), but they would not consider them. In fact, the prior FCHOA Board engaged in what amount to a scheme precluding Mr. Zumot from building the house by requiring him to agree that the only house that he could build was one that required removal of the tree while knowing he could not get permission to do that. Had those prior Board members acted in an honest, cooperative and problem-solving manner, as the current Board aims to and the majority of neighbors support, Mr. Zumot never would have been forced to cut down the tree.