

**District of Columbia Board of Zoning Adjustment  
441 54<sup>th</sup> Street, NW, Suite 210S  
Washington, DC 20001**

**Re: Testimony of Gene and Patricia Godley, and Robert and Phoebe Sharkey in  
BZA Case # 20636 - 4509 Foxhall Crescents, NW (the Property)**

Dear Members of the Board of Zoning Adjustment:

We have applied for party status in this matter, which is being opposed by the Applicant and Jody Westby, the President of the Foxhall Crescents Homeowners Association, Inc. (FCHOA). The Godleys' house, 4513, abuts the Property; the Sharkeys' house is within 200 feet.

We applied for party status in our own right after the Board denied party status to John Fox, a resident of Foxhall Crescents and the former president of the FCHOA because he did not reside within 200 feet of the subject site. We had filed letters with the BZA confirming that we intended for John Fox to represent us at the hearing, and we were led to believe that that would be sufficient to allow Fox to represent us as part of a group of Foxhall Crescents residents who have issues with the proposed construction.

Commissioner Chuck Elkins, ANC3D01, Advisory Neighborhood Commission 3D has submitted a letter to the Board expressing his view that we should be granted party status for the Board to hear the full set of arguments in the case. If we are not given party status, the Board will be deprived of essential information necessary for the Board to make an informed decision in the matter that fully complies with the criteria for special exceptions and variances. We can show to the Board, that without special conditions to any approval by the Board, the proposed use of the Property will adversely affect the use of our properties and cause substantial detriment to the general Foxhall Crescent community.

It is notable that neither the Applicant nor Ms. Westby assert any prejudice to their interests as a result of the asserted "untimely" filing of our request for party status, apart from their general disagreement with our perspective and their desire not to have that perspective be developed at the hearing. Indeed, Ms. Westby makes no claim that our application is untimely, since of course, the request of FCHOA was also untimely in that it was filed on April 26, 2022, which is obviously

long after the first hearing scheduled for March 2, 2022, and substantially fewer than 14 days prior to the first scheduled BZA hearing. See BZA Ex. 30.

This Board nonetheless saw fit to deny our requests for party status at the hearing on June 15, 2022, based on their view that the requests were untimely, and then struck from the record our reply to the oppositions to our party status filed by Ms. Westby and the Applicant. However, the Board subsequently granted us permission to re-file and re-submit our reply as written testimony going to the merits of the application, as we would have been able to do if our testimony as persons in opposition been in person rather than virtual. Accordingly, we have revised and reformatted our reply, which largely responds to material misstatements of the facts concerning the history of this site and the actions of various made by Ms. Westby in her opposition statement, which were reiterated in her testimony during the hearing.

#### **Location of Godley/Sharkey Houses and the Property Impacts:**

The Godleys have a special interest in the matter because of where their property is situated. The location of their property makes them distinctly and uniquely impacted by, among other things, traffic, parking, and stormwater run-off considerations. Because of the narrowness of the street and their requirement for handicapped access, they have considerable interests at stake.

The Applicant also opposes the Sharkeys' application because they are not abutting property owners. The zoning regulations do not limit party status to abutting property owners. The Sharkeys are on the list containing the names and addresses of properties located within 200 feet of the site and are therefore presumptively distinctly and adversely affected. See BZA Ex. 7. The Sharkeys have a special interest in the matter because of the location of their property which provides *prima facie* evidence of their special property interest and entitlement to party status in this proceeding, and because they are also uniquely impacted by the project.

#### **The Godleys and the Sharkeys Will Experience Unique Adverse Impacts from the Unresolved Storm Water Management Issues**

The Applicant makes several material misrepresentations regarding the storm water management plan as part of their opposition. First, Applicant's representation that this plan was available to the opposing parties or the ANC before it was filed with the BZA is false. As the

record demonstrates, as late as June 10, 2022 -- five days before the scheduled hearing -- the Applicant filed supplemental plans and information regarding its storm water management plan.<sup>1</sup>

Second, the Applicant attempts to downplay the significance of the storm water management problem on the Property. These issues are directly relevant to the standards governing the Applicant's request for a special exception and cannot be deferred until the permitting stage, as the Applicant suggests. Indeed, the Office of Planning recognize that "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." BZA Ex. 61, at 2

In addition, both properties would be affected by water run-off and sedimentation from the Property, which will be exacerbated by the increase in the site's impervious surfaces as well as by the application's failure to maintain the 30-foot vegetated buffer required by FCHOA bylaws. This increased run off will cause potentially hazardous conditions due to freezing and slippery conditions. Storm water management for new construction is an important consideration for us, and one that has been specifically noted by the Office of Planning as a deficiency in the Application. See BZA Exhibit 61. Thus, the Applicant's assertion that the Sharkeys are "unlikely to experience any distinct or unique impacts" associated with the project because their home is "a full block from the Property" is false. Due to the location of the Sharkeys' property directly downhill from the site, their property will experience direct harm from the unresolved storm water management issues on the site.

The Applicant's failure to address the serious storm water management issues were also specifically noted by ANC 3D, which recommended disapproval 7-1 of this application. The ANC

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<sup>1</sup> It is worth noting that the Applicant excuses its own tardiness in filing the storm water management plan by characterizing it as only late by a few days late, based on the assumption that the time runs from the postponed hearing date of June 15, 2022. However, by that standard, the requesters party status request was timely, since it was filed within the required 14 days of the same postponed hearing. If, however, the time for filing these supplemental submissions runs from the date of the first hearing scheduled for March 2, 2022, then the Applicant's supplemental filing was filed four months late.

specifically recommend that if the BZA were inclined to approve it, that it be subject to certain conditions, including strict compliance with the storm water management regulations. This is precisely what the BZA did regarding the Application in 2014 by the Applicant's predecessor in BZA Case 18708.

### **The Godleys and the Sharkeys Will Experience Unique Adverse Impacts from Traffic**

Both parties will uniquely experience the adverse traffic impacts from the Applicant's nonconforming access width. Foxhall Crescents is a 25-foot-wide street, except for the access road to the Property, which is only 16 feet and therefore requires a variance from the 24-feet required by the zoning regulations. Foxhall Crescents is a dead-end street which proceeds from Foxhall Road by way of a winding, sloping road. The nonconforming access road is very steep and where it intersects with the main Foxhall Crescents Street, there is a sharp turn to proceed north to the Sharkeys' house or south towards Foxhall Road. The lack of parking available to the Property (the only property in the community that does not include a portion of the abutting street as part of the fee simple), and the width of the access street and the elimination from the proposed plan of the road on the Property with a turnaround as stipulated in the Bylaws, does not allow for vehicular traffic of all types, including emergency, delivery and maintenance vehicles, to access the Property except by entering facing forward and then exiting by backing up. The first possible "turnaround" is at the intersection of the road from the Property and Foxhall Crescents, where theoretically vehicles can back into Foxhall Crescents and then turn right to proceed to Foxhall Road or left to proceed toward Sharkey's house. At this "turnaround" the abutting houses normally have cars parked in the street in front of the houses, so a "turnaround" is not available. The results from the proposed development plan would have a substantial adverse impact on both properties because of their proximity to the Property.

### **History and Current Issues**

We strongly disagree with the assertion in the opposition filed by Jody Westby that "this application is very similar to the 18708 application" filed in 2014. BZA Ex. 63, at p. 2. In that case, as here, the ANC did not approve the Application. The approval by the BZA was obtained, however, but it was subject to certain special conditions which satisfied the requirement of the Covenants and Bylaws of the FCHOA regarding the type of house to be built, its location on the

site, and strict compliance with the new storm water management regulations. Most notably, the stipulated size and location of the house satisfied the requirements in the FCHOA Bylaws that there be a 30-foot undisturbed perimeter around the Property and that the easement for the road through the Property be preserved.

If the BZA approves the Application, it should be subject to the same conditions stipulated in the prior BZA Case # 18708. These conditions were the subject of an agreement among the Applicant's predecessor, with the assistance of a competent attorney, and opposing parties, which included the Godleys and the Sharkeys. The Applicant's predecessor has not disavowed the agreement, and the Applicant specifically agreed in a Board meeting of the FCHOA in August 2021 to comply with it. Indeed, the application filed by Penguin in November 2021 specifically requests that the relief should be "*The Proposed form of relief . . . previously granted by the BZA in Case 18708.*" BZA Exhibit 8, at P. A-8 (Emphasis added).

Accordingly, we would have had no reason to oppose the application on April 12, 2022, which was when a request for party status would have been due (14 days prior to the hearing scheduled for April 26, 2022), since the plans conformed to the conditions specified in BZA Case # 18708, and up to that point, as noted in our request for party status, Applicant had consistently represented its intention to conform to the FCHOA Bylaws and the conditions previously negotiated as part of BZA Case # 18708. However, a subsequent amendment to the architectural plans, filed on April 28, 2022, materially changed the application, in terms of the size of the house, its location, the intrusions into the 30-foot undisturbed perimeter and the easement for the road through the Property. BZA Exhibit 28. At that point, any requests for party status would have already been technically "late." This material change in the application clearly presents good cause for any "late" filing of the request.

Both the Applicant and Ms. Westby have tried to make it a relevant issue that almost 30 years ago Mr. Godley supported a plan like that under current consideration. While consistency over a lifetime is a virtue, those positions were obviously vitiated by the unanimous FCHOA Board (on which Mr. Godley and Mr. Sharkey served) position in 2014 to require a more substantial Storm Water Management system and the Arthur Cotton Moore footprint house in the same location as on the original Site Plan, which the BZA incorporated into its Order. It should also be

noted that in this intervening 30-year period there have been unanticipated storm water run-off, the city regulations changed and DOEE's Storm Water Management requirements have strengthened substantially. It is ironic that the Applicant committed to the FCHOA Board that he was building the Arthur Cotton Moore Type 6 house in the same location as the Site footprint in August 2021 which was confirmed by his Project Manager in writing that month, only to submit a different plan 8 months later. Unable to maintain promises and positions for mere months, these same parties now criticize Mr. Godley for not adhering to 30-year-old views. These arguments are wholly irrelevant to the Godleys' party status request. Indeed, if any past actions should deprive a party of standing in this proceeding, it should be the Applicant's past actions in willfully and in direct violation of D.C. law destroying the heritage tree on the site.

The Applicant's objection to our having party status because it is "late" is thus totally without merit. There is no prejudice to the Applicant by our having party status at this juncture. And the Applicant surely is not in the position to criticize others for being "late" when it has consistently ignored time limitations on its submissions in this proceeding. Its submission of its storm-water management plan, which it submitted to DOEE on May 13<sup>th</sup>, but not filed with the BZA until May 27, 2022, less than 21 days prior to the June 15<sup>th</sup> hearing, and on the Friday before the Memorial holiday weekend, was obviously timed to lessen the ability of the opposing parties and the responsible government agencies' ability to review and analyze it.

Finally, Ms. Westby falsely asserts that "[t]he majority of the FCHOA community supports application 20636 and the building of the proposed home and variances requested." BZA Ex. 63, at 2. Article IX, Section 1 of the FCHOA Bylaws, which are attached hereto, specifically provide that after a member proposes new construction, the plan submitted must be reviewed at a special meeting of the Board of the FCHOA where all members of the association can review and give their views. This has not occurred, so there has not been a venue for discussion of the proposed development nor have our views been sought out.

Yours truly,

/s/ Gene Godley

/s/ Robert E. Sharkey

/s//Patricia Godley

/s/ Phoebe D. Sharkey