

FOXHALL CRESCENTS HOMEOWNERS ASSOCIATION

June 27, 2022

Mr. Frederick L. Hill
Chairman Appointee
Board of Zoning Adjustment
441 4th Street, NW
Suite 200S
Washington, DC 20001

**Re: BZA Case 20636
Response to Opposition Testimony of Gene and Patricia Godley and Robert and
Phoebe Sharkey**

Dear Chairman Hill:

Pursuant to your decision at the June 15, 2022 Board of Zoning Adjustment (“BZA”), I have attached the response by Foxhall Crescents Homeowners Association to the Opposition Testimony of Gene and Patricia Godley and Robert and Phoebe Sharkey and associated exhibits (BZA Exhibit 83, 83A, 83B).

Sincerely,



Jody R. Westby

Attachment: Response of Jody R. Westby, President, Foxhall Crescents Homeowners Association, to
Opposition Testimony

Response of Jody R. Westby, President, Foxhall Crescents Homeowners Association, to Opposition Testimony Filed by Gene and Patricia Godley and Robert and Phoebe Sharkey

June 27, 2022

Board of Zoning Adjustment Hearing Regarding Application 20636

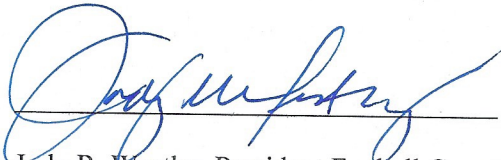
The Foxhall Crescents Homeowners Association (FCHOA) urges the BZA to disregard the opposition filing by Gene and Patricia Godley and Robert and Phoebe Sharkey and approve Application 20636 for the following reasons:

- The testimony you allowed me to submit on June 20 (Exhibits 85A1, 85A2) shows that the allegations of the opposing parties are misleading, inaccurate and/or belied by their own prior actions and statements.
- The opposition has tried to distract the BZA with tree preservation and storm water management issues that are outside the BZA's purview. The applicant has made clear that they will work with both DOEE and DDOT and obtain the necessary approvals, and we are confident that they will do so and will work with them to ensure that happens. We emphasize again that the ANC representative, Mr. Elkins, has stated that there is no SWM issue given the applicant's agreement to submit to the DOEE's strict regulations.
- The cutting of the Heritage tree was unfortunate, but DC law allows the appropriate penalty of \$300 per circumference inch and allows the Mayor to increase such penalty by regulation, which she has not done. The cutting of the Heritage Tree is not a matter that should impact BZA consideration. The Office of Planning memo to the BZA dated June 9, 2022, stated that, "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."
- The BZA should not allow DDOE and DDOT disrupt its decision making process by holding up input to the Office of Planning on this application. The DDOE and DDOT approvals can be managed in the building permit process, as is the normal course of these matters.
- The opposition asks the BZA to include the same conditions as it imposed on applicant 18708, which were based upon an illegal agreement presented to the BZA by the opposition. That agreement has been voided by the FCHOA Board and is a voidable conflict of interest transaction under DC law. The FCHOA only requests (1) the applicant abide by the Construction Management Plan included in Penguin's application, and (2) agree to use the same or substantially similar materials in color and type in the construction of the home so it blends in with the other homes in the community.
- The opposition has raised FCHOA Bylaw issues and once again put forward incorrect statements and conclusions to the BZA and attempted to embroil it in fabricated issues regarding easements, roads, and undisturbed perimeters. There is no easement across 4509, as shown by the Godley Deed of Sale and Property Deed (BZA Exhibits 84B, 84C). The

FCHOA streets are all private property, with ample parking, especially in the area of the 4509 lot, for extra construction parking.

- FCHOA Bylaws are outside the purview of the BZA, and the FCHOA Board eschews the claims of the opposition and is confident the approval of this application will not unduly disrupt the neighborhood. I would also note for the record that the opposition has raised issues as to whether the FCHOA Board has complied with Bylaw requirements with respect to this application. Please know that the current Board has *more than* complied with the Bylaw requirements. Specifically, on March 8, 2022, Mr. Zumot sent a memorandum to the community outlining his plans for the home he proposes to build. Then, the members of the community called a Special Meeting of the *entire* community on March 27, 2022, one of the stated purposes of which was to allow Mr. Zumot to make a presentation to the community. At that meeting, members were allowed to ask questions, and in fact, Mr. Sharkey, in particular, took the time to ask several questions. Subsequent to that meeting, on April 3, as president of the FCHOA, I circulated a letter to the entire community which I proposed to submit to the ANC3D Commission for their consideration of Mr. Zumot's BZA application, again describing in detail the plan and asking for any comments on her letter (none were received). Finally, on June 11, 2022 the Board held a meeting at which it formally and unanimously affirmed its approval of BZA application 20636. Thus, this Board has fully complied with the Bylaws and is acting with the support of the community in supporting Penguin LLC's BZA application.
- The FCHOA community looks forward to a beautiful new home to be built on theoretical lot 4509 so it can finally – after 40 years – have a completed community. Denial of this application or a significant delay to the BZA's decision will hurt the FCHOA community.
- Approval of this application is in keeping with the wishes of our community and the FCHOA Board which has unanimously approved it, and we again urge the BZA to approve it.

Thank you Mr. Chairman and Members of the BZA for your consideration of our views.



Jody R. Westby, President Foxhall Crescents Homeowners Association

CERTIFICATE OF SERVICE

I hereby certify that, on June 20, 2022, a copy of the foregoing Motion to Support BZA Application 20636 was served upon the following:

1. **D.C. Office of Planning**

Matthew Jessick, 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.rogers@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. **Advisory Neighborhood Commissioner SMD Jason Rao**

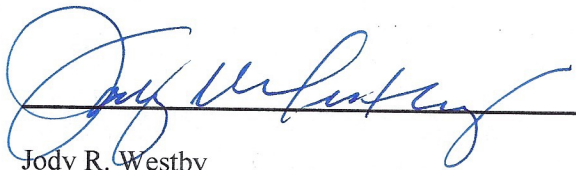
Via email: 3D06@anc.dc.gov

6. **Cynthia Giordano, Saul Ewing Arnstein & Lehr**

Via email: cgiordano@saul.com

7. **Rajai Zumot, Penguin LLC**

Via email: rzumot@zumot.net



Jody R. Westby
President, Foxhall Crescents Homeowners Association