

June 27, 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 Crescents, NW
(Square 1397, Lot 960)**

Dear Chairman Hill and Members of the BZA:

The following is the Applicant's response to the Sharkey's and Godley's filings per the Board's Memo to the File dated June 16, 2022. The Sharkeys and Godleys make the following claims to which we respond below.

Stormwater Management

The Sharkey's and Godleys claim that storm water management cannot be deferred until the permitting stage. Actually, storm water management is typically deferred until the permitting stage where DOE 's expertise is employed and utilized to review and approve such plans.

OP typically relies on that process as well and does not require DDOE approval during a BZA case. A recent BZA case, BZA No. 20594, involving a theoretical subdivision and approval of two houses in the Forrest Hills neighborhood is directly on point. Similar to the case before you, that case involved a sloping, heavily treed property as well as adjacent neighbor stormwater concerns. However, in that case the attached OP report simply recommended that "[t]he Project must comply with all relevant District stormwater management regulations" (see p.5 of Exhibit A, the attached OP report in BZA No. 20594). Further, as we stated previously, DOEE approval of the stormwater management control plans is required prior to permit issuance.

To hold up BZA decisions for DOEE approval of storm water management plans would wreak havoc on the BZA process. The same goes for Urban Forestry Division review. In thirty plus years of practice, I cannot think of a single zoning case where their comments were required prior to a BZA or Zoning Commission decision.

Traffic and Parking Concerns

The Sharkeys and Godleys contend that the subject property should not be developed because the street which accesses the property is only 16 ft wide. DDOT, in their review of the application disagrees: “[N]ear the property, private Foxhall Crescents NW is 16-foot wide curb-to-curb, which is wide enough for two-way traffic and adequate to serve the two (2) proposed parking spaces. See DDOT report attached hereto as Exhibit B.

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

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Elisa Vitale, AICP, Development Review Specialist
 Joel Lawson, Associate Director Development Review
DATE: May 4, 2022
SUBJECT: BZA Case 20594, 3007 Albemarle Street NW, for special exception to allow construction of two detached buildings on a single record lot in the R-8 zone.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following relief.

Special Exception pursuant to X § 901 for the following:

- C § 305.1, Theoretical Subdivisions, for multiple buildings on a single lot.

The Applicant has requested, in the alternative, the following variance relief pursuant to X § 1002.1, for which OP recommends **denial**:

- D § 502.1, Minimum Lot Width, (75 required; 16.3 feet existing and proposed).

II. LOCATION AND SITE DESCRIPTION

Address	3007 Albemarle Street NW
Applicant	Goulston & Storrs, attorney, on behalf of Nezahat and Paul Harrison, owners.
Legal Description	Square 2041, Lot 0818
Ward / ANC	3 / 3F
Zone	R-8 – the R-8 Forest Hills Tree and Slope Protection Residential House zone is intended to permit detached houses on large.
Lot Characteristics	The 30,618 square foot tax lot is a through lot with frontage on Albemarle Street NW and Appleton Street NW. The lot is generally rectangular in shape with a pipe stem providing access to Albemarle Street NW.
Existing Development	The subject property is currently improved with a detached building in single-household residential use.

Adjacent Properties	The Property is bounded to the north by Appleton Street NW and the southern property line of 4525 31 st Street NW; to the south by Albemarle Street NW and the northern property lines of 3033 to 2009 Albemarle Street NW; and to the east and west by adjoining properties in the R-8 zone.
Surrounding Neighborhood Character	The surrounding neighborhood is mainly low density residential in character, with multi-family and commercial development to the west along Connecticut Avenue, NW.
Proposed Development	The Applicant is proposing to raze the existing detached building on the site and construct two new detached buildings for single-household residential use.

III. ZONING REQUIREMENTS and RELIEF REQUESTED

Zone – R-8	Regulation	Existing	Proposed ¹		Relief
			Lot 1	Lot 2	
Lot Frontage C § 303.2	75% of the req. lot width or 56.25 ft. min.	16.3 ft.	75 ft.	16.3 ft.	Not requested
Lot Frontage C § 303.3	40% of req. width at street lot line (30 ft.) and no less than 14 ft.	16.3 ft.	75 ft.	16.3 ft.	None required
Lot Area D § 502.1	7,500 sq. ft. min.	30,618 sq. ft.	18,404 sq. ft.	12,214 sq. ft.	None required
Lot Width D § 502.1	75 ft. min.	16.3 ft.	75 ft.	16.3 ft.	Variance
Height D § 503.1	40 ft./3 stories max.	33 ft.	39.9 ft. / 3 stories	35.7 ft. / 3 stories	None required
Lot Occupancy D § 504.1	30% min.	4.3%	11.5%	14.7%	None required
Front Setback D § 505.1	Within range of existing front setbacks of residential buildings on the same side of the street in the block	10.25 ft. from Appleton 237.3 ft. from Albemarle	17.5 ft. from Appleton	192.6 ft. from Albemarle	None required
Rear Yard D § 506.1	25 ft. min.	237.3 ft. from Albemarle 10.25 ft. from Appleton	67.9 ft.	42 ft.	None required
Side Yard F § 507.1	8 ft. min./side and 24 ft. total, min.	35.5 ft. west 141.5 ft. east	42 ft. west 39.8 ft. east	11.4 ft west 12.6 ft. east	None required
Pervious Surface F F § 508.1	50% min. min.	Not provided	62%		None required
Parking C § 701.5	1/principal du min.	> 4 spaces	4 spaces	4 spaces	None required

¹ Information provided by Applicant, Exhibit 85, dated March 20, 2022.

IV. OFFICE OF PLANNING ANALYSIS

a. **Special Exception Relief pursuant to X § 900.2 from C § 305.1 for multiple buildings on a single lot**

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 Property is located in the R-8 zone and the Applicant is proposing to construct two detached buildings for single household residential use. OP notes that the existing lot is a tax lot (Lot 0818) and not a record lot.

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.

The Applicant is proposing two theoretical lots (Nos. 1 and 2) for the individual detached residential buildings.

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;

The Applicant is proposing conforming side and rear yards for Lots 1 and 2. See Section III of this report for a complete analysis of the theoretical lots against the R-8 development standards.

(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 Property would have two points of vehicular ingress and egress. A curb cut providing access from Appleton Street NW would serve Lot 1. The existing curb cut that provides access from Albemarle Street NW would serve Lot 2.

The District Department of Transportation (DDOT), at Exhibit 48, stated that it did not object to the project but noted that the proposed curb cuts and driveways to Appleton Street and Albemarle Street would be larger than the 8- to 12-foot width permitted by the Design and Engineering Manual for residential properties (DEM 31.5.3.d). The Applicant should shrink the curb cuts and driveway within the public right-of-way. Specifically, the Applicant should reduce the width of the 16-foot driveway on Albemarle Street to 12 feet or less and replace the leftover area with green space or landscaping.

(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

The Applicant states that the height of each building is measured from the finished grade at the middle of the building façade and that both buildings would not exceed the maximum permitted building height in 40 feet.

(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 building heights would be measured in accordance with C § 305.3(c); all buildings would conform to both zoning and Height Act limits.

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;*

The Applicant has submitted a plat of the lots proposed for subdivision at Exhibit 11.

(2) *The location of proposed streets and designated fire apparatus roads;*

Lot 1 would be accessed via a driveway from Appleton Street NW and Lot 2 would be accessed via a driveway from Albemarle Street NW. Appleton Street NW has a right-of-way width of 60 feet and Albemarle Street NW has a right-of-way width of 90 feet.

In its June 29, 2021 memo, at Exhibit 9, DC Fire and Emergency Medical Services (FEMS) indicated that it did not object to the project but noted that all fire department access and service feature requirements are in accordance with DCMR 12-H Fire Code Supplement, 2017 edition, and the International Fire Code, 2015 edition.

(3) *Location of proposed easements;*

The Applicant has not shown any proposed easements on the plans.

(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;*

The Applicant has submitted a proposed plat at Exhibit 11. The site plan provided at Sheet Z.100 of Exhibit 59 shows the lot lines of the proposed theoretical lots.

(5) *Existing grading and proposed grading plans;*

The Applicant has submitted a civil drawing at Exhibit 89 that shows existing and proposed grading.

(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;*

The Applicant has submitted a tree planting plan at Exhibit 72, which denotes the number, size, and species of proposed planting. The Applicant submitted a supplemental tree plan at Exhibit 89 that identifies the trees on the property and on adjacent property, indicates the tree diameter at breast height (DBH), and whether the trees would be retained or removed.

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;*

DC FEMS provided comments at Exhibit 9.

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

The Project must comply with all relevant District stormwater management regulations. The Applicant provided a civil drawing sheet, which indicates that each lot would meet the pervious surface requirements for the R-8 zone, Lot 1 65.8% and Lot 2 51.1%.

- (3) *Public education;*

The Project would include two single-household dwellings (one more than existing). At Exhibit 9, the Applicant provided correspondence from the Director of Strategy and Logistics at Murch Elementary indicating that it had the capacity to enroll all in-bounds students. At Exhibit 10, the Applicant provided correspondence from Deal Middle School indicating that it would enroll all new in boundary students.

- (4) *Recreation;*

The nearest recreation centers are Wilson Aquatic Center (0.9 mile), Hearst Recreation Center (about 1.2 mile), and Macomb Recreation Center (about 1.5 mile).

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

DDOT filed comments at Exhibit 32. In its report, DDOT notes no objection to the proposal, subject to a number of street design conditions including shrinking the width of the curb cuts and driveway within the public space.

The application includes a garage with 2 parking spaces for each house, whereas one space per property is required.. The property is located 0.4 miles from the Van Ness-UDC Metrorail Station, which is served by the red line.

- (6) *Urban design; and*

The Applicant is proposing 2 detached residential buildings with the house on Lot 1 fronting on Appleton Street NW and the house on Lot 2 fronting on Albemarle Street NW. The house on Lot 1 would measure 39.9 feet in height and three stories and would feature decks at the first, second, and third levels, as well as an in-ground swimming pool. The house on Lot 2 would measure 35.7 feet in height and three stories and would feature decks at the second and third levels. The buildings would be clad in stone and siding and would feature standing seam metal roofs.

The homes would each feature a two-car garage that would be accessed via the curb cut and driveway from Appleton Street NW for Lot 1 and via the existing curb cut and driveway from Albemarle Street NW for Lot 2.

The Applicant has provided elevations of the proposed buildings at Exhibit 75 but has not identified proposed building materials.

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

The Soapstone Valley Trail is accessible from Albemarle Street NW to the south and west of the

subject property. The proposed development should not have visual impacts on the trail.

- (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;*

Access to the proposed buildings would be via private driveways with access from Appleton Street NW for Lot 1 and access from Albemarle Street NW for Lot 2. The driveways should provide access for deliveries to be made to the proposed buildings.

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

The Applicant is proposing two enclosed parking spaces for each of the proposed lots, which exceeds the minimum required parking or one space for each lot. DDOT notes in Exhibit 48 that the proposed project should not have adverse impacts on the District's transportation network. The project would not generate a sufficient number of trips to meet the criteria to require a Comprehensive Transportation Review (CTR).

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

The Project should not significantly negatively impact neighboring properties. The Applicant has provided separation between the proposed homes and the existing surrounding development. At the closest, there would be approximately 13 feet of separation between the side facades of the home on Lot 2 and the rear wall of an accessory building at 4516 30th Street NW.

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

The application was referred to OP, DDOT, Department of Consumer and Regulatory Affairs (DCRA), Office of the Attorney General (OAG), Metropolitan Police Department (MPD), FEMS, DC Water, District Department of Energy and Environment (DOEE), Department of Parks and Recreation (DPR), Department of Public Works (DPW), and Office of the State Superintendent for Education (OSSE). OP also reached out to other District agencies for comment and had not received comments at the time this report was drafted.

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.

The proposed development of two detached buildings for single household residential use complies with the intent and purpose of the Zoning Regulations and should not have an adverse effect on the character and future development of the 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.

OP does not recommend any additional conditions at this time, but supports inclusion of the conditions recommended by DDOT in its December 10, 2021 report (Exhibit 48).

b. Variance Relief pursuant to X § 1002 from D § 502 from the minimum required lot width

The Applicant has requested, in the alternative, variance relief from the lot width requirements to permit the subdivision of the property (Square 2041, Lot 818) to two record lots. Although OP typically does not provide analysis of alternatives for a BZA case, analysis is provided below.

i. Exceptional Situation Resulting in a Practical Difficulty

The Applicant has not demonstrated an exceptional condition that results in an exceptional practical difficulty. The existing tax lot being large is not an extraordinary or exceptional situation or condition of the subject property. The existing tax lot is conforming, satisfies the minimum lot width and lot area requirements for the R-8 zone, and is currently improved with a detached building intended for single-household residential use.

As the Applicant has not demonstrated an extraordinary or exceptional situation or condition with the lot, no practical difficulty to development of this property has been shown. The subject property is currently improved with a detached building in single-household residential use.

ii. No Substantial Detriment to the Public Good

A subdivision to allow the construction of two detached buildings for single household residential use in the R-8 zone would not typically result in a substantial detriment to the public good, and would provide an appropriate level of infill development. As such, this proposal would not likely have a significant impact on the public good

iii. No Substantial Harm to the Zoning Regulations

The creation of a new substandard record lot that does not meet the minimum lot width requirements of the R-8 zone would not be consistent with the purpose and intent of the Zoning Regulations.

The regulations are intended to discourage the creation of new non-conforming lots, and to not create new nonconformities for existing buildings. The Subdivision Regulations at Subtitle C § 302.1 state, *“Where a lot is divided, the division shall be effected in a manner that will not violate the provision of this title for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces, or loading berths applicable to that lot or any lot created...”*

The Applicant has the ability to accomplish the desired outcome through a theoretical lot subdivision, which is reviewed as a special exception rather than as a variance.

V. COMMENTS OF OTHER DISTRICT AGENCIES

The Applicant submitted a letter from FEMA at Exhibit 9 indicating no objection to this project. DDOT submitted a memo at Exhibit 32 indicating that it had no objection and providing conditions regarding improvements in public space.

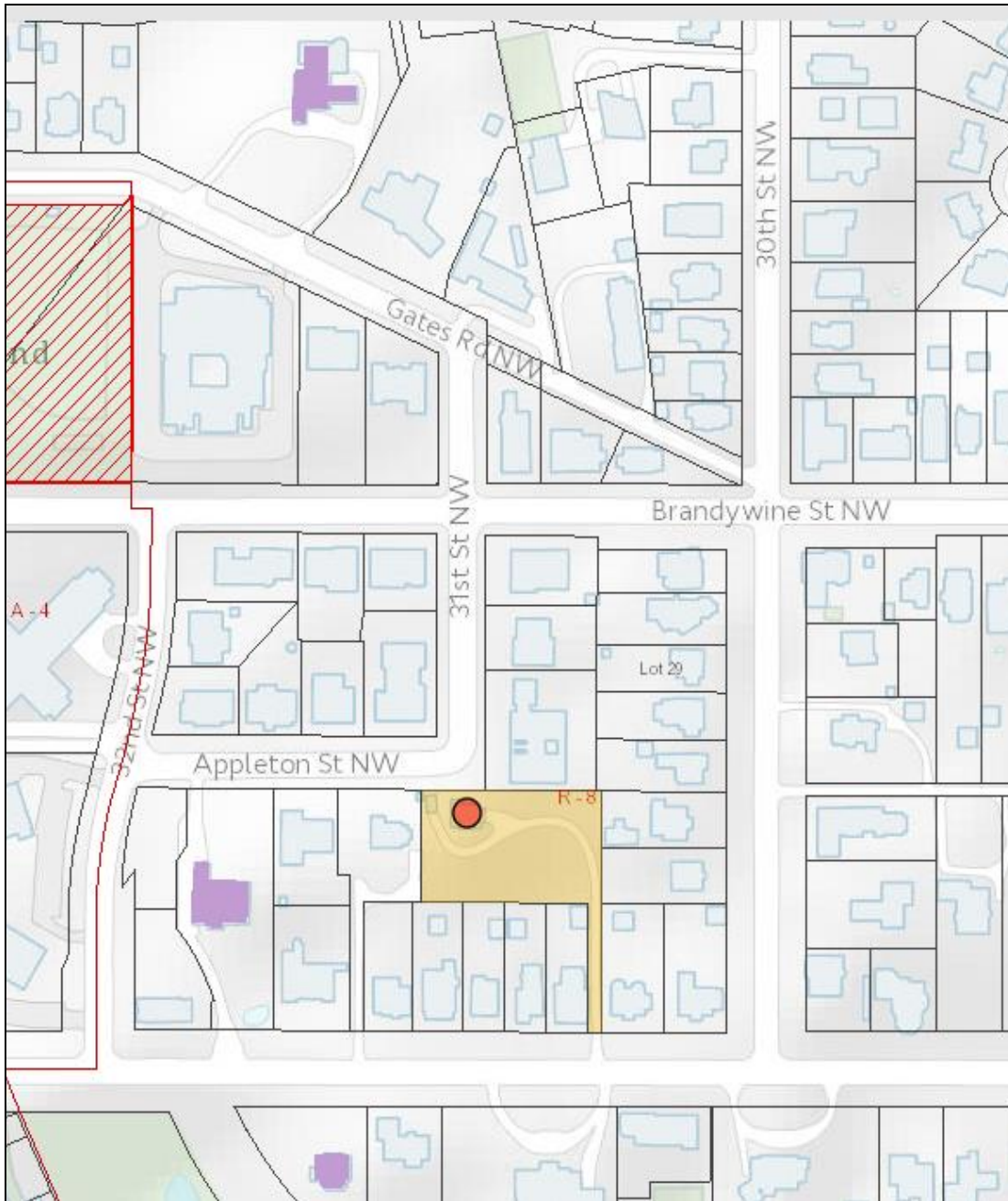
VI. ADVISORY NEIGHBORHOOD COMMISSION

Comments from ANC3F had not been submitted to the record at the time this report was drafted.

VII. COMMUNITY COMMENTS

There are numerous letters in opposition filed to the record. Three requests for Party Status in opposition were filed at Exhibits 27, 28, and 30. The Board granted the Party Status requests on December 22, 2021, see Exhibit 57.

Location Map



Government of the District of Columbia


Department of Transportation



d. Planning and Sustainability Division

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Anna Chamberlin, AICP 
Associate Director

DATE: February 18, 2022

SUBJECT: BZA Case No. 20636 – 4509 Foxhall Crescent NW

APPLICATION

Penguin, LLC (the “Applicant”), pursuant to Title 11 (2016 Zoning Regulations) of the District of Columbia Municipal Regulations (DCMR), Subtitle X, Chapter 9, requests a special exception from the subdivision regulations of Subtitle C § 302.1; pursuant to Subtitle C § 305.1 and Subtitle X § 901.2 and an area variance from the vehicular ingress and egress requirements of Subtitle C § 305.3(b); pursuant to Subtitle X § 1002 to construct a detached, two-story with basement principal dwelling unit. The site is located in the R-1-A Zone at 4509 Foxhall Crescent NW (Square 1397, Lot 960) and is served by a varying width (16-25 foot) private street.

RECOMMENDATION

The District Department of Transportation (DDOT) has reviewed the application materials and has determined that the proposed action will not have adverse impacts on the District’s transportation network. DDOT has no objection to the approval of this application, including the variance relief from the 24-foot street width requirement of Subtitle C § 305.3(b). Near the property, private Foxhall Crescent NW is 16-foot wide curb-to-curb, which is wide enough for two-way traffic and adequate to serve the two (2) proposed parking spaces.

STREETScape AND PUBLIC REALM

DDOT’s lack of objection to this application should not be viewed as an approval of the public realm design. If any portion of this or future projects at the property or within the Foxhall Crescents Master Plan propose elements within District owned right-of-way the Applicant is required to pursue a public space permit through DDOT’s permitting process.

Board of Zoning Adjustment
District of Columbia

The Applicant should refer to Titles 11, 12A, and 24 of the [DCMR](#), the most recent version of DDOT's [Design and Engineering Manual \(DEM\)](#), and the [Public Realm Design Manual](#) for public space regulations and design guidance. A permit application can be filed through the DDOT [Transportation Online Permitting System](#) (TOPS) website.

AC:je