



BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 140 - PARTY STATUS REQUEST

Before completing this form, please go to www.dcoz.dc.gov > IZIS > Participating in an Existing Case > Party Status Request for instructions. Print or type all information unless otherwise indicated. All information must be completely filled out.

PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.

Pursuant to 11 DCMR Subtitle Y § 404.1 or Subtitle Z § 404.1, a request is hereby made, the details of which are as follows:

Name:	Andrew Wong		
Address:	4507 Foxhall Crescent NW, Washington, DC 20007		
Phone No(s):	202-674-3637	E Mail:	andy.wong2@yahoo.com

I hereby request to appear and participate as a party in Case No.:	20636
--	-------

Signature:	<i>Andrew Wong</i>	Date:	Feb. 7, 2022
------------	--------------------	-------	--------------

Will you appear as a(n)	<input type="checkbox"/> Proponent	<input type="checkbox"/> Opponent	Will you appear through legal counsel?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
-------------------------	------------------------------------	-----------------------------------	--	------------------------------	--

If yes, please enter the name and address of such legal counsel.

Name:			
Address:			
Phone No(s):		E Mail:	

ADVANCED PARTY STATUS CONSIDERATION PURSUANT TO: Subtitle Y § 404.3/Subtitle Z § 404.3:

I hereby request advance Party Status consideration at the public meetings scheduled for:	Wednesday, March 2, 2022 @ 9:30 a.m.
---	--------------------------------------

PARTY WITNESS INFORMATION:

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the party's behalf;
2. A summary of the testimony of each witness;
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts; and
4. The total amount of time being requested to present your case.

PARTY STATUS CRITERIA:

Please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)
3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.)
4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

Form 140 – Party Status Request for Andrew Wong, 4507 Foxhall Crescent, NW

**District of Columbia Board of Zoning Adjustment: Application Case Number 20636 –
Theoretical Lot 960 (4509 Foxhall Crescent) Owner Rajai Zumot and Penguin LLC**

PARTY WITNESS INFORMATION:

1. A list of witnesses who will testify on the party's behalf; Andrew Wong
2. A summary of the testimony of each witness (*Zoning Commission only*);

I NEITHER SUPPORT NOR OPPOSE THE ZONING APPLICATION FOR THEORETICAL LOT 960
(4509).

I do not have the expertise nor authority which resides with the DC government agencies.

I place the responsibility for this decision with the government of the District of Columbia and the DC agencies responsible; including BZA, DCRA, Office of Planning, DDOT, Fire, Police, EMT and other responsible DC agencies.

A key issue is **Public Safety**. We have recently seen unimaginable, unforeseen catastrophic real estate related disasters (such as the 2021 Fort Lauderdale FL Surfside Condominium Collapse or 2018 Santa Barbara/Montecito CA mudslide) with loss of numerous citizens' lives and multi-billion dollar damage claims. A standard procedure after these tragedies is the commissioning of a follow-on government investigation. The purpose of the government investigation is to identify the linkages, chain of events, violation of government regulations and procedures, etc. that lead to the tragedy with possible criminal indictments, and large civil damage lawsuits, in part due to failure to fully apply the applicable regulations and laws.

The previous two BZA approvals in 1994 and 2014 were granted when public sentiment to public safety and environmental protection had not evolved to where we are today. In 2016, DC Council ended regulatory waivers for streets less than 24 feet wide in the District of Columbia. Also in 2016, DC Council passed the Tree Canopy Act protecting Heritage Trees. Regulatory oversight of stormwater management has become more stringent.

How is this relevant in the Case Application - 20636?

There are numerous legal and regulatory issues in this case that should be brought to the attention of the BZA during the hearing and adjudicated. These issues may even lead the BZA to conclude the theoretical lot 960 (4509) is "not developable" as stated by DDOT government official in a report on developing lot 960 (See Attachment 1)

These issues include:

A. Binding multi-party (five parties) commitments that includes the previous owner of Lot 960 (4509) negotiated and agreed to in the prior BZA application Motlagh 18708 ("**Agreement Regarding Case NO. 18708 before the Board of Zoning Adjustment of the District of Columbia**"). This legally enforceable agreement includes an agreement on the exact location and footprint of the proposed 4509 house (Lot 960). This is a separate agreement that continues to this day, not withstanding the expiration of BZA Approval Case NO. 18708. (See Attachment 2)

B. Mr. Zumot, the owner of 4509 (Penguin LLC) has written to the President of the Foxhall Home Owners Association (FCHOA), John Fox, that Zumot is considering moving the location of the house. This would be in violation of the "Agreement Regarding Case NO. 18708 before the BZA". In order to move the house location, at a minimum, it would require all five parties in the Motlagh 18708 Agreement to agree to amend the prior agreement. There have been no such actions to date.

Moving the location would make the current plan before the BZA incomplete, inaccurate and possibly misleading. (See Attachments 3)

In addition, the FCHOA Bylaws have restrictions on building within 30 feet of the external boundary of 4509 with a neighboring property on 2440 Foxhall Road (FCHOA Bylaws: Article 1 – Section 4 Definitions (k) Undisturbed Perimeter, page 3). (See Attachment 4)

C. Mr. Zumot Penguin LLC has NOT recorded the **Agreement Regarding Case NO. 18708 before the BZA as a Memorandum of Understanding** against the Property in the District of Columbia Recorder of Deeds at the time of transfer, as stipulated in Paragraph 10 of the Agreement for a "subsequent owner". (See Attachment 2, Page 3 – Paragraph 10)

D. While the initial meeting with the FCHOA Board and Mr. Zumot took place about five and a half months ago (on August 11, 2021), NO approvals have been granted from the Board of Directors for anything related with the project at this time (See Attachment 5).

E. The president of FCHOA, John Fox, has reported that Mr. Zumot - Penguin LLC has informed him that he or his representatives, met with representatives from DC's Mayor's Office within the past few weeks. Mr. Zumot was told by the Mayor's representatives that under NO circumstances would the live two Heritage Trees in question be removed. Without removal of one of the heritage trees, the location of the proposed 4509 house site would be in violation of the DC Tree Canopy Protection Act stipulating that a structure cannot be within 25 feet radius of a Heritage Tree. (See Attachment 3)

F. What has changed since the 1994 and 2014 BZA approvals for Theoretical Lot 960?

District of Columbia City Council enacted laws pertaining to; a) greater Public Safety including minimum size of the width of a street, b) more stringent laws for Environmental Protection (Clean Water Act), DDOE Storm Water Management, Impervious Surface Water Runoff and c) Tree Canopy Protection Act of DC's Heritage Trees. Many of these new regulations did not exist in 1994 or even in 2014 when the previous BZA application was filed.

First Example, Public Safety. Starting in 2016 DC would not provide waivers for street widths less than 24 feet wide. Previously, including the 2014 approval of the Motlagh 18708 Application, this waiver was granted. Due to heightened concerns for Public Safety, the DC Council eliminated the waiver in 2016. Access in emergencies by Fire, Ambulance and Police may not be possible, especially during the winter with snow on the street, given the steep incline of the grade of the Foxhall Crescent's road, narrowness of the street, and cars parked on the street. (See Attachment 6)

Second Example, Preservation of Heritage Trees.

There have been a recent report of developers and owners cutting down Heritage Trees By ignoring and violating the law. The offending party pays a fine. Whether DC enacted the law as a tax revenue generating activity or is sincerely interested in protecting Heritage Trees will be in focus in Case 20636. (See Attachment 7 - Developers cutting Heritage Trees and paying fines).

In the case cited in the attached article, the neighborhood citizenry outrage demonstrated a failure by regulatory authorities to effectively enforce the DC Heritage Tree law.

DC DDOE arborist employee handling the Heritage Tree removal permit application has written in their report (in the DDOE Permitting Review System – Tracking Number 88440) that “This site does not seem developable based on site visit with applicant. Applicant also does not necessarily seem qualified to put together advanced TPP for the 2 heritage trees on site” (DDOE Permitting Review System - Internal Notes). The DDOE employee also adds in the Notes For Applicant, “ ... Will need advanced TPP for the 2 heritage trees on site before approving.” ... In all honesty, site is highly technical because of the 2 heritage non-hazardous trees, the slope, the confines of the entrance, etc. – and may simply not be developable at this time.” (See Attachment 1 - DDOE Report)

Here would be a clear case where if there was a genuine interest in enforcing the Tree Canopy Protection Act, BZA could make a condition of BZA approval be contingent on Mr. Zumot guaranteeing the safe guarding of the Heritage Tree in question or all DC government approvals would immediately become null and void.

In conclusion, the purpose of these comments was to bring to the attention of the BZA and other responsible relevant DC agencies, the existence of legally enforceable agreements and Bylaws currently in place, and shed light on some of the complex public safety issues raised with respect to Application 20636.

I request these comments be submitted to the record.

All these issues should be fully addressed. If not, should an unimaginable catastrophe with loss of human life unfortunately occur, the investigators could reasonably ask whether DC Government agencies with regulatory responsibilities for the project had a clearly defined plan for re-solving all these outstanding issues with assurances/guarantees before granting approval in order to protect and safe guard DC citizens.

3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts (*Zoning Commission only*); and

4. The total amount of time being requested to present your case (*Zoning Commission only*). - 20 minutes

PARTY STATUS CRITERIA:

Please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?

Mr. Zumot/Penguin LLC (the Applicant) and I share a common property line running 56 feet.

2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)

I am owner of 4507 Foxhall Crescent, NW, Washington, DC 20007 I do not have any legal interest in Application 20636 Theoretical Lot 960 (4509) Penguin LLC.

Per my property survey and consistent with Foxhall Crescent HOA (FCHOA) Bylaws, one-half of the street in front of my house is MY PROPERTY, as it is with most of the twenty-seven other FCHOA members, with two significant exceptions (4500 and 4509).

All HOA Members have a limited Easements of Enjoyment Right to use the street and sidewalks (FCHOA Bylaws: Article 1 – Section 4 Definitions of Common Properties, page 2, and Article VIII – Section 1, Members’ Easements of Enjoyment, page 27). (See Attachment 8)

3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.)

My property 4507 is adjoining Lot 960 (4509) with a 56 feet common property line.

4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?

Environmental Impact:

Public Safety and Parking –

As the owner of the adjoining property (4507), I NEITHER SUPPORT NOR OPPOSE THE ZONING APPLICATION FOR THEORETICAL LOT 960 (4509).

I do not have the expertise nor authority which resides with the DC government agencies including BZA, DCRA, DC Planning, Fire, Ambulance, Police, EMT, DDOT, et cetera.

Access in emergencies by Fire, Ambulance and Police may not be possible, especially during the winter with snow on the street, given the steep the incline of the grade of the Foxhall Crescent's road, narrowness of the street, and cars parked on the street. See attached pictures of the width of the street with one of my cars parked in front of my house (See Attachment 6).

5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.

6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.