

Gene & Patricia Godley



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

I hereby request to appear and participate as a party in Case No.:	
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Signature:	<i>Gene & Patricia Godley</i>	Date:	
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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 type="checkbox"/> No
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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:	
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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 **Bound by the Proposed** zoning action than that of other persons in the general public.

Bound by the Proposed
District of Columbia
CASE NO.20636
EXHIBIT NO.57

June 1, 2022

Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20001

Re: BZA Case 20636

PARTY WITNESS INFORMATION

1. A list of witnesses who will testify on the party's behalf and a summary of the testimony of each witness:

I wish to hold a place for an as yet unnamed professional Storm Water Management expert who will present an evaluation of the late filed May 27, 2022 newly submitted Storm Water Management Plan and the Sediment and Soil Erosion Plan and the adequacy thereof.

Joe Mehra P.E., P.T.O.E. or Reju Radhakrias will provide expert testimony as to the adequacy of the parking, the congestion thereof and the alternatives to reduce the negative impact on the neighborhood, particularly the adjacent properties, due to the inadequate 16' access to the lot.

Guillermo Rueda, A.I.A., will provide testimony as to the compliance of the application with the requisite Zoning and Application requirements

Gene Godley will testify on the history of the site and site planning and the adverse impacts of the development

2. 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

Mehra and Radhakrias will testify as transportation experts. Rueda will testify as a zoning expert. They have been qualified before the BZA to give expert testimony. A water management expert witness will also be presented.

3. The total amount of time being requested to present your case.

We wish an hour to present our case. We will be sharing this time with Robert and Phoebe Sharkey, who are also requesting party status, and we will present a coordinated case with shared expert witnesses, represented by Andrea Ferster, legal counsel.

Sincerely,

Gene and Patricia Godley
4513 Foxhall Crescents, NW
Washington, DC 20007

June 1, 2022

Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20001

Re: BZA Case # 20636

We request Party Status in the matter of Case # 20636, Penguin, LLC (Penguin), 4509 Foxhall Crescents, NW (the Property), now due for hearing on June 15, 2022. We intend to coordinate our opposition to Penguin's current application with Robert and Phoebe Sharkey, who are also now requesting party status and we incorporate their statements in their request for party status into ours. Furthermore, we incorporate the previous Exhibit #21 submitted by Mr. Andy Wong of 4507 Foxhall Crescents, NW, as part of our testimony as well as the ANC letter of opposition, Exhibit #39. Please see below the responses to Party Status Criteria Form 140.

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?

We have lived in our house at 4513 Foxhall Crescents, NW since 1992, almost 30 years. Our property, Lot 962, is adjacent to the Applicant Lot at 4509 Foxhall Crescents, NW and shares a common border of around 35 feet. If the Applicant's current request for a variance and special exception are granted, our property will be significantly impacted by:

(1) Parking and Traffic Congestion. Since the application does not provide on-site parking for guests, vendors, service vehicles, etc., that will impede our ability to park in front of our house, which is a necessity for handicapped access by Patricia Godley. Patricia is almost totally wheelchair bound and for those times when she cannot walk the most level access is either the garden gate near the front door or the front house entrance, both of which have been used by EMS. As the street narrows, the parking becomes more congested (see pictures, Exhibit 1) and if Mr. Wong parks in front of his house and we park in front of ours, the street is virtually impassable towards the Applicant's property.

Furthermore, in the 2014 BZA order granting a special exception to the prior owner, Amir Motlagh, (BZA 18708) a construction management agreement provided that all construction vehicles would be parked on the premises, and provided for them, but the current

applicant has proposed an agreement whereby four construction vehicles would be parked on our street, which would further impede our parking and that of adjacent neighbors. This also illustrates the obvious, if the Applicant cannot accommodate vehicles on its property, then the burden falls on its neighbors.

(2) Drainage/Storm Water Management. The lot is quite steep (Exhibit 2) and storm water management has been an ongoing issue (Exhibit 3). The problems related to storm water management was the pivotal issue and grounds for our objection in the previous application (BZA 18708) in 2014 leading to an Order and Agreement (Exhibit 4) providing for an enhanced Storm Water Management Plan. The then Applicant was unable to satisfy the requirements of DOEE for such a plan and after 7 years, sold the property to the current Applicant. It is shocking to us that no storm water management plan was submitted until May 27, 2022, less than the required 21 days prior to the hearing, given the serious nature of the storm water management problems previously identified on the site. While we have not had time to review the Storm Water Management Plan due to its tardy submission, it does not appear to adequately address the previously identified concerns, and indeed, will exacerbate those concerns due to the failure of the Applicant to maintain the 30-foot undisturbed green space around the property perimeter required by FCHOA bylaws.

(3) Environmental Impact and Character of the Community. Now that almost all the trees on the property have been cut down, in contrast to the neighborhood and the original commitments and design, the lack of canopy and plantings will contribute to erosion and water run-off. Furthermore, the violation of several of the FCHOA by-laws (soil disturbance in the 30' undisturbed perimeter, removal of trees therein and elsewhere without advance approval, extinguishing of easements along paved area, etc.) and significant deviation from the Arthur Cotton Moore design and site plans will diminish the value and character of the neighborhood, and especially our adjacent property.

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

We are owners of the property (and have been for 30 years), which is adjacent to the Applicant's property.

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.)

We are adjacent to, and downhill from the property, so zero.

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?

BACKGROUND

To begin with, this is not a simple development whereby an owner purchases a lot in fee simple and then build in conformity with the Zoning regulations. Foxhall Crescents was and remains a unique development, and its initial approval and all subsequent development is subject to a complete constellation of requirements, covenants, design restrictions and bylaws, which are binding on all lots within the development, including the subject site.

The Development of Foxhall Crescents, formerly the Rockefeller Estate, was a controversial and complicated negotiation between the Developer and a citizens group (Coalition for Planned Environmental Development, Inc), culminating in a June 15, 1978 agreement (Exhibit 5) in which the Developer committed to substantial measures to protect the environmentally sensitive site, including design restrictions and a 30' Undisturbed Perimeter, grading restrictions, preservation of the canopy, etc. The Developer agreed to Incorporation of the Developer's obligations in Condominium Documents (the predecessor of our FCHOA Bylaws) (see page 8, Exhibit 5).

The Development was then submitted to and reviewed by the District Government under the Large Tract Review Regulations culminating in a Report from the Office of City Administrator on July 12, 1979 (Exhibit 6). The Report codifies that (1) the design of the proposed houses will vary according to seven prototypes designs developed by the architectural firm of Arthur Cotton Moore and Associates" (see page 2 of Exhibit 6) and the streets on the site will be in private ownerships with "means of multiple covenants in relation to easements and maintenance to the satisfaction of the Corporation Counsel's Office" (see page 3). A subsequent letter from Collier, Shannon, Rill & Scott (Exhibit 7, page 2) discusses compliance and the need to submit any modifications to the agreement to the District for Large Tract Development review. That has not happened in this case and a review of the Large Tract Development requirements and an Attorney General's opinion as to such compliance are warranted before any BZA decision is made on this application.

IMPACTS

With the above background, we submit the following:

Parking Congestion. If the Applicant's requests are granted, the Applicant's parking for guests, vendors, service vehicles, deliveries, etc., would be in front of our house instead of providing such parking on their own property as the other property owners do. Under the site plans for the community, negotiated and approved by the District of Columbia in 1978 under the Large Tract Development program, each homeowners owns the land in fee simple to the middle of the street in front of their houses (and pay real estate taxes). The private street runs over each homeowner's private property, providing an easement through the street for all other homeowners, as illustrated in the attached (Exhibit 8). A similar street is designed and approved for the subject property, to have the Applicant contribute fee simple land to accommodate his guests, vendors, etc. like all other homeowners. But under the Applicant's current proposed house location, the street is eliminated (along with extinguishing all other homeowners' easement along it) and the parking is conveniently "dumped" on others' fee simple land. Thus, the burden of Applicant's providing parking for their guests, vendors, emergency vehicles, etc. is shifted onto nearby properties.

Easement Through Extended Street. Under the Multiple Building Covenants of 9/30/1979 (Exhibit 9) there are common easements shown on the exhibit Paved Areas CR8, and the “easements hereby created shall be perpetual and may not be extinguished without the written consent of the District of Columbia” (page 4). This is clear, although not shown on the Applicant’s Site map. It has been argued that when another lot east of the property (originally part of the development), 4511 was sold off, the necessity for the street ended. Yet in the First Amendment to the Declaration of Covenants, Conditions and Restrictions and Bylaws of July 20, 1981 (Exhibit 10) the Grading and Tree restrictions were removed on the Applicant’s site at 4509 (which were subsequently reinstated by amendment and are currently in our bylaws), but in the third section it is stated: “3. No Other Changes. Except as amended hereby, the Declaration and Bylaws remain in full force and effect.” So, the easement across the paved area remained. Similarly, the current bylaws (relevant excerpts in Exhibit 11) state “Article VIII Section. MEMBERS’ EASEMENTS OF ENJOYMENT. Every Member shall have a mutual and non-exclusive right and easement of access to and a use and enjoyment of paved areas and sidewalks along the paved areas shown on Exhibit B. Such easement shall be appurtenant to and shall pass with the title to every Site.” Again, if the Applicant stayed with his commitment to the Board on August 11, 2021 (Exhibit 12, Minutes of Board Meeting) to build the Type 6 Arthur Cotton Moore house with the same footprint and in the same location (as contained in the 2014 BZA Order) and confirmed by his Project Manager August 18, 2021 (Exhibit 13 Email), the easement would not be an issue.

Size and Scale of the House. The scale of the house (which footprint is now 67% more than the Arthur Cotton Moore designed house for that property), would appear as a McMansion and thus be out of character with the community. This is a significant departure from the City agreed plans in the Large Tract Review Report which states houses will be one of seven Arthur Cotton designs. To mimic the front façade of the Arthur Cotton Moore Type 6 house (Exhibit 14: Actual footprint/plans of Arthur Cotton Moore) does not make it the same and will detract from the integrity of community design. The last BZA Order restricted the Applicant to the footprint of the Arthur Cotton Moore Type VI house, which was a reduction from the Applicant’s submission (see page 1 in the Agreement, of Exhibit 4)

Location of House. The location of the house would destroy the integrity and design of the community, thus reducing the benefit and value from living in an Arthur Cotton Moore designed community. Furthermore, the current proposed location does not comply with the Arthur Cotton Moore design because the house does not face the original direction toward the extended street through the property, but rather faces other homeowners’ houses. The applicant’s illegal removal of the Heritage tree on the site, which conveniently also allows the Applicant its preferred non-complaint location on the site, also impairs the value of our property. If the Applicant were to return to the location it originally proposed and agreed upon with the Board last August, these issues would be resolved.

Privacy. Similarly, the location of the house on the front of the property, rather than being set back (where there is ample room) to the location of the original Arthur Cotton Moore plan would decrease the privacy of our abutting home and be out of scale, proportion and mass. If the current Application is approved, the house would loom directly over our back yard, with front windows and door providing vision to invade our privacy. The Arthur Cotton Moore design had the viewshed of all houses toward the front and back of the houses, toward the canopy, rather

than sideways toward other's houses (side windows are limited), in order to avoid exactly the invasion of privacy that results from the Applicant's proposed site plan.

In summary, when applying the review standards, this Application will not be in harmony with the intent of Zoning, will adversely affect the use of neighboring property and does not warrant a special exception.

Storm Water. This is a very steep lot (Exhibit 2) and our house is directly at the end of the "funnel" for water runoff if not protected. If the action requested of the BZA is granted, the proposed elimination of existing protective berms protecting our property from storm water runoff enhances the probability that whatever water runoff there is (even if it is within required limits) would no longer be directed toward the storm water grate inlet, but would flow onto our property.

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.

See above factors.

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.

As directly abutting property owners, we would be impacted more significantly, distinctively, and directly because the parking congestion would fall directly in front of our house; the likelihood of excessive water runoff would be directly on our property; and the proximity and size of the house would reduce our privacy. Because of our proximity to the proposed house the decrease we believe that the deviation from the Arthur Cotton Moore design will decrease the homeowner value of our property.

We designate Andrea Fenster, Esquire, to act as our legal counsel. She has the authority to bind us in this matter.

Gene and Patricia Godley
4513 Foxhall Crescent, NW
Washington, DC 20007