



## **ADVISORY NEIGHBORHOOD COMMISSION 3E**

**TENLEYTOWN AMERICAN UNIVERSITY PARK  
FRIENDSHIP HEIGHTS**

c/o Lisner Home 5425 Western Avenue, NW Washington, DC 20015

### Minutes of ANC 3E January 4, 2010 Meeting

The meeting convened at 7:35 pm. Commissioners Jonathan Bender, Matthew Frumin, Lucy Eldridge, and Beverly Sklover were present. Commissioner Sam Serebin arrived later in the meeting.

#### **Announcements**

Commissioner Bender announced the creation of the new ANC3E website which will make it easier for residents to access information regarding ANC3E. Commissioner Bender noted that Commissioner Serebin had done the graphic design work for the website.

#### **Open Forum**

A resident of Ellicott Street complained that American University and the Police Department had to date failed to solve issues relating to an unofficial AU fraternity house next door to her home. She indicated the students living in the unofficial fraternity house were loud and held very disruptive parties and that repeated complaints to the university and police had not resulted in a solution to the problem.

## **Crime Report by 2<sup>nd</sup> District Police**

Police urged residents to place their GPS systems in the trunk of the car or take their systems with them to their destination. The police announced arrests of members of a Tenleytown gang. The police said they were surprised PSA 202 was so quiet in December and said the total of 32 crime incidents reported were much lower than expected.

## **Agenda**

### Application by Café India for a Temporary Liquor License

Commissioner Eldridge explained the background on the new restaurant -- Café India – located in her SMD, explaining that pending resolution of their application for a liquor license they could receive a temporary liquor license with ANC support. The owner of and lawyer for Café India explained the importance of such a temporary liquor license for the restaurant.

Commissioner Eldridge proposed a resolution in support of such a temporary liquor license and Commissioner Sklover seconded. It passed unanimously by a vote of 4-0, with Commissioners Eldridge, Sklover, Frumin and Bender voting yes.

### Request by Residents of 5219 42nd Street for Handicapped Parking Space

Commissioner Eldridge presented a proposal for the creation of a disabled parking space at 5219 42<sup>nd</sup> Street. Commissioner Eldridge explained that Niva Lewis-Farrar and her husband Ronald Farrar have submitted a request

to the D.C. Department of Transportation (DDOT) for a Reserved Residential Parking Space for a disabled resident for on-street parking in front of their house located at 5219 42nd Street, NW. According to Commissioner Eldridge, neighbors have expressed support for the request indicating a strong desire to support a family that had lived in the residence for over 30 years. Commissioner Eldridge proposed a resolution in support of the application which Commissioner Sklover seconded. The resolution passed unanimously – 4-0 -- with Commissioners Eldridge, Sklover, Frumin and Bender voting for it.

#### 4719 Butterworth Place Application for a Special Exception

Peter and Leslie Shields have requested a Special Exception to allow construction of a two story addition to their home at 4719 Butterworth Place, NW. Dr. Shields stated that the house which was built in 1946 needs a two-story addition to accommodate his growing family. The Shields need a Special Exception for their plan because current zoning regulations require 8 foot side yards and the plan shows a 4.66 foot side yard on the west side of the proposed addition.

Jon Rosenthal, the neighbor directly to the west, opposed the Special Exception. All other neighbors who expressed an opinion either supported or did not object to the proposed addition. Mr. Rosenthal expressed concerns regarding the height of the proposed addition as well as the distance it went back into the yard. He also expressed concern about the look of the proposed addition from his property. Moreover, he highlighted concerns he had regarding the impact of the proposed addition on water in

the alley between his home and the Shields' property. Mr. Rosenthal also complained about the notice he was provided regarding the proposed addition and suggested that the Shields received favorable treatment by the ANC due to Dr. Shields' relationship with Commissioner Frumin.

Commissioner Frumin, in whose SMD the property is located, explained that he has known Dr. Shields for 10 years. He claimed that his acquaintance with Dr. Shields did not affect his judgment in the matter. He explained that he had urged Dr. Shields to seek letters of support from each of his nearby neighbors to present to the ANC and BZA, even though BZA had already notified all neighbors within 200 feet of Dr. Shield's property that his application was pending. It was this extra notice that prompted Mr. Rosenthal to speak out in opposition – he had not expressed opposition based on the service in the ordinary course. Once Mr. Rosenthal expressed opposition, Commissioner Frumin explained, the ANC postponed the discussion of the matter and Commissioners Frumin and Bender met with Mr. Rosenthal and Dr. Shields to see if solutions could be found (Commissioner Sklover had intended to attend that meeting but could not because she had suffered an injury the day before). At that meeting, Commissioners Bender and Frumin identified stormwater management issues, which Dr. Shields agreed to address.

With regard to the substance of the application, Commissioner Frumin explained that the relief sought was from the 8 foot side yard requirement but that given the intervening alley there would be over 20 feet between the addition and Mr. Rosenthal's property. Commissioner Frumin also noted that, if they did not receive the relief requested, the Shields could build a

larger addition with a more adverse impact on Mr. Rosenthal, extending significantly deeper into the backyard, matter-of-right. Commissioner Frumin stressed, however, that any addition should be constructed in a manner that would not exacerbate water issues in the alley.

Commissioner Frumin proposed a resolution supporting the application conditioned on the applicant providing meaningful assurances to the BZA that steps would be taken to insure that the construction of the addition would not exacerbate water issues in the alley. He also stressed that the Shields should take steps to ameliorate any contribution to water in the alley from any portion of their house and work with the City to seek improvements in the alley that would serve both of them, Mr. Rosenthal and other residents with properties adjoining the alley. Commissioner Sklover seconded the resolution. It was approved 5-0 with Commissioners Frumin, Bender, Serebin, Eldridge and Sklover voted for it.

Presentation by Nominee for People’s Counsel Position – Vicky Beasley

Vickie Beasley, Mayor Adrian Fenty’s nominee for the position of Peoples Counsel, made a presentation of her qualifications and fielded question regarding her background and qualifications for the position as well as regarding her plans if confirmed.

Application for Use Variance for 4615R 42<sup>nd</sup> Street – the Carriage House

Commissioner Bender introduced this application to permit use of a carriage house in the alley behind Morty’s restaurant as a residence. This was the second time the application was presented to the Commission. At

Commissioner Bender's suggestion the last time the application was presented, Stephen McKinney, the carriage house's owner, asked BZA to postpone its hearing on the application so that he could attempt to reach an amicable resolution with objecting neighbors.

At the instant meeting, Marty Sullivan, Mr. McKinney's attorney, asserted that residential use was a better fit for the neighborhood than use as an artist's studio, which would be permitted as of right. Mr. Sullivan claimed that he and his client had attempted to reach a compromise with Bruce Lowry, whose house adjoins the Carriage House property to the south, and another neighbor, but that no such compromise could be reached. Mr. Sullivan presented letters in support from four neighbors and one neighbor appeared to speak in favor of the application. Mr. Lowry and another neighbor spoke in opposition. They contended, among other things, that use as a residence would impose a greater burden on them than use as an artist's studio.

The Commissioners discussed the relative burdens from an artist's studio and a residence. Commissioner Bender noted that the property could be used as a matter of right as a site for music lessons seven days per week or a studio for a heavy metal band that rehearsed in the evening. The sense of commissioners was that such uses could impose at least as much a burden as many residential uses.

Commissioner Bender, however, drew a distinction between use of the property as an owner-occupied residence versus use as a rental, noting that the risk of undue burden appeared to be greater if the property was used as a

rental. Commissioner Bender asked whether the owner would be willing to enter into a covenant that would run with the land that would require that the property be owner-occupied if used as a residence, unless changes to the law made such use available as a matter of right. Mr. Lowry indicated that even with such a covenant, he would oppose the application. The owner indicated he would nonetheless agree to record such a covenant.

Commissioner Bender proposed a resolution supporting the application subject to the condition that the owner represent to the BZA that he would record such a covenant if he received the relief sought. The resolution was unanimously approved by a vote of 5-0.

#### Safeway Request for Postponement of PUD Hearing

In the face of significant opposition to the plan currently before the Zoning Commission from nearby neighbors and members of the ANC, Safeway proposed a postponement to its Zoning Commission hearing on its application for a PUD. Commissioner Bender proposed a resolution supporting Safeway's application for a postponement of the PUD hearing, but noting that if the PUD hearing was not postponed by the Zoning Commission, ANC 3E opposed the application in its current form. The resolution was seconded and passed unanimously.

#### Taskforce Chair Updates

The Chair of the Environmental Taskforce provided an update on the work of that group.

The reports of the Chairs of the taskforces on Aging-In-Place and Homelessness and Metro Station Safety were tabled to the February meeting.

### **ANC Business**

The Treasurer's report for December was approved 5-0.

The October Meeting Minutes were approved 5-0.

The November Meeting Minutes were approved 5-0.

The ANC Security Fund Resolution was approved 5-0.

The Treasurer was authorized and wrote checks the following checks:

- To Ms. Winthrop's invoice for Administrative Services for December 2009 for \$333.75 (check#1261)
- To Angela Bowman for Website implementation services for \$2500 (check # 1262).
- To the ANC Security Fund for \$25.00 (check # 1263).

The following Officers were elected for 2010 by a vote of 5-0:

Matthew Frumin, Chair

Beverly Sklover, Vice Chair

Lucy Eldridge, Treasurer

Jonathan Bender, Secretary

The meeting recessed at 10:55 pm

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matthew Frumin', with a large, sweeping flourish at the end.

Matthew Frumin, Chair