



ADVISORY NEIGHBORHOOD COMMISSION 3E

TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS
c/o Lisner-Louise-Dickson-Hurt Home 5425 Western Avenue, NW Washington, DC 20015
www.anc3e.org

February 19th, 2018

Mr. Anthony Hood
Chairman
District of Columbia Zoning Commission
441 4th Street NW, Suite 210S
Washington, DC 20001

RE: Z.C. Case No. 16-23
Spring Valley Neighborhood Association's Response to Post-Hearing Submission from
Spring Valley Wesley Heights Citizens Association/Neighbors for a Livable
Community/Spring Valley West Homes Corporation

Dear Chairman Hood:

ANC3E hereby submits the following response to the February 12, 2018 post-hearing submission from the Spring Valley Wesley Heights Citizens Association ("SVWHCA") and Neighbors for a Livable Community ("NLC").

In general, ANC 3E is deeply concerned that parties testifying before Commission are possibly misrepresenting who they speak for and the bona fides that qualify them for both party status and as organizations that represent geographical areas versus ones that represent specific points of view. We believe that a lack of clarity in distinguishing between the two, as well as enough information to make that determination, is undermining resident's right to fair representation and possibly impeding the Commission in its ability to weigh public input.

1. *It is interesting to note that the two ANC Commissioners would limit their interrogations on internal governance only to the parties in opposition in this case.*

We believe this to be a fair point in the abstract and would hope that all parties to this matter, or any other zoning matter, would be asked to supply their leadership list and titles, number of members, and a member list when petitioning the ZC for party status, as well as comply with other requirements that are listed in the Zoning code. CRD, another party in opposition, supplied exactly that information when asked, as well as proof that specific members were within 200 feet of the proposed project. SVWHCA also claimed in their sworn testimony on January 25, 2018 [ZC 16-23, Transcript 1/25/2018, p. 72] that there are many more neighbors living within 200 feet of the project site than those shown in official documents produced by the Zoning Commission – specifically Exhibit 67B – but offered no specific proof that the two homes on Fordham Road listed in the exhibit were consenting members of SVWHCA. We thought the Commission would benefit from SVWHCA and NLC

supplying the adequate information in order to understand their compelling reasons for party status.

But it's also true that other parties, either in opposition or in support, don't purport to represent 3,000 households without their consent, as does SVWHCA. In fact, there are only approximately 1,500 households within SVWHCA's entire self-proclaimed jurisdiction, including Westover Place. Unlike SVWHCA, one of the other parties testified in this case "We do not claim to represent all Spring Valley residents" [ZC 16-23, January 11, 2018, p. 173]. This same party stated in ZC 11-07G just two months prior to that their organization has over 250 involved neighbors and over 100 active members and that they "dispute SVWHCA's contention that, quote, the SVWHCA includes in its membership all residents of Spring Valley" [ZC 11-07G, Transcript of November 20, 2017, pp 105-106]. Further, these other parties don't claim to represent existing Community Organizations without their consent and in direct contradiction to their clearly expressed wishes. (See Letter from Westover Place Homes Corporation Board to SVWHCA [Endnotes ²].)

Lastly, SVWHCA was, up until May of last year, not registered with the District as a non-profit corporation and is not a member of the Federation of Citizens Associations [Endnotes ³], despite their testimony to the contrary. (See Response of Earl Williams, Federation of Citizens Associations of the District of Columbia, January 29, 2018 [Endnotes ⁶] A similar response was received verbally from Graylin Presbury of the DC Federation of Civic Associations on January 29, 2018.)

2. *"Article II. Membership A member of the Association may be any person 18 years or age of older, who resides or conducts business at a fixed location within the boundaries of the Association. All households within the boundaries are members of the Association."*

As stated in the District's Code governing Nonprofit Corporations (§ 29–404.02. Admission), the code under which SVWHCA is incorporated: "A person shall not be admitted as a member without the person's consent".

This article of SVWHCA's incorporation thus appears to be illegal as well as an abrogation of resident's right to choose who may represent them and how they may do so. Again, this was not the case for SVWHCA until May of 2017, when they submitted amended articles of incorporation that changed the definition of membership. As the accompanying table [Endnotes ¹] shows, SVWHCA is an outlier in making a claim to represent residents without their consent.

3. *Contrary to the assertion of ANC 3E, the Articles of Incorporation do not mandate dues as a requirement of membership.*

Again, this is only recently true since, up until May of last year, this was not the case and SVWHCA did require members to pay dues in order to remain members. We note that this is an anomaly in DC Community organizations as shown in a table comparing organizations [Endnotes ¹]. We might add that we did not assert the Articles of Incorporation mandated dues, we merely asked if they still did:

MR. MCHUGH: And along that line, so according to
19 your, do you still have the same bylaws from 1978?

20 MR. SMITH: Are you asking me as Neighbors for a

21 Livable Community? Or you asking --

22 MR. MCHUGH: Then Mr. Krebs --

23 MR. SMITH: We're three different groups.

24 MR. MCHUGH: Okay, then I'm asking Mr. Krebs that
25 question.

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1 MR. KREBS: No, we revised our rules.

2 MR. MCHUGH: So, you're no longer incorporated?

3 MR. KREBS: No, we're still incorporated. We just
4 revised our bylaws.

**5 MR. MCHUGH: In what sense? You still, your
6 bylaws at one point said who's ever eligible within the
7 geographic boundaries of your -- that's eligible to be in
8 there. So, do you still have dues?**

9 MR. KREBS: You'll have to ask the treasurer.

10 MR. SMITH: I also serve as the treasurer. This

11 is an association, so I'll be happy to answer that. We do
12 not, we have the ability to collect dues from our members.

13 We don't chose to do that. And have not chosen to do that
14 for many years because of how large, I'm embarrassed to say
15 this, but how large our treasury has been.

16 So, we didn't feel, we didn't need -- to give you

17 a sense of the history -- many years ago and this was before

18 I became that active in the Citizen's Association there was

19 a court decision involving AU, which required AU to make a
20 payment to the Citizen's Association, and that funding has

21 been used since that period of time to manage the affairs of
22 the Association. And we're very frugal.

23 MR. MCHUGH: Okay so --

**24 MR. SMITH: No longer does it require you to pay
25 dues to be a member?**

66

1 MR. SMITH: So we don't mandate dues. We do

2 accept voluntary contributions, voluntary dues from folks.

4. *...Westover Place was included in the boundaries of the Association at their express request...*

As the accompanying email exchange shows, this is currently untrue and was untrue when Mr Krebs and Mr Smith testified at the January 2018 hearings. Mr. Smith amended the articles of incorporation for SVWHCA in May 2017 without any proof that WPHC had agreed to be represented by SVWHCA and would most likely not agree to it. And yet they still claimed this in the current Zoning filing. Below is an excerpt from an email exchange between Ms Claire Craik, President of the WPHC Board, and Mr Tom Smith, Treasurer of SVWHCA:

"Let me make clear on behalf of the unanimous WPHC Board that whatever view some previously had on that matter, the WPHC Board unequivocally and formally rejects and will not agree to any such structure, jurisdiction, arrangement or otherwise going forward. We therefore ask you and your

members to refrain from asserting that SVWHCA includes Westover Place."
[Endnotes ^{2/}]

5. *Nevertheless, we do not believe that the Zoning Commission should require parties to submit lists of members or donors to demonstrate their "existence" or right to party status to represent their constituencies and interests.*

It appears SVWHCA disagrees with the Zoning Commission in asking for evidence of the particulars of organizations that come before them. Both Commissioner Turnbull and Chairman Hood made clear they believe this is a prerogative of the Commission, as evidenced by Commissioner Turnbull's request of CRD [Endnotes ^{5/}] and Chairman Hood's statement at the January 25th, 2018 hearing:

**6 CHAIRMAN HOOD: Hold on, hold on, hold on. Let
7 me say this, let me save some time. I think our rules do ask
8 for it, Mr. Smith, so if you can give that, whatever you can
9 give us.
10 But let me ask you this. Are you the, are you all
11 under the Citizen's Association of the Charter, here in the
12 District?
13 MR. SMITH: Yes, sir.
14 CHAIRMAN HOOD: Okay, so to me I think that
15 carries weight. But I think our rules do, and CRD did do it.
16 So, that request, if you can do it, or have members you can
17 get, that would be good. Okay. Next question.**

It is also supported in the code governing Commission proceedings:

Subtitle Y 404.1 (g)

If the party status request is not being made by an individual, but by an association, corporation, partnership, government agency, or other similar entity, the request shall include proof that the entity authorized the persons filing the request to do so. The proof may consist of a resolution of the person's board of directors; a copy of the by law provision authorizing the particular officer, employee, or agent to represent the person in such proceedings; a letter signed by all the members of the organization; or **similar proof satisfactory to the Board;**

In satisfying the above requirements, it's clear that an organization would need to supply at least the names and titles of their board of directors or leadership team. We would also disagree with SVWHCA's contention that supplying a membership list, with or without contact information, would potentially expose members to violations of their privacy. Clearly the Commission's request of CRD to supply its membership list also contradicts SVWHCA's argument.

For organizations that claim to have no members, as NLC does [ZC 16-23, Exhibit 210, p. 6, February 12, 2018], a listing of the names and titles of its leadership would seem to be a reasonable expectation and consonant with Commission's Policies and Procedures.

6. *"The spectacle of ANC Commissioners actually seeking to limit neighborhood engagement in the city's affairs, including zoning, by probing and judging the internal operations of citizens' and other neighborhood groups is quite stunning."*

There is nothing "stunning" about asking other parties to comply with Zoning Commission rules. SVWHCA is free to participate in any of the city's affairs, but asking for party status in a zoning case naturally presents a higher bar than testifying as a witness, one deliberately set by the code governing zoning cases and meant to ensure only those parties who are *"more significantly, distinctively, or uniquely affected in character or kind"* by zoning cases are granted such status. The Commission has latitude to make the determination to grant party petitions. We believe that, in order to reach this higher bar and make that determination, the Commission is best served by knowing who is before it and who they represent. The zoning code, as well as the documents used to petition for party status, reinforce this point.

In conclusion, we thank the Zoning Commission for the opportunity to respond and comment on the post-hearing submission of the SVWHCA and NLC and trust that they will take into account the concerns and observations expressed above.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jonathan McHugh", is written over a vertical line.

ANC 3E

By Jonathan McHugh, Vice Chairman