Virginia L. Major
Advisory Neighborhood Commission 8C -07
3301 5th Street, SE
Washington, D.C. 20032
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D.C. OFFICE OF ZONING
2002 JAN 10 P 1:33

January 8, 2002

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

Dear Ms. Kress:

The enclosed letter from the Corporation Counsel is to follow up my testimony at the BZA Hearing for 623 Mellon Street SE. I'm also requesting the Board of Zoning Adjustment to reconsider by request for party status as Advisory Neighborhood Commissioner 8C -07 in Commission 8C since the Commission did not fulfill the requirement as outlined in regulation governing how Advisory Neighborhood Commission should represent the community and thus obtain "full weight status" before the Board. I believed my involvement and testimony in this long standing case as an ANC commissioner and thus, a resident of the community before this Board should be recognized as an affected party for the following reasons:

1. I was serving as Chairperson of the ANC when this case came before the BZA (September 2000) and my questions concerning the interpretation of the zoning laws precipitated the Board returning this case to the Zoning Administrator for further work.

2. When the case came back to the BZA in November 2001, it was my testimony that precipitated the Counsel for the BZA to indicate at the hearing that other zoning variances needed to be addressed. Thus, the Board decided to send the case to the Office of Planning for review and a written report for the Board to use for their final determination. The Board also decided that only the Parties approved by the Board could submit a response to this report and no oral testimony would be received. This effectively excludes me as a single commissioner and interested party from further participation in the key element of this case. Further, since the ANC did not fulfill the requirements for this case according to the DC Law for "great weight" and the deadline set by the Board, any submission the Commission sends, if they choose to do so, at this time would probably not meet the criteria for "great weight" if it qualifies for consideration. Thus, I feel my participation would insure that a part of the community would be represented.

Thank you in advance for your review of this letter and my request for party status.

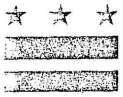
Sincerely,

Virginia Major
Commissioner 8C-07

BZA
Case No. 16597
Exhibit No. 49

Board of Zoning Adjustment
District of Columbia
CASE NO.16597
EXHIBIT NO.49

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL



Office of Government Operations
Legal Counsel Division

December 19, 2001

Virginia L. Major
Commissioner, ANC 8C
3301 5th Street, S.E.
Washington, D.C. 20032

Re: Notice of August 16, 2001 Advisory Neighborhood Commission Special Meeting

Dear Commissioner Major:

This responds to your letter of December 8, 2001 and follow-up phone call. You request advice regarding the Advisory Neighborhood Commission (ANC) 8C special meeting held on August 16, 2001. You state that you never received any written notice of the meeting, although you recall that the meeting might have been mentioned at the end of a prior ANC special meeting, and that inadequate public notice was given. You state that there was no posting of flyers regarding the meeting, although you were informed that some flyers were passed out individually to persons who live in the area affected by a zoning matter that was the subject of the meeting. Notice was not published in any newspaper, nor was it distributed to a mailing list. You state that ANC 8C has no approved minutes for the August 16, 2001 meeting. The Chair states in a letter to the Board of Zoning Adjustment dated August 30, 2001 that "proper notification [was] given to residents and commissioners". You ask whether the meeting was an official meeting under ANC law.

Notice of ANC meetings is governed by section 14(c) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.11(c), as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000 ("ANC Reform Act"), effective June 27, 2000, D.C. Law 13-135.

> Each Commission shall give notice of all meetings or convocations to each Commissioner, individuals with official business before the Commission, and residents of the Commission area no less than 7 days prior to the date of such meeting. Shorter notice may be given in the case of an emergency or for other good cause. **Notice of regular and emergency meetings must include,** but is not limited to**, at least 2 of the following**:
>
> (1) Posting written notices in at least 4 conspicuous places in each single-member district within the Commission area;
>
> (2) Publication in a city or community newspaper;

(3) Transmitting or distributing notice to a list of residents and other stakeholders in the community; and

(4) In any other manner approved by the Commission.[1]

(Emphasis added.) If, as you describe, the only notice of the meeting was given by a verbal announcement at the end of a prior meeting and passing out flyers to a few individuals, then the notice was inadequate under the law. The ANC Reform Act does not provide for verbal announcements as a form of notice. Therefore, in order for a verbal announcement to qualify as notice under the law, it would have to have been approved by the Commission as a form of notice. There is no indication that the Commission has ever formally approved verbal announcements as an alternative form of notice. Furthermore, the passing out of notices to certain individuals who live in a specific area of the ANC does not rise to the level of distribution of notice required by the statute. The result of an ANC's failure to comply with the statutory requirement of two forms of notice is that no official action may be taken at the meeting, and any action taken by an ANC at such a meeting is invalid.

If you have any further questions with regard to this matter, please contact Annette Elseth, Assistant Corporation Counsel, Legal Counsel Division at 724-5537.

Sincerely,

ROBERT R. RIGSBY
Corporation Counsel

Darryl Gorman

By: DARRYL G. GORMAN
Senior Deputy Corporation Counsel
for Government Operations
Legal Counsel Division

DGG/abe
(AL-01-784)

[1] Section IV of ANC 8C's by-laws requires that notice of regular meetings be given "by posting written announcements in at least two conspicuous places in each single-member district." As was pointed out to you in letters dated February 13, 2001 and August 1, 2001, because of the passage of the ANC Reform Act ANC 8C's by-laws are now out of date and should be revised to include posting in 4 locations in each single member district, rather than 2, and to add an additional form of notice (either publication, a mailing list, or another form of notice approved by the ANC).