Before the Board of Zoning Adjustment
For The District of Columbia

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ALL SOULS MEMORIAL EPISCOPAL CHURCH 2300 Cathedral Ave., N.W. Washington, D.C. 20008 *Application for Special Exception and Variance*	Docket No. 16875 Public Meeting Date: 1/21/03

RESPONSE TO JIM GRAHAM'S 1/6/03 LETTER

All Souls Memorial Episcopal Church (the "Church"), by and through its undersigned counsel, hereby responds to Councilman Jim Graham's ("Councilman") letter dated January 6, 2003 in which he withdraws his endorsement of the Church's referenced Application on the grounds that neighboring residents were not notified of the pending action before the Board of Zoning Adjustment ("Board" or "BZA") or of the meetings of the Woodley Park Community Association ("WPCA") or Advisory Neighborhood Commission ("ANC") at which the parking lot matter was addressed.

The Councilman's letter is factually unsupportable. The record is replete with evidence that the community received appropriate and adequate notice of the Application as required by the Zoning Regulations (*see,* 11 DCMR §§ 3113.13 through 3113.20):

1. The Office of Taxation provided the names and addresses of all property owners within a 200-foot radius of the Church parking lot.

BZA
Case No. 16875
Exhibit No. 49

Board of Zoning Adjustment
District of Columbia
CASE NO.16875
EXHIBIT NO.49

2. The Church filed a set of mailing labels with its Application on which the Office of Taxation's name and address list had been transposed, together with a copy of the original list.

3. On July 2, 2002, the Board confirmed at its Public Meeting that, pursuant to 11 DCMR §3113.13 (b), the BZA Director mailed notice concerning the Application to all owners of property within a 200-foot radius of the Church. *See*, Transcript of 7/2/02 Public Meeting, pp. 27-29 (highlighted), attached as Exhibit A.

4. No neighbor of the Church other than Peter Choharis complained of having not received notice from the BZA of its May 29, 2002 Public Hearing on this Application. In fact, some neighbors filed letters with the BZA in response to the notice they received, which are a matter of record. When questioned on the notice issue, Mr. Choharis could not confirm that he was **not** mailed a copy of the BZA's notice, since he was not living at his property on Woodley Place, NW, or even Ward 1 at the time of the mailing. Mr. Choharis speculated at the hearing that his mail had fallen victim to a flood in his basement at the time. In fact, the Board confirmed that it had mailed a copy of its notice to Mr. Choharis' Woodley Place address. *See*, Transcript of May 29, 2002 Public Hearing, pp. 13 and 15-16 (highlighted), attached as Exhibit B.

5. It is undisputed that, for the 15 days prior to the May 29, 2002 Public Hearing in this matter, the Church posted two orange "Notice of Public Hearing" signs prominently on its property in accordance with 11 DCMR §§ 3113.14 through 3113.20. The record includes an Affidavit of Posting pursuant to 11 DCMR §3113.20, a copy of which is attached as Exhibit C. The orange posters provided the Application

number, a description of the Application, the date and time of the public hearing, and the BZA phone number to call for more information.

The Zoning Regulations do not require notice of WPCA or ANC meetings or agendas. Nevertheless, notice of both meetings on the Church's parking lot proposal were announced and distributed in the normal manner.[1]

Notably, the Councilman questions only the Board's compliance with its procedural requirements, and **does not withdraw his substantive support for the Church's Application.**[2]

WHEREFORE, this Board should regard the letter filed by the Councilman as factually flawed and not inconsistent with his endorsement of the underlying Application.

January 13, 2003

Respectfully submitted,

Brigitte L. Adams
2800 Wisconsin Ave., N.W. #208
Washington, D.C. 20007
(202) 363-8190

[1] In the case of the WPCA, notice of meetings is provided both through a community newsletter called the Acorn which is delivered to each residence, as well by posting on the Association's Internet website. In the case of the ANC, notice of meetings is published in the Northwest Current newspaper, which is a free publication distributed throughout the community.

[2] Moreover, the Zoning Regulations do not prescribe any weight to a Councilmember's endorsement, or lack thereof, of an Application.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONSE TO JIM GRAHAM'S 1/6/03 LETTER was mailed, first-class, postage prepaid, to party opponent Mr. Peter Choharis at 2771 Woodley Place., N.W., Washington, D.C. 20008 and Councilman Jim Graham at 1350 Pennsylvania Ave., N.W., Suite 406, Washington, D.C. 20004 on this 13th day of January, 2003.

Brigitte L. Adams

EXHIBIT A

CHAIRPERSON GRIFFIS: Very well. Thank you very much. Okay, Board members, first, I thought it was it was important for us to know the entire spectrum of the four issues that are before us, before we jump into all of them. However, I would take a motion on each individually in order to dispense.

Let me start generally. I believe that this Board has currently held fairly strictly to its rules in not accepting information after the close of record, and I would at the outset be inclined to maintain that. Speaking specifically about the first, which is the letter of opposition, I would clearly -- actually, I'm not sure that we necessarily need a motion on that. I think perhaps we could just reach a consensus that we would not accept them into the record, since the record was closed. Again, as staff has stated, the fact of the matter was that proper notification was provided. There was ample time for submissions on this, and I do not believe, anyway, it would in fact prejudice any of the interests of parties in this case, and so I would ask your support on that, but I can take comments also.

MR. ZAIDAIN: Mr. Chair, I would agree. The process went through as mandated by law, in terms of the notifications and things such as that. And we had a full hearing on this at our regularly scheduled time. We were specific on what we wanted to see from the applicant and the parties. I would be inclined to strike all of this from the record that came

in after the closing of the date.

CHAIRPERSON GRIFFIS: Okay.

MS. RENSHAW: So, Mr. Zaidain, you're talking about all of them and not one at a time?

MR. ZAIDAIN: That's the Chair's pleasure.

CHAIRPERSON GRIFFIS: Well, let's see the first consensus not to accept. No opposition? Okay.

The second is the applicant's reply to the party's response to the management plan. Again, I think there's ample information in the record that was properly presented to us in order for our own deliberations. And not having reviewed this yet, I do not see how it could, in fact, in-fill any information that might be lacking, for our purposes. So I would also support not accepting that into the record. And I would just ask if anyone opposes that, to let that be known. If not, we can take that as a consensus and move on.

Now, the motion for the party requesting the Board to reopen the hearing for three reasons that have been stated by the staff. That is, the applicant has omitted fact, inaccurate or misleading statements, that there was a lack of notice to the residents in the immediate area and that there was development of new facts and information.

First of all, I think we can adequately state the fact that there was no lack, from our records, of notification. Is that correct? If we can reiterate that -- and staff is

indicating that that is correct. Our procedures and regulations were followed. So I am not compelled to grant the motion for reopening on that issue.

In terms of omissions of fact, inaccurate or misleading statements, again, this is not one of the most complicated cases we've seen. I think this Board was adequately prepared to ask pertinent questions that went to the heart of what we needed to find for our own deliberative purposes. Also, ample cross-examination was available of all witnesses, and I think information was elicited.

One might project, perhaps, some of the assertions. And I think this Board is perfectly capable, in its own deliberations, of distilling fact from fiction, reality from unreality, and that is part of our own process. And therefore, I don't feel that this would in fact be beneficial for this Board to reopen the hearing.

Then, I would combine the third and fourth. Obviously, applicant's response to disregard any further findings I think becomes moot if we, in fact, on our own do not take any in. And so I would hear opposition to that. And if there is none, we can take that as a consensus and we will hold to the closing of the record, which did close at the end of the hearing, except for that information, which was specifically stated at that time. And we have received all of the requested information. So, we are ready to proceed.

EXHIBIT B

letter.

MS. ADAMS: Your Honor, for the record, we would object to party status for this gentleman.

MR. CHOHARIS: Your Honor, I'm a homeowner in the community. I'm across the street. I think I deserve party status in terms of my property interests are at stake.

CHAIRPERSON GRIFFIS: I understand the issue. First, a technical piece. I'm the Chairman of the Board, so you don't have to call me Your Honor. I don't even have a law degree.

So, the other piece of it is, just for clarification, there's also written notification that goes out on the cases for residents within a 200 foot radius. Did you receive a letter from Office of Zoning?

MR. CHOHARIS: I don't believe I did, but let me clarify. I've been flooded out of my home, and mail received has not been consistent because I go by and pick up mail.

CHAIRPERSON GRIFFIS: Okay.

MR. CHOHARIS: So, I may well have been sent it, but I don't believe I received it.

CHAIRPERSON GRIFFIS: Okay. Well, our straight regulations state that applications for party status have to come in writing, and there are certain sections of the regulations that it has to address for granting party status. It needs to come in 14 days before the hearing, if I'm not mistaken, and that

frankly.

CHAIRPERSON GRIFFIS: Who is? But, if that doesn't cause great consternation and great objection, at which case you can come up and tell me about it, but I would appreciate your patience in doing that, and hopefully we can get through this fairly quickly.

Rather than talking more on the schedule, I think we just need to proceed with this, and that's what I would anticipate. Let's call the All Souls Memorial Episcopal Church. We will get into Adams Alley as we -- Adams Alley is a continued case, of which we could not finish last. So, it is our responsibility to get to them to finish it up. Again, I can't anticipate exactly how long that's going to take, but we've made it through a bit of the case, and then we'll get to the last case, certainly at a reasonable time in the afternoon, and we'll get to it even quicker the faster we get into this.

Second issue, I am going to hear an argument for the party request. What I need to do is have staff give you the regulations while we call this case so that you can review it because you're going to need to speak to all of those issues very briefly but very quickly to the Board. We will hear your party request.

Now, I'm only doing this, and frankly, waiving our own rules and regulations based on the fact that you've indicated that you've had a bit of a problem receiving mail. You are on

the list. You did receive the letter, so it may be in a stack somewhere. Maybe it's soaked. Who knows? But be that as it may, we'll entertain a verbal request for party status.

MR. CHOHARIS: Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: So, let's get that now. If we can give him a hard copy, which is coming out, and --

MS. ADAMS: Mr. Chairman, in the meantime, may I set up? I have my materials.

CHAIRPERSON GRIFFIS: That would be great. Let's use the time.

MS. ADAMS: Okay.

MS. BAILEY: Mr. Chairman, call the place?

CHAIRPERSON GRIFFIS: That would be great. Thank you.

MS. BAILEY: Application No. 16875 with All Souls Memorial Episcopal Church, pursuant to 11 DCMR 3104.1 for a special exception to allow the use of an existing accessory parking lot for week-day parking under Section 213, in the R-4 District at premises 2300 Cathedral Avenue, N.W., Square 2208, Lots 23 and 24.

Please take the oath. Please remain standing so you may take the oath. Raise your right hand. Do you solemnly swear or affirm that the testimony you will be giving this afternoon will be the truth, the whole truth, and nothing but the truth?

EXHIBIT C

Before the Board of Zoning Adjustment
For the District of Columbia

In Re: All Souls Memorial Episcopal Church BZA Application Number 16875

Hearing Date: May 29, 2002

AFFIDAVIT OF POSTING

DISTRICT OF COLUMBIA, ss:

Brigitte L. Adams, being first duly sworn, do hereby depose and say that:

I, Brigitte L. Adams, posted two (2) orange zoning ("Notice of Public Hearing") posters furnished by the Director of the Office of Zoning on private property known as 2300 Cathedral Avenue, N.W. on May 14, 2002 at 10:30a.m.. The zoning posters were placed in plain view of the public on the street frontages as listed in the affidavit below.

I have taken four (4) photographs of the orange zoning posters where they have been placed. The photographs, attached hereto, clearly show each zoning poster as seen by the public. The photographs are numbered and correspond to the following street frontages:

Photograph	Street Frontage
#1	Cathedral Ave., N.W.
#2	Cathedral Ave., N.W.
#3	Woodley Place, N.W.
#4	Woodley Place, N.W.

Brigitte L. Adams

Brigitte L. Adams

Subscribed and sworn to before me this 20th day of May, 2002.

District of Columbia

The foregoing instrument was acknowledged before me this 20th day of May, 02 by

Harriett Lee Tucker

Notary Public

My commission expires: Oct. 14 2006