COZEN O'CONNOR

October 26, 2026

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Via IZIS

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

Re: BZA Case No. 21510
Prehearing Statement of Party In Opposition

Chairperson Pourciau and Honorable Members of the Board:

On behalf of Joseph Sellers, Laurie Davis and Julia and Lowell Schiller, owners and residents of 2331 and 2323 Porter Street NW, respectively, please find enclosed the Prehearing Statement in Opposition for the above-referenced case. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR



Meridith H. Moldenhauer

Board of Zoning Adjustment
District of Columbia
CASE NO. 21510
EXHIBIT NO. 131

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2026, a copy of the foregoing Prehearing Statement was served, via electronic mail, on the following:

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Meridith Moldenhauer

BEFORE THE
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

APPLICATION OF **BZA CASE NO. 21510**
ROCK CREEK CLUB **HEARING DATE: November 4th**

PREHEARING STATEMENT OF
JOSEPH SELLERS, LAURIE DAVIS AND JULIA AND LOWELL SCHILLER
IN OPPOSITION TO THE APPLICATION

I. INTRODUCTION AND NATURE OF OPPOSITION

This Prehearing Statement is submitted on behalf of Joseph Sellers, Laurie Davis and Julia and Lowell Schiller (collectively, the "Neighbors"),[1] the owners and residents of 2331 Porter Street NW and 2323 Porter Street NW, respectively, in opposition to the application of Rock Creek Club (the "Applicant" or "RCC") regarding the property located at 2325 Porter Street NW (the "Property" or "Greystone"). The Applicant seeks special exception relief, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle U § 203.1(d), to convert Greystone, a 1913 manor house within the Greystone Enclave historic landmark,[2] into a membership-based recreational facility with pools, tennis courts, padel courts, fitness facilities, and a café (the "Project").

The Neighbors' property directly abuts the Property on both sides. The Neighbors oppose the application because the Applicant has not met its burden of demonstrating compliance with any of the four special conditions of Subtitle U § 203.1(d) or with the general special exception standard of Subtitle X § 901.2. In particular, a members-only recreational facility, available to a limited number of dues-paying households drawn from multiple neighborhoods and financed by

[1]The Party Status Application identifies Joseph Sellers and Laurie Davis, owners and residents of 2331 Porter Street NW who have been granted party status and Julia and Lowell Schiller, owners and residents of 2323 Porter Street NW who have filed party status and whose party status will be ruled on as a preliminary matter at the November 4th hearing.
[2]The Greystone Enclave, which consists of the interrelated landscape and historic improvements across four adjoining properties 2323, 2325, and 2329 Porter Street NW and 3445 Williamsburg Lane NW, is listed in the D.C. Inventory of Historic Sites.

those members, is not organized exclusively for the promotion of the social welfare of the neighborhood in which it is located and is neither reasonably necessary nor convenient to that neighborhood. For the reasons set forth below, and as will be further demonstrated at the public hearing, the Board should deny the application.

II. THE NEIGHBORS AND THEIR PROPERTY

Mr. Sellers and Ms. Davis own and reside at 2331 Porter Street NW and hold a direct ownership and possessory interest in that property. A personal statement from Mr. Sellers and Ms. Davis is attached at **Exhibit A**. Their property directly abuts the Property; the distance between the two is therefore zero feet. Their home and outdoor living areas sit immediately beside the existing pool and new proposed children's pool. The tennis court and proposed second tennis court are in the view shed of the Sellers' Home with no dimensional plan to show the distance from the side property line.

Mr. and Ms. Schiller own and reside at 2323 Porter Street NW and hold a direct ownership and possessory interest in that property. A personal statement from Mr. and Ms. Schiller is attached at **Exhibit B**. Their property directly abuts the Property; the distance between the two is therefore zero feet. Their home and outdoor living areas sit immediately beside the existing tennis court and new proposed entrance to be used for pedestrian, bike, and scooter access, and for trash collection. The existing tennis court, and the proposed second tennis court and new padel courts, are in the view shed of the Schillers' Home with no dimensional plan to show the distance from the property line.

The gravel access path that provides the only vehicular access to Greystone travels over the Neighbors' land. The gravel access path provides the only vehicular access to the Neighbors' property and provides the only pedestrian access to the Schillers' property and those homes which share the gravel path.

The requested approval would replace the existing residential use of Greystone with a membership-based recreational club operating throughout the day and into the evening.[3] For the Neighbors, that change would bring recurring recreational activity, member and guest arrivals, employee traffic, and service activity into the immediate setting of their homes. The proposed operation would also intensify use of the shared gravel access path, including for member pickup and drop-off, employees, and deliveries, directly affecting the Neighbors' daily access and use of the gravel access path, large sections of which are the Neighbors' Property. The Neighbors would bear the immediate consequences of the proposed operation where they live, work, and spend time outdoors. Their interest arises from direct exposure to the proposed use and its effects on their adjoining property, not from a generalized concern about development in the neighborhood.

III. THE APPLICANT HAS NOT SATISFIED THE SPECIAL CONDITIONS OF SUBTITLE U § 203.1(d)

The Applicant bears "the full burden to prove no undue adverse impact" and must demonstrate compliance "through evidence in the public record." Subtitle X § 901.3. "If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility." *Id. See also Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973) ("The burden of showing that the proposal meets the prerequisite enumerated in the particular regulation pursuant to which the exception is sought rests with the applicant."). The Applicant has not carried that burden as to any of the four conditions.

[3] The Applicant has classified the proposed use as a "community center." While the Neighbors do not agree with this classification, the Neighbors also acknowledge that the Board has consistently held that arguments asserting the need for additional or different zoning relief are irrelevant to its consideration of a self-certified application. See, e.g., Application No. 19689- A (MIC9 Owner, LLC; order on remand issued January 18, 2023). Accordingly, the Neighbors do not intend to engage in a discussion on the appropriate use classification, but, instead, reserve the right to challenge the use classification when a final determination has been made by the Zoning Administrator.

A. The Use Is Not Organized Exclusively for the Promotion of the Social Welfare of the Neighborhood in Which It Is Proposed to Be Located

Subtitle U § 203.1(d)(1) requires that "[t]he use shall not be organized for profit, but shall be organized exclusively for the promotion of the social welfare of the neighborhood in which it is proposed to be located." Nonprofit status satisfies only the first clause of this condition. The second clause independently requires an exclusive purpose of promoting the social welfare. And the third clause requires that use be exclusively for a specific neighborhood: the neighborhood in which the use is located. The Applicant has not demonstrated that the Project satisfies this condition.

1. Stewart Demonstrates That a Members-Only, Member-Financed Facility Does Not Satisfy the Social-Welfare and Neighborhood Requirements

The District of Columbia Court of Appeals has already analyzed whether a closely analogous proposal satisfies these requirements and concluded that it did not. In *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516 (D.C. 1973), the Board granted a special exception under a predecessor regulation that, like Subtitle U § 203.1(d)(1) and (4), required that the use be organized "exclusively for the promotion of the social welfare of the neighborhood in which it is proposed to be located" and be "reasonably necessary or convenient to the neighborhood in which it is proposed to be located."[4] The proposal would have allowed a tennis club to erect facilities for indoor tennis, squash, handball, sauna baths, and indoor swimming, operated "for its members and their guests only." 305 A.2d at 517. The Court of Appeals reversed,

[4]Under the regulation at issue in *Stewar*t, the community center special exception was available only where the facility was "not organized for profit, but exclusively for the promotion of the social welfare of the neighborhood in which it is proposed to be located," and where the use would "be reasonably necessary or convenient to the neighborhood in which it is proposed to be located." These conditions are carried forward in substantially identical form in Subtitle U § 203.1(d)(1) and (4).

holding that the Board erred in concluding that the applicant met the regulation's requirements. *Id.* at 520.

The court's reasoning turned on the same facts that bear on the social-welfare and neighborhood conditions here. The same facts that led the *Stewart* court to conclude that the social-welfare and neighborhood conditions were not satisfied are also present here.

First, the evidence showed that the facility "will not be open to the members of the community at large." *Id.* at 519. Although the club promised not to discriminate, it conceded that its facilities "would be available only to those willing and able to pay the membership entrance and operating fees" and that "the number of memberships offered would be limited." *Id.* Similarly, the Greystone Project's amenities, including the pool, new children's pool, tennis courts, padel courts, fitness center, co-working space, meeting space, and café, would be available only to households that purchase one of a limited number of memberships. More than 125 memberships have already been distributed through a process that has not been disclosed in the record. And the Applicant reserves 15% of its memberships for households outside its self-selected one-mile radius of the Property, with no information about how those memberships would be allocated.

Second, the court found that "the members comprise no substantial portion of the general public of the area." *Id.* (quoting *Jeffery v. Planning & Zoning Bd. of Appeals*, 232 A.2d 497, 501 (Conn. 1967)). So too here: as discussed below, members would comprise less than 1% of households within the proposed one-mile radius.

Third, also critical to the court's decision were the scale and financing of the venture: the capital and operating expenses "were so substantial as to preclude the feasibility of a community organization initiating such a project." The court noted that the $1 million purchase price in *Stewart* required a minimum payment of $9,610 per month over ten years to retire the mortgage, and the

applicant "expressed doubt that the Georgetown community alone could support such a large-scale venture and for that reason did not want to restrict membership to Georgetown residents." *Id.* at 520. As in *Stewart*, and as discussed further below, the acquisition and build-out of a multi-acre estate will require RCC members to carry the cost of the real property, and 15% of member households would be outside the one-mile radius.

A facility with these characteristics serves its members, not the social welfare of the neighborhood in which it is located. Under *Stewart*, the Board cannot find that condition (1) is satisfied on this record.

2. A Recreational Club for Members Does Not Promote "Social Welfare"

The phrase "promotion of social welfare" has a settled meaning. Merriam-Webster defines "social welfare" as "organized public or private social services for the assistance of disadvantaged groups." That definition reinforces the distinction between serving community welfare and providing luxury recreational benefits to paying private club members.

The zoning language also closely tracks the Internal Revenue Code, which distinguishes "[c]ivic leagues or organizations…operated exclusively for the promotion of social welfare"[5] from "clubs organized for pleasure [or] recreation."[6] The Applicant obtained its tax-exempt status under the latter category, which exempts "[c]lubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder." The IRS's implementing regulations expressly state that social clubs are not organizations operated primarily for the promotion of social welfare:

[5] 26 U.S.C. § 501(c)(4)(A) exempts "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare."
[6] *See* 26 U.S.C. § 501(c)(7).

> Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.
>
> 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii).

Because the zoning provision uses substantially the same social-welfare language as the tax code, the federal treatment of that language is persuasive guidance in applying the zoning condition. *Stewart* itself drew on federal tax authority in distinguishing a members' venture from a civic organization whose benefits are "bestowed upon the commonalty as such." 305 A.2d at 519 & n.10 (quoting *Commissioner of Internal Revenue v. Lake Forest, Inc.*, 305 F.2d 814, 818 (4th Cir. 1962)).

RCC's tax classification and proposed program place it squarely on the recreational-club side of that line. Its proposed condition that 85% of members reside locally establishes where most members live, not an exclusive purpose of promoting neighborhood social welfare. Nothing in the RCC submission supports the use as social welfare to assist disadvantaged groups. Membership demand demonstrates that people want access to the club, and are willing to pay substantial initiation and monthly fees; it does not establish the organizational purpose required for this special exception. Unless the Applicant can explain what makes it organized "exclusively for the promotion of the social welfare of the neighborhood," beyond the fact that most of the people enjoying its amenities will live somewhat nearby, the separate social-welfare requirement would not be satisfied at all. The Board should reject the notion that any nonprofit recreation club could satisfy it simply by including the phrase "social welfare" in its organizing documents.

Indeed, as described in greater detail in Section III.A.3 below, the special exceptions that have been granted for community centers reflect a consistent focus on serving individuals in need or disadvantaged groups. The only example the Applicant cites of a private recreational club that

was granted this special exception is the Lenore Pool and Tennis Club, but the details of that facility only confirm how far this Application strays from the special exception standard. As explained in Section III.c below, the Lenore Club was organized to serve a small and hyper-localized group of families located within a 1,000 foot radius of the club. In contrast, the RCC is overwhelmingly opposed by the families within a similar radius and proposes to draw is members from a much broader geographic area—a scenario much more akin to what the Court of Appeals rejected in *Stewart*.

3. Past BZA Approvals for Community Centers Involve Organizations Serving Individuals in Need

This section of the prehearing statement summarizes the D.C. Board of Zoning Adjustment (BZA) orders and hearing records covering community center and related applications decided between 1987 and 2014. The past case record shows a consistent "social welfare" focus to serve individuals in need or disadvantaged groups.

Most of the approvals involved organizations that deliver services to vulnerable or underserved residents.

- Asian American LEAD was approved in 2004 and renewed in 2009. It is a 501(c)(3) whose mission is to help low-income Asian-American youth and families through education, leadership development, and community building. Its application described a Vietnamese refugee and immigrant population struggling with poverty, trauma, and language barriers.

- The Unique Learning Center (2008) had served the Shaw community for more than 25 years. It provides after-school academic, cultural, and moral enrichment to about 40 children from 24 families, most of them single-parent households.

- Youth Organizations United to Rise (2000) ran a before- and after-school program across from an elementary school. It charged fees based on ability to pay and turned no child away.

- McKendree-Simms-Brookland United Methodist Church was approved in 1999 for a center distributing food and clothing. Its Outreach House continues that work today for Ward 5 residents.

- The 1994 approval at 1470 Irving Street, N.W. (National Capital Presbytery) concerned a building that public sources show has housed the Barbara Chambers Children's Center since 1973. That center serves primarily low-income and immigrant families.

- Even the one large church hall in the record, Our Lady of Perpetual Help (1987), was approved because the Board found it to be an established, open neighborhood institution that "fill[s] a vital neighborhood need." That approval was limited to three years and carried strict security and curfew conditions.

The Board consistently approved community centers in which the use was limited in size or aimed at at-risk groups, and it routinely imposed caps on headcount, hours, and geographic reach, see attached chart at **Exhibit C**.

It is clear from the language of the zoning condition, the identical tax code, Court of Appeals cases, and past community center approvals that the RCC does not satisfy the social welfare requirement in the special exception conditions. A luxury social club that serves an exclusive self-selected group of friends is not the intent of the nonprofit social welfare requirement of the regulations.

4. The Applicant Cannot Selectively Define "the Neighborhood in Which [the Use] Is Proposed to Be Located"

The Applicant's revised filings define the neighborhood it proposes to serve as a one-mile radius around the Property, abandoning its original definition of a one-mile radius plus all of ANC 3C. The Applicant appears to believe it may unilaterally define the relevant neighborhood for purposes of qualifying for the special exception. We submit that it may not. The Applicant fails to meet this clause of the special exception condition based on its own admission, the comprehensive plans designations, and past case precedent.

Subtitle U § 203.1(d)(1) and (4) refer to "the neighborhood in which it is proposed to be located," and the use must be operated by a "local community organization or association." The

condition requires that the use serve the local community in which it sits; a membership catchment area drawn by the Applicant is not that community. Nothing in the regulation assigns the Applicant the right to draw that neighborhood however it likes.

a. <u>RCC Would Serve Only 1% of Households Within the One-Mile Radius</u>

If the relevant neighborhood is a one-mile radius, it is apparent that the Project does not promote the social welfare of that neighborhood. The radius contains dense urban areas and large apartment buildings, with an estimated population of over 48,000 and approximately 25,000 households.[7] The Applicant's proposed 270 memberships would serve only about 1% of that community, and less than 0.5% once accounting for the more than 125 memberships already distributed and the 15% of memberships reserved for households outside the radius. As in *Stewart*, "the members comprise no substantial portion of the general public of the area." 305 A.2d at 519 (quoting *Jeffery v. Planning & Zoning Bd. of Appeals*, 232 A.2d 497, 501 (Conn. 1967)).

b. <u>The One-Mile Radius Comprises Multiple Neighborhoods</u>

The Applicant's own submission confirms that the one-mile radius is not a single neighborhood. The Applicant concedes that the radius "encompasses portions of the Mount Pleasant, Cleveland Park, Woodley Park, Lanier Heights, and Crestwood neighborhoods on each side of Rock Creek Park." It acknowledges that the Property is in the Rock Creek West Area Element but immediately adjacent to the Mid-City Area Element (Mount Pleasant and Lanier Heights) and the Rock Creek East Area Element (Crestwood). Its transportation analysis concedes that only "much of" the radius falls within a 15-minute walkshed. And throughout its filing, the

[7]Population and household estimates are based on U.S. Census data and are intended for illustrative purposes only. These figures represent reasonable approximations derived from available data and should not be interpreted as precise counts or definitive projections.

Applicant refers to the "neighborhoods" it serves, in the plural. *See* Ex. 21, pgs. 2, 5, 10, and 12 n.3.

Notably, the Applicant's initial application tied the neighborhood to ANC 3C, the ANC in which the Property is located. The revised definition abandons that civic boundary entirely, excluding portions of the Property's own ANC while reaching across Rock Creek Park into other ANCs and Wards. This confirms that the radius is a membership catchment area drawn by the Applicant, not a recognized neighborhood. Every recognized boundary system divides the one-mile radius into multiple distinct communities:[8]

- *Wards:* Three: Ward 3 (west of Rock Creek Park), Ward 1 (Mount Pleasant, Lanier Heights, Adams Morgan, Columbia Heights), and Ward 4 (Crestwood).
- *Advisory Neighborhood Commissions:* Approximately five, including ANC 3C (Cleveland Park, Woodley Park, McLean Gardens), ANC 3F, ANC 1D (Mount Pleasant), ANC 1C (Lanier Heights/Adams Morgan), and the Ward 4 ANC covering Crestwood, together with many more Single Member Districts.
- *Named Neighborhoods:* Cleveland Park, Woodley Park, McLean Gardens, Forest Hills, Crestwood, Mount Pleasant, Lanier Heights, and portions of Adams Morgan and Columbia Heights, as shown on the Applicant's own map.
- *DCPS Elementary School Boundaries:* Approximately five to six, including Eaton, Hearst, Oyster-Adams, Bancroft, Shepherd, and Marie Reed, feeding different middle and high school pathways on either side of Rock Creek Park.
- *Census Tracts:* Roughly 15 to 25.

A club drawing its membership from across three Wards, several ANCs, multiple school zones, and both sides of Rock Creek Park is not organized exclusively for the promotion of the social welfare of the neighborhood in which it is located, and the Applicant therefore cannot satisfy condition (1).

[8]Boundaries are approximate and based on current District boundary data.

c. The Comprehensive Plan Defines District Neighborhoods and the Application's One-Mile Radius Does Not Qualify

The Zoning Regulations and the Comprehensive Plan both confirm that "the neighborhood in which it is proposed to be located" is a real, recognized place. It is not a circle the Applicant may draw. The Comprehensive Plan, which the Board must apply alongside the Zoning Regulations, defines the District's neighborhoods with specificity. It recognizes that "Washington, DC has no fewer than 130 distinct and identifiable neighborhoods," and names Crestwood, one of the communities the Applicant's radius reaches across Rock Creek Park to capture, as its own neighborhood. 10-A DCMR § 310.2. The Plan treats Cleveland Park, Woodley Park, and Mount Pleasant as separate historic districts. Id. § 1007.2. It divides the entire District into ten Area Elements, including Rock Creek West, Rock Creek East, and Mid-City, as separate planning geographies whose place-based policies refer to "specific neighborhoods." Id. §§ 104.5–104.6. The Applicant concedes that its radius spans all three. The Plan identifies Rock Creek Park as "the largest contiguous open space within the District," covering more than 2,000 acres, and as an open space network in its own right. Id. §§ 811.1, 812.3. That is the very feature separating the Property from Mount Pleasant, Lanier Heights, and Crestwood. The Plan describes neighborhoods with a strong sense of place as having "well-defined edges." Id. § 909.1. Rock Creek Park is the clearest such edge in Northwest Washington. Finally, the Plan's own measure of local service area undercuts the Applicant's radius. It describes a Neighborhood Commercial Center, the use most closely tied to "the day-to-day needs of residents . . . in the adjacent neighborhoods," as serving an area "usually less than one mile," and reserves wider service areas for corridors that serve "multiple neighborhoods." Id. §§ 225.14–25.15. A one-mile radius fails to describe the neighborhood in which the Property is located.

d. Past Community Center Cases Tie the Social Welfare Requirement to Immediate Proximity

The Board's prior community center decisions confirm that a one-mile radius drawn by the applicant is not "the neighborhood in which [the use] is proposed to be located." In every approval in the record, the Board tied the social welfare requirement to a small, local group that lived near the site.

The applicant cites the Lenore Pool and Tennis Club, which is the only approval in the record that resembles a private social club; however, this singular example does not permit the Board to disregard the "social welfare" requirement of the special exception condition from BZA Case No. 14619 (1987). The Lenore Club approval was strictly limited. The Board found in the Lenore Case that membership would be limited to no more than fifteen families, "[a]ll but two" of whom "will live within approximately 1000 feet of the facilities." The Board expressly relied on "a limitation on members in number and geographic area" and the fact that most members would be "walking to the site." The facility was limited to a single tennis court, one 20-by-55-foot pool, a bathhouse, and a deck. Later modifications raised the cap only to 20 families (2010) and then 25 families (2014), with no more than six living beyond 1,000 feet. In the 2014 modification, the Board found no adverse impact on the community, and 12 neighbors living within 200 feet petitioned in support. The Board justified these approvals by pointing to the small number of participants and their immediate proximity to the site.

In BZA Case No. 17080 involving Asian American LEAD, the Board credited OP's conclusion that the center's programs "will cater to a small population residing in the immediate neighborhood." The Asian American LEAD served "a targeted community within Columbia Heights."

The Unique Learning Center, BZA No. 17742, served at-risk "inner city" children from the Shaw neighborhood. During the hearing, Steven Mordfin, Office of Planning, noted that the center "will serve Shaw residents only."

Each of the past community center cases measured the neighborhood by immediate proximity, walkability and a narrowly defined local population. A one-mile radius cannot be reconciled with this precedent.[9] Nor can it satisfy Subtitle U § 203.1(d)(1)'s requirement that the use be organized "exclusively for the promotion of the social welfare of the neighborhood in which it is proposed to be located." And unlike each of these other community centers, this Applicant has no letters of support from the immediate community. Nick Auger a neighbor and member of the Rock Creek Glen Association, prepared this map showing homes in red that are opposed to the use, attached at **Exhibit D**.

B. The Applicant Has Not Demonstrated That the Use Will Not Include Retail Sales to the General Public or Impermissible Fees

Subtitle U § 203.1(d)(2) provides that "[t]he use shall not include retail sales to the general public but may charge a fee to members for services, which may include refreshments." The provision opens with a prohibition and follows with a limited permission. The Applicant has not demonstrated compliance with either.

1. A "Fee to Members for Services" Does Not Include the Owner LLC's Carrying and Capital Costs

The permission to "charge a fee to members for services, which may include refreshments" is a narrow exception within a provision that otherwise restricts commercial activity. It allows the

[9] The letter from the Advisory Neighborhood Commission cites the *Maret* case to support the use of a one-mile radius, but the issue in that case was very different: whether a field several miles from a private school could be considered an accessory use given its distance from the school's campus. Likewise, the case involving the Brown Street Maker Cooperative provides no support. There is no neighborhood opposition in the record for that case, and the BZA did not consider the scope of the neighborhood affected by the proposal.

use to establish a membership structure (e.g., to promote administrability) and charge its members for services, meaning things done or supplied for a member. It does not permit the use to pass the cost of owning, financing, maintaining, or improving the real property on to members, through financially exclusive membership dues or otherwise. Plain meaning, the structure of the provision, the ordinary rules of construction, and *Stewart* all point the same way.

First, undefined words take their ordinary meaning. A "fee" is a charge paid for a particular service or privilege, and a "service" is work performed or a benefit supplied to someone. The phrase therefore describes an exchange: the member pays and receives a service in return. Mortgage payments, property maintenance, landscaping, and capital renovations are not services rendered to members. They are the owner's ordinary costs of holding and improving real property. A member who contributes toward the mortgage receives no service; the member is simply paying down the owner's debt and building the owner's equity.

Second, the drafters' single illustration, "refreshments," confirms that "services" means discrete, consumable items or activities provided to members in connection with their participation. Under the related canons of *noscitur a sociis* and *ejusdem generis*, a general term is read in light of the specific examples paired with it. Nothing about refreshments points toward mortgage payments or building renovations. Members can pay for services thus at cost for lessons, food or drinks. But the regulations do not permit a monthly fee that exceeds services because the intent of the special exception is to benefit the social welfare of a local underserved population not create a private luxury club.

Third, reading "services" to include facility costs would render the limitation meaningless. If "fee for services" covered any cost connected to the facility, every dollar the use spends, whether on its mortgage, utilities, landscaping, or a new wing, could be relabeled a "service" and charged

to members, and the condition would mean the same thing as "may charge members any fee." The drafters did not write that. Because the permission is an exception carved out of a prohibition, it must be read narrowly so that it does not swallow the rule. This provision is critical in distinguishing this special exception use from other uses.

Fourth, *Stewart* demonstrates that a member-funded, debt-financed model is inconsistent with the narrow permission in condition (2). The court found the heavy carrying costs that would be needed to sustain the club – including a $1 million purchase price, the $9,610 monthly mortgage payment over ten years, and the further "fixed debt which must be borne in addition to the operating expenses," inconsistent with the concept of the special exception. 305 A.2d at 520. Although the regulations allow a community center to charge "a fee to members for services," that is a narrow allowance. When member fees exist to retire a mortgage and pay for the capital costs of building out a facility, the use is no longer the limited, member-service activity the regulation contemplates. Reading this language to allow members to fund the significant costs associated with the acquisition, upkeep, landscaping, or renovation of Greystone[10] would approve exactly the model that *Stewart* held fell outside "the concept of the special exception."

This reading is also administrable. A charge is a permitted "fee for services" if it pays for a service or item provided to the member, such as refreshments, a class, an event, or use of programming. A charge is not permitted if its purpose or effect is to pay the owner's carrying or capital costs for the real property, including mortgage principal or interest or other acquisition financing; routine upkeep, repairs, or maintenance; landscaping and grounds maintenance; and renovation, expansion, or other capital improvements. Relabeling such a charge as "dues," a

[10] The Greystone property was purchased for $7.5 million. The Washington Business Journal has reported that Greystone Holdings LLC obtained two loans totaling $6 million to finance the acquisition, one for $3.5 million from Old Dominion National Bank and one for $2.5 million from the property's former owners, Thomas Gibian and Christina Grady.

"service fee," or a "membership fee" does not change the result; the substance of the charge controls. The Applicant has not disclosed its financing structure or demonstrated that its membership charges fall within the permitted category.

The Applicant's representative has noted to the Neighbors that members will pay a $10,000 or $12,000 deposit, in addition to initiation fees and monthly dues. The proposed structure is not in the BZA record but verbally stated by the Applicant to the ANC and Neighbors. This proposed structure is not consistent with the limited condition under the special exception**.**

2. Guest Activity Would Constitute Retail Sales to the General Public

The Applicant proposes a café/bar and fee-based programming and permits members to bring guests. If guests may pay for food, drinks, classes, court time, or pool passes, then non-members are purchasing goods and services on site, and the use includes retail sales to the general public. Likewise, if members must pay a guest fee, the guest is a member of the general public paying for access. The record does not foreclose a pro shop selling tennis gear, apparel, swimwear, or fitness equipment, or pay-per-class drop-ins, private lessons, clinics, camps, or tournaments open to non-members. The Applicant bears the burden to establish, with enforceable limits, that none of these activities will occur.

The Applicant's proposed 6 special events per year provide no cap or limit on non-members. They also envision imposes charges on non-members; the Applicant has represented to Neighbors that the special events may include fundraisers for local organizations. With out clear conditions, such events could violate this condition of the special exception standards.

C. The Use Is Likely to Become Objectionable in an R Zone Because of Noise and Traffic

Subtitle U § 203.1(d)(3) requires that "[t]he use shall not likely become objectionable in a R zone because of noise or traffic." The Applicant has not made that showing.

1. Noise

The Applicant proposes operating hours from 7:00 a.m. to 10:00 p.m., with outdoor pools, tennis and padel courts, terraces, and gathering areas located immediately beside the Neighbors' homes. The proposed change in use would expose the Neighbors to recurring noise from recreational activities, outdoor gatherings, and events throughout the day and into the evening, interfering with ordinary residential activities, including working from home, resting, and spending time outdoors. These impacts are expected to be substantial, particular when taking into account that the Applicant is proposing to transform the property from a residence used by a single family and its guests to a recreational facility used by 270 families and their guests, plus vendors and employees.

Padel in particular will have significant noise impacts on Neighbors. As explained in a 2026 study published in the journal City and Environment Interactions (Attachment B), "the sport's acoustic signature, comprising dry, impulsive sounds from ball-racket and ball-glass impacts, metallic clangs on the wire-mesh fence, and players' vocalizations, generates substantial annoyance for nearby residents and has become a leading cause of legal disputes in several countries." The study found that "comparisons with tennis indicate higher perceived annoyance for padel" and found that, in jurisdictions that have evaluated the impacts, a minimum setback of 100 meters (328 feet) from neighboring dwellings has become the standard recommendation. The Applicant's proposed new outdoor padel courts would be located much closer than that to nearby dwellings.[11]

[11] The Applicant's plans show no dimensions for setback or distance to rear and side yards.

The Applicant's proposed limitation on amplified sound to approximately six special events per year does not address the principal source of impact: the cumulative, unamplified noise generated by the simultaneous use of multiple outdoor facilities by hundreds of people at a time.

The Neighbors would also experience increased pedestrian activity near their property boundary, and new circulation routes, gathering areas, and changes to vegetation and screening would diminish the separation and privacy their home currently enjoys.

The proposed trash operation would require staff to move numerous heavy refuse containers along the steep, winding path to Porter Street, generating additional noise.

The Applicant has proposed no acoustical study, no limits on attendance or simultaneous occupancy of outdoor areas, and no enforceable limits on events. Without clearly defined limits, the proposed restrictions provide insufficient assurance that these impacts would remain compatible with the adjoining residential use.

2. Traffic

The proposed operation would increase traffic on the shared access path through member and guest arrivals, pickup and drop-off activity, employee trips, deliveries, and rideshare services, creating safety, congestion, and access concerns for the Neighbors, whose daily access depends on that path. Despite the Applicant's attempt to mitigate traffic concerns, these conditions do not meet the burden the applicant has, which is to show the proposed use "shall not be objectionable" because of traffic.

The only vehicular access to the Greystone property is over the private gravel access path that runs across the neighbors' properties. This narrow, mixed-use path also provides the only vehicular access to the Neighbors' properties, as well as the only pedestrian access to 2323 Porter St. NW. Increased traffic on this path—which historically has accommodated only light residential

traffic—would expose Neighbors (and their families and guests) to heightened safety risks as they walk to and from their homes, potentially significant congestion from queuing, and other impacts.

The queuing impacts could be frequent and pervasive. The Applicant is proposing to host an unlimited number of organized activities, such as swim lessons, tennis classes, fitness lessons, as well as catered dinner parties for up to 100 people twice a week, every week. These organized activities would generate clusters of arrivals and departures, including approximately 100 people regularly leaving the property after dark following a dinner party. However, the turnaround that the Applicant is proposing to build would accommodate only three vehicles, meaning that larger numbers of simultaneous pickups or dropoffs would lead to queuing on the private access path, potentially blocking one or more Neighbors' access to their properties on a regular basis.

These impacts would be particularly severe because they would occur on private land. Because the access path runs across Neighbors' properties and not public land, the objectionable nature is elevated because DDOT will not manage or oversee this impact on private land the burden will fall on the Neighbors. This will leave the Neighbors particularly vulnerable to the traffic impacts that the RCC would generate, and makes the impacts even more objectionable than they would be on public land.

Separately, on Porter Street, trash collection trucks could obstruct traffic on the narrow roadway near Beach Drive. During the six large Special Events, the applicant proposes that all pick-up and drop-off activity take place there, with significant potential to obstruct traffic. However, during most of the large twice weekly dinners, the applicant makes no provision for pick up and drop off activities, which presumably would take place on the property that can only be reached via the private gravel path.

The Applicant's projected reliance on walking, bicycling, and transit likely overstates actual mode share given the site's topography, seasonal conditions, the proposed dinners and closing times after dark, the location of the Property at the edge of Rock Creek Park, and the realities of families traveling with children and recreational equipment. Indeed, the Applicant's own analysis concedes that only "much of" its service radius falls within a 15-minute walkshed, and membership extends to households on the opposite side of Rock Creek Park, with 15% of member households from beyond the radius altogether.

The Applicant's transportation analysis also assumes a static membership. It models travel behavior based on the households as they exist today and does not account for how those households will travel as members and their families age. The Applicant's own letters of support confirm that its prospective membership is concentrated among families with elementary school-age children. The BZA record reflects that the Letters of Support at Exhibits 37-51, 53-55, 57-68, 70, 71, 73-78, 80-94, 98-104, 106-117, 124 are all from parents with children between the ages of 2-6 years old. Over 50% of the potential members have children under 4, 34% between 5 and 6 years old and only 10% with children between 7 and 8 years old. Families with young children may be able to travel together by foot or by electric family-size cargo bike, but that mode becomes impractical as children grow too large to ride as passengers, begin traveling independently on schedules that differ from their parents', and participate in travel sports and other activities that require transporting athletes and equipment by car.

A membership that today arrives by cargo bike will, within a few years, increasingly arrive by vehicle, including separate trips for parents and teenage children, drop-offs by carpools and rideshare services, and, eventually, trips by newly licensed teenage drivers. The Applicant has evaluated its proposal through the narrow lens of its founding members' current stage of life and

has not contemplated how member use, trip generation, and mode share will evolve over the life of the use. Because the special exception runs with the land and is not limited to the current cohort of members, the Board must evaluate whether the use is likely to become objectionable because of traffic over time, not merely during its opening season. The Applicant has offered no evidence on that question and therefore has not carried its burden under Subtitle U § 203.1(d)(3).

Nicole White, P.E., PTOE, of Symmetra Design will testify as an expert in transportation planning and traffic engineering regarding the transportation impacts of the proposed use, including the reasonableness of the Applicant's trip generation and mode split assumptions, the failure of those assumptions to account for changes in travel behavior as member households and their children age, and the capacity of the shared access path. A transportation report from Symmetra Design is enclosed at **Exhibit E**. Realistic travel assumptions and enforceable operating restrictions are necessary to prevent traffic from exceeding projected levels, and the Applicant has offered insufficient information or omissions which create adverse impacts.

D. The Use Is Not Reasonably Necessary or Convenient to the Neighborhood in Which It Is Proposed to Be Located

Subtitle U § 203.1(d)(4) requires that "[t]he use shall be reasonably necessary or convenient to the neighborhood in which it is proposed to be located." The Applicant's claim rests principally on two assertions: that the surrounding neighborhoods lack nearby recreational facilities, and that more than 125 families have paid deposits to join. Neither establishes the conclusion the Applicant draws.

1. Membership Demand Does Not Establish Necessity

Deposits demonstrate interest in purchasing a membership. They do not establish that the neighborhood needs the proposed club. The Applicant moves from evidence that families want its amenities to the conclusion that those amenities are reasonably necessary, without establishing the

asserted shortage of existing facilities. Repeating the number of prospective members does not supply that missing connection.

2. The Claimed Shortage of Recreational Facilities Is a Product of the Applicant's Site Selection

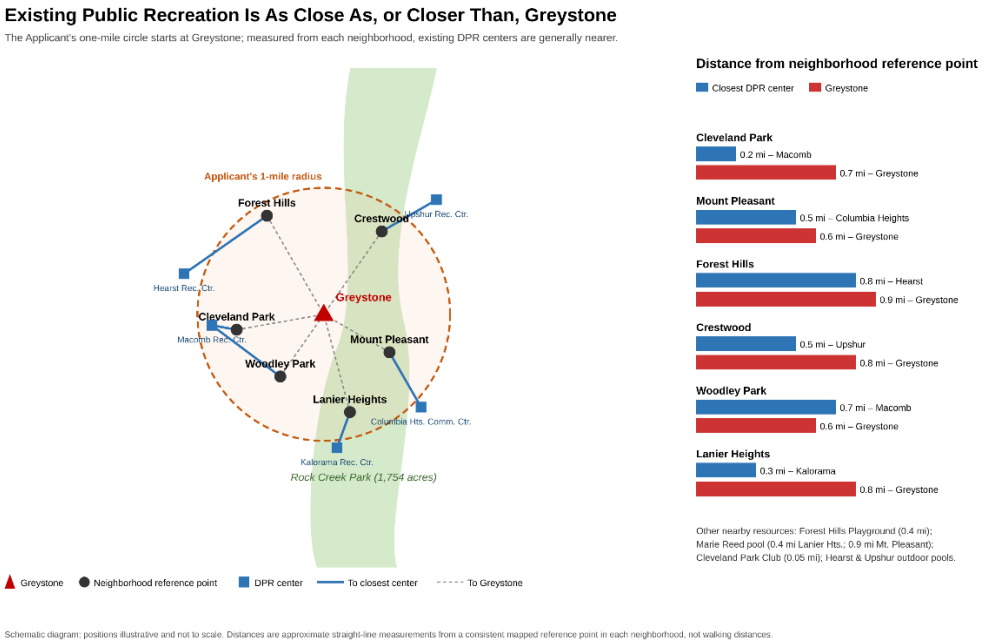
The Applicant manufactures the claimed shortage by making Greystone's isolated location the starting point of its analysis. It draws a one-mile circle around an estate at the edge of Rock Creek Park and relies on the limited recreational facilities within that area to portray the surrounding neighborhoods as underserved. Setting aside that a large portion of the radius is parkland devoted entirely to public recreation, the distances from Greystone to other facilities do not establish the distances that residents of the surrounding neighborhoods must travel. A comparison using consistent mapped neighborhood reference points shows that existing public recreation centers are generally as close as, or closer than, Greystone:[12]

Neighborhood	Closest DPR Recreation/Community Center	Distance to Existing Center	Distance to Greystone
Cleveland Park	Macomb Recreation Center	0.2 mile	0.7 mile
Mount Pleasant	Columbia Heights Community Center	0.5 mile	0.6 mile
Forest Hills	Hearst Recreation Center	0.8 mile	0.9 mile
Crestwood	Upshur Recreation Center	0.5 mile	0.8 mile
Woodley Park	Macomb Recreation Center	0.7 mile	0.6 mile
Lanier Heights	Kalorama Recreation Center	0.3 mile	0.8 mile

Available recreation also extends beyond these centers. Forest Hills Playground, approximately 0.4 mile from the Forest Hills reference point, includes tennis courts, basketball, and a ballfield. Marie Reed's indoor pool is approximately 0.9 mile from Mount Pleasant and 0.4

[12]Distances are approximate straight-line measurements from a consistent mapped reference point in each neighborhood, not walking distances or measurements from every residence. The District does not establish official neighborhood boundaries or centers.

mile from Lanier Heights. Cleveland Park Club, approximately 0.05 mile from the Cleveland Park reference point, offers swimming, social gatherings, and adult and children's programming. Hearst and Upshur provide public outdoor swimming facilities. These resources supplement the adjoining 1,754-acre Rock Creek Park.



For five of the six neighborhoods the Applicant identifies, the closest public recreation center is nearer to the neighborhood than Greystone. The Applicant cannot characterize existing facilities as too remote while relying on comparable or greater distances to establish the convenience of its own proposal. It has not identified any deficiency in the facilities that already serve those neighborhoods or explained how a luxury members-only club would remedy that deficiency. The fact that more than 125 friends of the Applicant and founding members would like to join a private club answers neither question. Nor is a dead-end site reachable only over a small gravel road, or up a steep and narrow access path, a "convenient" location for the neighborhood.

IV. THE APPLICANT HAS NOT SATISFIED THE GENERAL SPECIAL EXCEPTION STANDARD OF SUBTITLE X § 901.2

Independent of the specific conditions, the Board may grant a special exception only where it will "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps" and "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." Subtitle X § 901.2(a)-(b).[13] The Board's discretion "is limited to a determination whether the exception sought meets the requirements of the regulation." *Stewart*, 305 A.2d at 518.

A. The Relief Is Not in Harmony with the Purpose and Intent of the Zoning Regulations and Maps

The Property lies in a low-density residential zone intended to protect quiet residential areas developed with detached dwellings. As the *Stewart* court noted of the predecessor R-1 District, such regulations "are designed to stabilize such areas and to promote a suitable environment for family life." 305 A.2d at 517. Replacing a single-family residence with a membership recreation facility operating fifteen hours a day, serving hundreds of member households and their guests, is fundamentally at odds with that purpose.

The Project is also not in harmony with the Property's status as part of the Greystone Enclave historic landmark. A report from EHT Traceries is enclosed at **Exhibit F**. Emily Hotaling Eig of EHT Traceries will testify as an expert in historic preservation regarding the significance of the Greystone Enclave, including its landscape, topography, spatial organization, and historic views. She will address the enclave's rural character, a major contributing factor in its designation in the D.C. Inventory of Historic Sites, and the potential effects of the proposed recreational

[13] Section 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), authorizes the Board to grant special exceptions only where, in the Board's judgment, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, will not tend to affect adversely the use of neighboring property, and will meet the special conditions specified in the regulations.

facilities, additional paving and grading, reconfigured pools and courts, and related site improvements on that character, the landmark, and its setting.

The Zoning Regulations in Subtitle B § 100.2 defines "Historic District" and "Historic Landmark." It also defines "Historic Resource" as a landmark or building "that contributes to the character of a historic district." Therefore, when evaluating the harmony with the purpose and intent of the regulations, character and historic landmarks are factors the Board must weight.

B. The Relief Will Adversely Affect the Use of Neighboring Property

For the reasons described in Section III(C), the Project would adversely affect the Neighbors' use and enjoyment of their adjoining property through recurring noise, lighting and pedestrian activity, loss of privacy, and intensified traffic on their shared access path. In addition, additional paving, grading, construction, and changes to landscaping, fencing, access routes, recreational facilities, and service areas could worsen drainage onto adjoining property, reduce screening, and alter the historic residential setting.

The record is also incomplete in ways that preclude the Board from finding no undue adverse impact. The application omits key details regarding the nature and scope of daily operations and how they would be managed, including the overall site capacity, limits on attendance, guests, gatherings, deliveries, outdoor music, and lighting; the final configuration of the pool and court areas; the nature and frequency of organized activities or lessons, and the extent of site improvements[14]. Because later plan revisions could intensify these effects, and because

[14] The mitigation conditions should be developed only after the Applicant has provided more details regarding the activities it listed in the Applicant. The Applicant notes that they will offer lounge spaces, a café/bar, library and co-working spaces, and an open studio space. The Applicant envisioned group fitness classes as well as children's play space. Is that a day care use with staff? The Applicant will also offer aquatic amenities, such as a kids' pool, a cold plunge, and/or a hot tub.

exterior changes remain subject to historic preservation review, the Board cannot evaluate the Project's actual impacts on this record. The Applicant, not the Neighbors, bears the burden of filling those gaps. Subtitle X § 901.3.

V. ALTERNATIVE REQUEST FOR CONDITIONS AND A TERM LIMIT

The Neighbors maintain that the application should be denied. Should the Board nonetheless approve it, the Neighbors respectfully request that the Board exercise its authority under Subtitle X § 901.4 to impose requirements "it deems necessary to protect adjacent or nearby property," including, at a minimum:

- a cap on total memberships at 150 families and no more than 25 guests per day;
- family dinners for up to 49 people shall only occur once a month and limitations on other events, clinics and programs;
- members must be within a 2,000 feet radius;
- restricted hours for outdoor activity, with no outdoor programming before 8:00 a.m. or after 8:00 p.m.;
- a prohibition on amplified sound outdoors and on lighting of the pools and courts;
- a prohibition on retail sales, guest fees, and programming open to non-members, and on membership charges used to fund acquisition financing or capital or maintenance costs of the Property;
- enforceable transportation demand management measures, including limits on use of the shared access path for drop-off, deliveries, and trash collection;
- landscaping, fencing, and screening along the Neighbors' property line, subject to their review;
- a stormwater management plan demonstrating no increased runoff onto adjoining property; and
- the approval shall only be valid for one (1) year after which renewal of the special exception shall be required.

The Neighbors further request that the Board impose a term limit of one (1) year pursuant to Subtitle X § 901.5, which authorizes a term limit "when it determines that a subsequent evaluation of the actual impact of the use on neighboring properties is appropriate." Given the incomplete record regarding operations, transportation, and site improvements, and the

Applicant's failure to account for how member travel will change as member families and their children age, a subsequent evaluation of actual impacts is plainly appropriate here.

VI. WITNESSES

- Joseph Sellers, Owner and Resident, 2331 Porter Street NW, regarding existing residential conditions, his property's proximity to the Project, and the anticipated effects of the proposed use on the use and enjoyment of his property.
- Laurie Davis, Owner and Resident, 2331 Porter Street NW, regarding the same subjects as to her use and enjoyment of the property.
- Julia Schiller, Owner and Resident, 2323 Porter Street NW, regarding pedestrian safety, her property's proximity to the Project, and the anticipated effects of the proposed use on the use and enjoyment of her property.
- Lowell Schiller, Owner and Resident, 2323 Porter Street NW, regarding the same subjects as to his use and enjoyment of the property.
- Nicole White, P.E., PTOE, Symmetra Design, expert in transportation planning and traffic engineering, resume attached at **Exhibit E**.
- Emily Hotaling Eig, EHT Traceries, expert in historic preservation, resume attached at **Exhibit F**.

The Neighbors request 60 minutes to present their case.

VII. CONCLUSION

For the reasons stated above, and for the reasons that will be presented at the Board's hearing, the Applicant has failed to carry its burden under each of the applicable special conditions and the general special exception standard of Subtitle X § 901.2. Accordingly, the Neighbors respectfully request that the Board deny the application.

Respectfully submitted,
COZEN O'CONNOR



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Counsel for Julia and Lowell Schiller