**BZA CASE NO. 21510 — ROCK CREEK CLUB**
**APPLICANT'S WRITTEN REBUTTAL**

## EXECUTIVE SUMMARY

This memorandum rebuts the claims advanced by parties in opposition ("**Opponents**"), through counsel, in their pre-hearing submission dated October 26, 2026. In sum:

- The plain language of the regulations and established precedent by the Board clearly allows for nonprofits that operate private community centers focused on recreation activities to be approved pursuant to Subtitle U Section 203.1(d)(1).

- The District's planning framework eschews a reliance on fixed neighborhood definitions and establishes a one-mile radius as the proper range for a neighborhood-serving community center, and prior precedent demonstrates flexibility in the determination of the "neighborhood" served by such centers pursuant to U § 203.1(d)(1).

- The use plainly satisfies the prohibition on commercial activity required under U § 203.1(d)(2). Other claims regarding membership structure and fees are not germane to the special exception test, though such fees are reasonable and compatible with the limited scale of the proposed use.

- The Applicant's membership structure is typical for neighborhood community centers focused on recreation use, and notwithstanding numerical limits driven primarily by the requirement of the special exception to mitigate potential objectionable impacts pursuant to U § 203.1(d)(3), the community center will serve its target population.

- A data-driven analysis supported by substantial evidence in the record demonstrates that the proposed center is both reasonably necessary and convenient to the neighborhood it serves as required under U § 203.1(d)(4).

- The Application complies with the court's limited holding in Stewart v. District of Columbia Board of Zoning Adjustment because the community center is operated by and tailored to the scale of the neighborhood it serves.

The Applicant, a nonprofit organization formed by families to create a recreation-focused community center that serves their neighborhood, is exactly the type of private community center contemplated and previously approved by the Board in past cases. The Applicant has proposed over two dozen detailed conditions that clarify the scope of operation and manage and mitigate potential adverse impacts, consistent with the recommendations for approval from the Office of Planning, the District Department of Transportation, and Advisory Neighborhood Commission 3C. Accordingly, the Applicant has satisfied the burden of proof for special exception approval.

Board of Zoning Adjustment
District of Columbia
CASE NO. 21510
EXHIBIT NO. 140

## I. APPROVAL OF A COMMUNITY CENTER UNDER U § 203.1(d) IS NOT LIMITED TO SOCIAL SERVICE ORGANIZATIONS AND INCLUDES FACILITIES DEVOTED TO RECREATIONAL ACTIVITIES

### A. The Plain Language of the Zoning Regulations Includes a Recreation Facility as a Type of Private Community Center Eligible For Approval Under U 203.1(d)

Subtitle U Section 203.1(d)(1) requires that a private community center shall be a non-profit organization or association that is organized exclusively for the promotion of social welfare of the neighborhood in which it is located. In its prehearing submission, the Opponents claim that the phrase "social welfare" should be read to limit approval under this provision to only organizations that serve disadvantaged groups, relying on an erroneous reading of the Regulations and out-of-nowhere application of the Internal Revenue Code. The Opponents' arguments flatly contradict the very type of use described in Section 203.1(d)—a private community and recreation center—and the plain meaning of the Zoning Regulations.

The Opponents claim that "social welfare," as used in Subtitle U § 203.1(d)(1), is intended to be interpreted as a single phrase and rely on the dictionary definition of that phrase. To bolster their selective reading, the Opponents involve a specific type of nonprofit organization under Section 501(c)(4) the Internal Revenue Code:

> *(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purpose.*
>
> *(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.*

Thus, the Opponents claim that the "nonprofit" requirement under U § 203.1(d)(1) is limited only to social service providers organized under 501(c)(4) and excludes nonprofit organizations organized for recreational purposes.

This strained reading cannot be reconciled with the plain language of the Zoning Regulations. Nothing within the Zoning Regulations implies that the Zoning Commission intended to limit the phrase "not be organized for profit" in U § 203.1(d)(1) to a particular type of nonprofit organization. Indeed, the definition of "non-profit organization" in Subtitle B Section 100 is broad and covers a wide range of purposes, including **community** purposes:

> ***Organization, Non-Profit****: An organization organized, registered with the appropriate authority of government, and operated exclusively for religious, charitable, literary, scientific, community, or educational purposes, or for the prevention of cruelty to children or animals; provided that no part of its net income inures to the benefit of any private shareholder or individual.*

The Zoning Regulations include nearly two dozen references to the concept of a non-profit organization, and none of them are limited to a specific type of nonprofit under the Internal Revenue Code.[1]

Moreover, nothing in the plain language of the definition of a "private community center" in Subtitle B or in the special exception set forth in Subtitle U Section 203.1(d), each of which describes a "community center building, park, playground, swimming pool, or athletic field," suggests an intent to limit such use to social service uses. To this end, the ordinary definition of the words "social" and "welfare," each defined separately but read together in the context of a "private community center" as described above, supports a plain reading that applies U § 203.1(d)(1) to social- and recreation-based nonprofit organizations such as the Applicant. Read individually, "Social" and "Welfare" each mean:

> *Social: 2a : marked by or passed in pleasant companionship with one's friends or associates, . . . 2c : composed of sociable persons or formed for the purpose of sociability, or 2d: of, relating to, or designed for sociability or sociable gatherings.*[2]

> *Welfare: the state of faring or doing well: thriving or successful progress in life : a state characterized by good fortune, happiness, well-being, or prosperity.*[3]

Thus, in the context of § 203.1(d), "the social welfare of the neighborhood" describes uses that further opportunities for social gathering and companionship to promote the happiness and wellbeing of a neighborhood, which is precisely what the recreational and social functions of a pool, tennis court, and community center provide. In addition, the understanding of "welfare" used above aligns with the use of the word elsewhere in the Zoning Regulations and the Zoning Act, where it is used to explain the broad goals of zoning in the District of Columbia as furthering the welfare of the public as a whole.[4]

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[1] B § 100.2 (definitions of "organization, non-profit"); B § 200.2(p) (definition of General Institutional use group); U § 203.1(d) (special exception for private community center); see also I 305.7(b); I 803.2(b); U 251.1(g); U 252.5(g); U 320.1; U 401.1(e)(2); Y 1600.1(a)(3); Y 1600.3; Z 302.10(k); Z 1603.2(c); K 412.1(c); K 913.7; H 6005.1(b)(7); B 100.2 (definitions of "animal shelter," "private club," and "community service use").

[2] https://unabridged.merriam-webster.com/unabridged/social

[3] https://unabridged.merriam-webster.com/unabridged/welfare

[4] D.C. Code § 6-64.01; Subtitle A § 101.1.

The use of the term "private community center" within the structure of the Zoning Regulations further confirms the Applicant's reading of "social welfare." Subtitle B groups "private community centers" side by side with "private libraries, non-profits, or social service providers" together as examples of "General Institutional" uses, which are defined as "[a] non-governmental use involving the public assembly of people or provision of services for social or cultural purposes." If the Zoning Commission had intended to limit a "private community center" to the narrow definition proffered by the Opponents, it would not have listed "private community centers" as a distinct use from "social service providers."

Finally, the use and definition of a "community service center" elsewhere in the Zoning Regulations shows that the Zoning Commission knows how to draft a true social-service use when it intends one. Subtitle B defines a "community service use" as "a not-for-profit use established primarily to benefit and serve the population of the community in which it is located" and Subtitle U § 320.1(b) allows for a "community service center" by special exception to "accommodate organizations created for the purpose of improving the social or economic well-being of the residents of the neighborhood," giving examples such as "job training, family counseling, consumer cooperatives." That this separate use category exists, distinct from a "private community center," and tracing back to the adoption and amendment of the original 1958 Zoning Regulations,[5] demonstrates that where the Commission wanted a narrower, social-justice-oriented use, it said so expressly and used different operative language. The distinction between the two uses was then reaffirmed in 2016, when it carried forward private community centers and community service centers as distinct uses with distinct special exception criteria. The Commission did not limit a "private community center" to the limited purposes implied by the Opponents, and the Board should not read it in.

## B. Board Approvals Include Multiple Private Pool and Tennis Recreation Uses Under the Private Community Center Special Exception.

To support their narrow reading of U § 203.1(d), the Opponents offer a select set of prior approvals by the Board of community centers that claim such approvals were limited to uses serving vulnerable or at-risk populations.[6] To provide a more accurate picture of the Board's prior approvals, the Applicant has conducted a comprehensive evaluation of past precedent.[7] As set forth on the chart attached as **Exhibit A**, the Board has approved at least two dozen types of "community

[5] Compare 11 DCMR Section 3101.45 (1958) (including private community center in the original 1958 Zoning Regulations) with 11 DCMR Section 3104.46 (1977) (reflecting addition of "community service center" as a distinct use).

[6] The evidence offered by Opponents is flawed in two respects: it ignores approvals by the BZA that were granted both before 1987 and after 2014, and it ignores an approval within their own self-selected timeframe for a recreational community center use.

[7] In preparing the chart, the Applicant searched IZIS for all orders issued by the Board under U § 203.1(d) and its prior codifications, 11 DCMR Section 3101.45 (1958) and 11 DCMR Section 209.1 (following recodification). The Applicant also utilized the BZA Case Dashboard to search for approvals under the 2016 Zoning Regulations.

centers" over the past five decades.[8] While many of the approvals were social service providers, the list also includes multiple neighborhood recreation facilities as well as other community center uses that are not limited to serving individuals in need.

The history of prior Board approvals also rebuts Opponents' premise that approval under U § 203.1(d) is limited to 501(c)(4) nonprofit organizations. In addition to multiple recreation centers such as the Lenore Pool and Tennis Club that are 501(c)(7) nonprofit organizations,[9] the Board has approved other organizations under this provision such as the Brown Street Maker Cooperative and Asian American LEAD, which are each 501(c)(3) nonprofit organizations.[10]

## II. THE NEIGHBORHOOD PROPOSED BY THE APPLICANT IS REASONABLE AND WILL BE SERVED BY THE COMMUNITY CENTER

### A. The Applicant's Definition of Its Neighborhood as a One-Mile Radius is Grounded in Established Planning Principles

The Zoning Regulations tie the approval of a private community center to the "neighborhood in which it is proposed to be located."[11] The Zoning Regulations do not define the term "neighborhood," which means that we look, again, to the definition in Webster's Unabridged Dictionary. As with other terms, there are multiple definitions, but the most apt one is:

> *Neighborhood: 4a **:** a number of people forming a **loosely cohesive community within a larger unit** (as a city, town) and living close or fairly close together in more or less familiar association with each other within a relatively small section or district of **usually somewhat indefinite boundaries** and usually having some common or **fairly common identifying feature** (as approximate equality of economic condition, similar social status, similar national origins or religion, similar interests) and **usually some degree of self-sufficiency as a group** (as through local schools, churches, libraries, business establishments, cultural and **recreational facilities**)*[12]

The definition above, which focuses on "indefinite boundaries" and a "loosely cohesive community" organized around a commonality other than mere boundaries on a map, emphasizes the inherent flexibility and variability that comes with defining what constitutes a neighborhood.

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[8] Cases prior to 1973 were not returned during the Applicant's search. This is likely because older orders have not yet been uploaded to IZIS (indeed, BZA Order 11066, issued in 1972, was only recently uploaded after Applicant's counsel requested a copy). Certain older cases were incorporated by reference based on their mention in orders for reapprovals.

[9] https://app.candid.org/profile/7782333/lenore-pool-tennis-club-52-1625629

[10] https://app.candid.org/profile/16380510/brown-street-maker-cooperative-33-1617203; https://app.candid.org/profile/7784145/asian-american-lead-52-2102012

[11] Subtitle U § 203.1(d)(1); 203.1(d)(4).

[12] https://unabridged.merriam-webster.com/unabridged/neighborhood

It also aligns with the settled approach to neighborhood definition adopted by the Office of Planning, which eschews official neighborhood boundaries.[13] Given this accepted understanding of neighborhood, it is surprising that the Opponents insist on reducing the term to mere boundaries on a map (and in doing so invoking the tired and pernicious treatment of Rock Creek Park as a dividing line).

For those who live within the neighborhood, Rock Creek Park is a focal point of the neighborhood rather than a dividing line, and the Park is a "common identifying feature" that helps define the neighborhood. The Applicant's use of a one-mile radius—and application of that one-mile radius across geographic and political boundaries---is grounded in the District's own planning principles. The Comprehensive Plan and does not treat political divisions or geographic features as dividing lines,[14] and within the Plan, a one-mile radius is used to describe the catchment for a recreation center[15] as well as other neighborhood-serving uses, such as a "neighborhood commercial center."[16]

Consistent with these planning principles, the Office of Planning and ANC 3C each affirmed the Applicant's definition of neighborhood in their reports, noting the term is "subject to interpretation," with common definitions relying on "geographic boundaries, social and community relationships, shared identity, or access to local amenities," and finding that a "one-mile radius is a reasonable definition of the neighborhood for a facility of this kind." Indeed, as suggested by the definition of neighborhood quoted above, a shared association with a recreation center such as that proposed by the Applicant is exactly the type of characteristic that can define a neighborhood.

## B. Prior Board Approvals Have Not Limited to Immediate Areas or Traditionally Defined "Neighborhoods"

Contrary to Opponents' assertion, the Board's prior precedent also confirms that a community center is not necessarily limited to a "small local group that lives near the site." For example, Opponents claim that the approval for the Asian American LEAD affirms their limited "one neighborhood" approach, but LEAD's reapproval order, BZA Order No. 17942, expressly acknowledged that the center served families in not only the Columbia Heights and Mount Pleasant neighborhoods but also the Chinatown neighborhood, which is not even contiguous. So, too, was the Barbara Chambers Children's Center approved in BZA Order No. 15878 founded to serve

[13] https://planning.dc.gov/page/dc-office-planning-mapping-services.

[14] The Plan divides the city into a series of planning areas that do not align neatly with political divisions such as Ward boundaries and cross over natural features such as Rock Creek Park and the Anacostia River.

[15] 10-A DCMR § 805.6.

[16] 10-A DCMR § 225.15.

multiple neighborhoods, including the Adams Morgan, Mount Pleasant, and Columbia Heights neighborhoods.[17]

Some community centers are not even limited to neighborhoods. The approval for the community clothing center in BZA Order No. 13792 notes service to not only the immediate vicinity but also the "entire District of Columbia." And the approval for the Brown Street Maker Cooperative in BZA Order No. 21192 is not limited to a single or defined neighborhood; counsel for its applicant testified that it would be "available for use for neighboring individuals and communit**ies**"[18] and the Cooperative is now in operation with no geographic limit.[19] Against this context of prior Board approvals, the Applicant's proposed one-mile neighborhood is reasonable compared against the range of "neighborhoods" that characterized prior approvals.

## C. The Proposed Community Center is Clearly Reasonably Necessary or Convenient to the Neighborhood It Serves

In their pre-hearing submission, the Opponents challenge whether the proposed community center is "reasonably necessary or convenient" to the neighborhood by comparing the distances from the Property and nearby public recreation centers to certain arbitrary "neighborhood reference points." The Opponents do not explain their process or rationale for selecting these "neighborhood reference points," but the arbitrary and fixed points are irrelevant to the impetus behind the Applicant's proposal: for many families within the neighborhood, there is a lack of a suitable and convenient gathering space within close proximity to their homes and they look to the Property as a more convenient location.

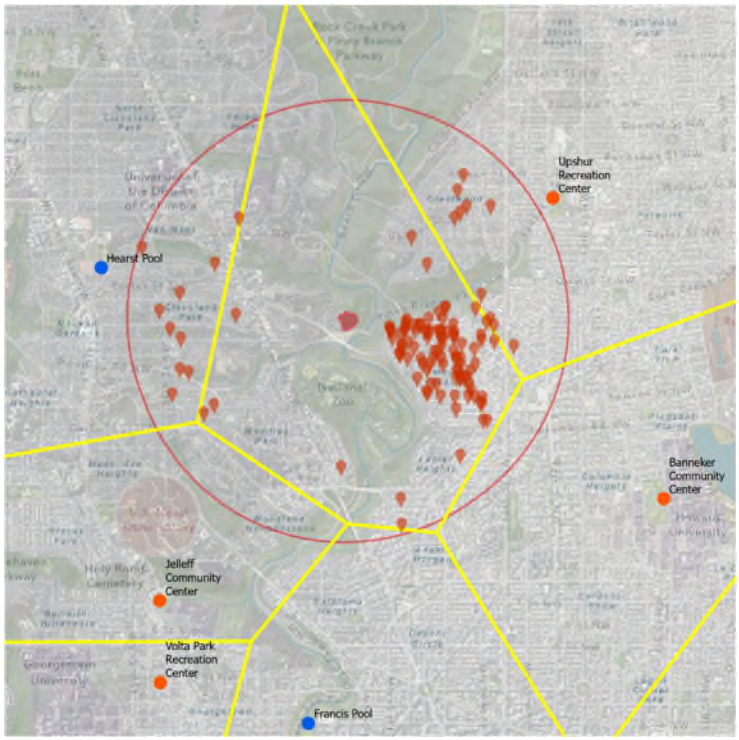
[*continued on next page*]

[17] https://barbarachambers.org/history/

[18] Tr. Nov. 13, 2024 at 190 (M. Moldenhauer) (emphasis added).

[19] https://www.brownstreetmakercoop.org/about/ (including no reference to any neighborhood or other geographic limitation on potential membership)

Using GIS data, the Applicant has undertaken a thorough analysis that conclusively demonstrates why the proposed community center is both reasonably necessary and convenient. **The map to the right—which is to scale—demonstrates that for the majority of the area within the one-mile neighborhood, the Property is closer than the nearest public recreation center that mirrors the mix of facilities provided by the Applicant's proposal (i.e. a recreation center with an outdoor pool).**[20] The yellow polygons (known as Thiessen polygons) convey the area around each recreation center where each location (i.e. each household) within that polygon is closer to that public recreation center than the Property and/or another public recreation center. For households within the central yellow polygon within the one-mile neighborhood, RCC is the closest and most convenient recreation center – and the map demonstrates that the Property is closer for many households, including all of Mount Pleasant and Lanier Heights, much of Woodley Park, and the densest portions of Cleveland Park along Connecticut Avenue.




For households outside the central polygon, other comparable public recreation facilities may be closer, but that does not obviate the need for private alternatives, just as independent schools complement public schools. The Comprehensive Plan expressly acknowledges the opportunity for private facilities to meet outdoor recreation needs—and relieve pressure on public facilities.[21] For most families within the one-mile neighborhood, there is no nearby private recreation center—the next closest options are in Maryland. (While the Cleveland Park Club is another private recreation center, membership is only available to those who reside within a limited area that comprises a fraction of the Applicant's neighborhood, and its membership is currently full.) Thus, the lack of comparable private facilities makes the Applicant's proposal a necessary one for those seeking a private option.

[20] Out of the half-dozen recreation centers cited by the Opponents, only Hearst and Upshur are comparable. The Macomb and Kalorama Recreation Centers and the Columbia Heights Community Center lack any pool, and Marie Reed's adult pool is an indoor pool.

[21] 10-A DCMR § 809.15.

Finally, as was expressly concluded by ANC 3C in its report and as is also demonstrated by Applicant's map above, the proposed center's necessity and convenience is real. The red dots, which correspond to the 125 households that have already signed up to join the facility, show that families within the neighborhood have affirmed that the proposed community center is indeed sufficiently needed and/or accessible.

**D. The Community Center Will Serve Its Neighborhood Notwithstanding its Membership Limit**

Opponents claim that the community center does not serve the neighborhood because the number of memberships limit participation to a small percentage of the population within the neighborhood. Their cursory analysis errs in multiple ways:

- Membership is not limited to a predetermined group of families. The Opponents claim, without any basis, that the Applicant's 270-member limit is evidence of an effort to establish a "luxury social club that serves an exclusive self-selected group of friends." To the contrary, most of the families that have signed up were unknown to the Applicant's organizers. As evidenced by the many dozens of letters in support in the record, their commonality is merely a shared desire for a nearby place for their families to gather and build new social connections. The diverse cross-section of families from east and west of the Park that reached out to join did so independently and enthusiastically because the proposed use filled a service gap within the neighborhood and would help them to remain in the District.

- Membership is not selective, and the numerical limit is a function of the zoning process. The 270-member limit is not an attempt to create exclusivity. To the contrary, the Applicant would happily pursue a larger membership if feasible. Membership is available to **any** household that lives within the neighborhood; there is no selectivity or eligibility criteria. The membership limit is solely a function of the required special exception and the need to demonstrate that the use will not cause objectionable impacts.

- Membership fees are reasonable and reflect the cooperative, community-based, and operation-focused nature of the community center. Opponents misrepresent the Applicant's membership fees. The Applicant's membership structure has two primary tiers:
    - A Neighborhood membership that includes (a) a cooperative-style initiation fee of $12,500, of which 80% (or $10,000) is refundable upon leaving RCC and (b) monthly dues of $500 that are comparable to the price of similar privately-operated recreation facilities; and
    - A Recreational membership with a smaller $2,500 initiation fee and lower monthly dues of $350.

These fees are reasonable and accessible to a significant number of families that reside within the one-mile radius.

- Memberships have not been "reserved" for households outside the neighborhood. Opponents' repeated claim that the Applicant is "reserving" 15% of memberships for households outside of the one-mile radius is false. What the Applicant has stated is that it will reserve a minimum of 85% of memberships for households within the one-mile radius, thus ensuring that the facility primarily serves its neighborhood. The flexibility around the remaining 15% is in large part to allow for members who move elsewhere in the District in the future to remain connected to their current neighborhood through the proposed community center.

- Memberships are available to a reasonable number of households within the neighborhood that are anticipated to have interest in a private recreation center. The Opponents' claim that the center will only serve "1%" of the households within the one-mile radius is unsupported rhetoric. Again, membership is available to any household that resides within the neighborhood. Some households, however, likely already have access to pools and other recreation facilities, such as those who live in larger apartment buildings with pools and meeting spaces, or those who already have access to comparable private facilities such as the Cleveland Park Club. Moreover, the target population for the Applicant is focused on families with young children, which comprise a fraction of the overall households the neighborhood. And finally, as discussed above, private community centers are intended to augment and supplement public facilities to create options for families. As is true with other facilities such as schools, some households may elect to choose public recreation and community centers. The net result of these factors is that membership will be available to a significantly greater percentage of households who are actually interested in using the proposed community center.

For all of these reasons, the Opponents' recommendation to reduce the number of available memberships to 150 households cuts against their claims, as it would significantly reduce the ability of families in the neighborhood to use and enjoy the proposed community center.

Taken together, the facts make clear that the Applicant will serve a meaningful portion of its target population: families within the one-mile radius around the proposed community center. There is no exclusivity or selectivity associated with the membership requirement; it is a mere function of the requirements of the special exception to mitigate potential adverse impacts and the practical limitations of the capacity of the facility. Again, as the Applicant explained in its prehearing submission, courts have distinguished private neighborhood pool and tennis facilities from private clubs because the neighborhood centers show "no plan or purpose of exclusiveness"

or other intent to be selective.[22] The Applicant's neighborhood area and membership count (both in the absolute and as a proportion of the overall eligible households in the neighborhood) aligns with the precedent cases, which also concluded that the ability for out-of-bounds households to join did not render the recreational facility selective or detract from the facility's service to its neighborhood.

The Opponents' attempt to portray the Applicant as a somehow exclusionary club is particularly ironic given that Opponents otherwise repeatedly invoke Lenore Pool and Tennis Club as a proper application of the special exception test. To hear the Opponents tell it, it would be perfectly acceptable for the 20 households on Porter Street and Williamsburg Lane to have purchased the Property and converted it to a community center limited to only their households. How, then, is purchasing the Property and making it available to a broader population somehow more exclusionary? It is not, of course.

Similarly ironic is the Opponents' claim that a membership limit is in itself disqualifying. Two years ago, in BZA Case No. 21192, counsel for the Opponents secured approval for the Brown Street Maker Cooperative as a member-run private community center.[23] The Brown Street Maker Cooperative is located in Mount Pleasant and thus serves many of the same households served by the Applicant's proposed community center. According to the Cooperative's own website, the Co-op now has over 300 members and has paused membership.[24] This underscores that neither a member-based model or a numeric membership cap is inconsistent with the Board's prior approvals. Note, further, that membership at Brown Street is held individually rather than by household; meaning, each adult in a household must apply for and hold their own membership. That structure is, if anything, more restrictive on a per-capita basis than the Rock Creek Club's proposed cap of 270 households (which, including multiple adults and children per household, will serve a comparable or larger population).

Both Lenore and Brown Street confirm what the regulatory text already makes clear: a community center use permitted under Subtitle U § 203.1(d) may be structured around a defined membership, with capacity limits, without losing its character as a community center. The Opponents cannot credibly argue that a community center with a membership limit is not approvable when their counsel obtained BZA approval for Brown Street as a member-run nonprofit cooperative on essentially the same showing two years ago. The fact that Brown Street's operation is not a social service use and its membership is not limited to a single neighborhood

[22] Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969) (concluding a neighborhood recreation center in Fairfax County was not a "private club" exempted from civil rights protections); Tillman v. Wheaton-Haven Recreation Ass'n, 410 U.S. 431 (1973) (concluding the same for a neighborhood pool in Silver Spring).; see also Olzman v. Lake Hills Swim Club, Inc., 495 F.2d 1333 (2nd Cir. 1974) ("If limitation on the number of users were the test, every restaurant or night club limited by law or fire regulations to a given number of occupants at a given time would be magically transformed into a "private club.")

[23] Tr. Nov. 13, 2024 at 188.

[24] https://www.brownstreetmakercoop.org/about/#faq

similarly undercuts the Opponents' other arguments. (To be clear, the Applicant is fully supportive of Brown Street—like RCC, it is another excellent example of the type of "third space" for gathering and activity that is desired by the families and households that reside in the neighborhood.)

## III. THE PROPOSED FACILITY IS NOT A COMMERCIAL ENTERPRISE AND ITS FEES COMPLY WITH THE REQUIREMENTS OF SECTION 203.1(d)(2)

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." Opponents attempt to frame this provision as a broad-based set of rules and requirements on the financial underpinnings of the nonprofit organization, but as the plain language makes clear, this prong is simply meant to do two things: (1) prohibit generalized commercial activity and (2) affirm that charges to members are not considered to be commercial activity. This understanding is supported by the predecessor language under the 1958 Zoning Regulations, which provided only that "[a] community center shall offer no articles of commerce for sale in the center," confirming that the focus of this condition has always been on prohibiting general commercial retail activity. The language in the 2016 version, which prohibits "retail sales to the general public," carries forward the same restriction, but confirms that the prohibition on sales is limited to the general public only, and then adds the new second clause to clarify that sales to members are allowed.

Nothing in U § 203.1(d)(2) suggests any effort on the part of the Zoning Commission to regulate the inner-workings of the nonprofit organization itself, including the structure of the membership or the financial support of the organization. Such regulation would go well beyond the exercise of typical land use and zoning authority and represent an extraordinary intrusion into the organization's recreational mission.[25] Again, the reference to "fees for members" is merely intended as a clarification and qualification to the broader prohibition on sales to the general public. Moreover, the prohibition in U § 203.1(d)(2) is on "retail sales" and to that end, the corresponding language regarding "services, including refreshments" is logically framed against the concepts of "goods and services" that are typically charged by a retail or service use.

Set against this clear-eyed understanding of the prohibition on commercial activity, the proposed operation of the center complies fully with these restrictions. Pursuant to Condition 5, use of the facility and participation in its activities is restricted to members and their guests. With regard to refreshments, as set forth in Condition 7(a), access to food and beverage service is also limited to members and their guests. Indeed, food and beverage service is limited, with no full-service restaurant or commercial kitchen shown on the proposed plans and with such activity

[25] See, e.g. President and Directors of Georgetown College v. D.C. Bd. of Zoning Adj., 837 A.2d 58, 74-75 (D.C. 2003) (finding that the forced imposition of an enrollment cap would represent an *ultra vires* intrusion on a university's educational mission).

prohibited pursuant to Condition 7(b). Finally, Condition 5(c) expressly prohibits retail sales to the public.

The Opponents also argue that guests somehow constitute "public" activity. Guests are permitted—as is typically the case for many private recreation centers—but strict limitations set forth in Condition 10 constrain guests to the same rules and restrictions as members and thus distinguish them from the general public. Guests must be accompanied by a hosting member, are held to the same rules as members (with sanctions against the member for a guest's violations), and strict limits are placed on the number of guests each member may bring. As is also the case for many private recreation centers, all charges for refreshments and other activities are placed to a member's account, so a guest cannot pay. Thus, a guest who must be accompanied by a member, whose fees must be paid by the member, and whose conduct exposes that member to sanctions, is in no way a not a member of the "general public" within the meaning of Subtitle U § 203.1(d)(2); the guest's access is entirely derivative of, and controlled through, the member relationship the regulation expressly permits.

Therefore, the bulk of the Opponents' assertions regarding the financial structure and operation of the center are irrelevant to the special exception test and go beyond the scope of the Zoning Regulations. Section 203.1(d) requires that the operator is a nonprofit organization and anticipates that the association will be a member-run organization, as is the case here. This aligns with the expected structure for a private nonprofit neighborhood recreation facility—a member-based organization where member fees fund the enterprise, including both capital improvements and ongoing operational costs.

Here, the Applicant will occupy the Property pursuant to an arms-length, long-term lease, As required by the IRS, the rent will be at fair market value and not inure to the benefit of any individual, and the Applicant will not be responsible for carrying or financing costs. The Applicant will be responsible for club-related renovations and improvements as well as the costs to run the operation. Members will fund these costs through fees—just as tuition funds both capital expenses and operating costs for an independent school and homeowners fund the capital expenses and operating costs for a homeowners' association.

## IV. STEWART IS NOT APPLICABLE TO THIS APPLICATION

The Neighbors lead with Stewart v. District of Columbia Board of Zoning Adjustment, 305 A.2d 516 (D.C. 1973), for the proposition that any membership facility with capped enrollment cannot qualify as a community center use. However, as has been made clear by the discussion above, the proposed community center at issue in this Application is distinguishable from the private racquet club at issue in Stewart, and so this rebuttal will end with an explanation of why Stewart is not controlling in this case.

In Stewart, the court reversed a special exception approving a community center because the proposed "community center" was in substance a broader regional racquet club that happened to be located in Georgetown and was focused on serving the purposes of the club rather than the neighborhood surrounding the facility. The court overturned the BZA's approval because, at bottom, the scale of the operation precluded it being supported by or run by the community in which it was located:

> [T]he Board erred in concluding that the applicant met the Zoning Regulation's requirement that the proposed facility be a **community center** facility operated by a local **community organization**.[26]

As explained in the court's decision and in the BZA order that originally approved the center, a corporate purchaser, Tennis Promotion, Inc., had assigned its interest to Georgetown Racquet Club, Inc. to buy the property, which then arranged for the facility to be run by the Georgetown Recreation Club, a nonprofit entity created to run the facility.[27] The existing building already included an indoor pool, and the Club proposed to construct additional buildings to create a facility that would include indoor tennis, handball, and squash courts as well as the indoor swimming pool and other athletic facilities.[28]

Georgetown Recreation Club was not a community-based association; indeed, the court noted that the Club had "expressed doubt that the Georgetown community alone could support such a large-scale venture."[29] To that end, the scale of the venture, which called for the construction of additional buildings to contain the indoor racquet facilities, "preclude[d] the feasibility of a community organization initiating such a project." While the record in the case below reflected evidence that over 800 residents in the immediate neighborhood expressed interest in using the facility, the Club nevertheless believed that it needed a far greater membership base to support the venture and sought members from the "greater Washington area."[30]

Rock Creek Club stands in stark contrast. As is discussed in extensive detail above, the Applicant is a nonprofit community association formed directly by families within the neighborhood to further the social well-being of their neighborhood. The Applicant has committed that the association will be overwhelmingly reserved for households within that one-mile

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[26] Stewart, 305 A.2d at 520 (emphasis in original); see also id. at 518 ("That regulation . . . permits as a special exception the establishment of **community centers** operated by **local community groups** . . . ." (emphasis in original)).

[27] Id. at 517 n. 3.

[28] Id. at 517; BZA Order No. 11066 at 1, 2

[29] Stewart, 305 A.2d at 520.

[30] Id. at 519-20.

neighborhood, and membership is available to residents of the community at large without any selectivity or qualification for membership other than residing within the neighborhood.[31]

Furthermore, the scale of the Project is significantly smaller than that called for in Stewart—the Property is already improved with the building, a pool, and a tennis court, and limited additional work is required to adapt the property for use as a community center—and so the one-mile neighborhood surrounding the Property is able to fund and sustain the Project. The fees required for membership are comparable to other similar neighborhood facilities, and the initial fee is largely refundable, reflecting a cooperative model focused on the use and stewardship of the historic estate rather than extensive redevelopment with new buildings and facilities. Put simply, the Applicant is exactly the type of local neighborhood organization operating the scale of facility for the benefit of that neighborhood envisioned under Section 203.1(d).

## CONCLUSION

The extensive record in this case conclusively demonstrates that the Applicant has satisfied the criteria for special exception approval as a community center under U § 203.1(d).

- The proposed use as a member-run recreation center serving a local neighborhood complies with the plain language of the Zoning Regulations as affirmed by the Board's past precedent and established District planning guidance.

- The proposed private community center was created by families within the neighborhood to fill an unmet need, and objective data as well as the committed support of those families affirms that the proposal meets that demand.

- The Office of Planning, District Department of Transportation, and ANC 3C have each reviewed and approved the approval of the Application, subject to conditions to mitigate potential impacts on noise and traffic.

- The Applicant has agreed to these recommendations and incorporated them into an exhaustive set of conditions of approval that will ensure that the use of the Property as a community center will not cause objectionable or adverse impacts to the immediate residential neighbors.

- And the Applicant has committed to implement these conditions and return to the Board after five years to re-evaluate the efficacy of their restrictions.

[31] To the extent that the Stewart court appeared to conclude that the Club's membership requirement was disqualifying, the Zoning Commission's change of the special exception prong in 2016 to expressly acknowledge that a private community center could be limited to members—and indeed require such restrictions to prevent sales to the general public—demonstrates that the mere presence of a membership requirement is not enough to distinguish a private community center from a private club.

Accordingly, the Applicant respectfully requests that the Board approve the Application.

Respectfully,

David Avitabile
Counsel for the Applicant, Rock Creek Club

November 2, 2026