



GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADVISORY NEIGHBORHOOD COMMISSION 3D
PO Box 40846, Palisades Station
Washington, DC 20016

*PALISADES – KENT - SPRING VALLEY - WESLEY HEIGHTS - NEW MEXICO/CATHEDRAL –
THE AMERICAN UNIVERSITY - FOXHALL VILLAGE - BERKELEY*

January 11, 2018

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

RE: Case No. 16-23, Exhibits 150 and 151

Dear Chairman Hood,

This letter responds to the submissions of ANC3D Commissioners Alma Gates and Holmes Whalen with respect to the Exhibits referenced above.

As of January 11, 2018, both submissions contain incorrect and misleading information pertaining to a violation of ANC3D Bylaws for failing to call a special meeting for further consideration of the Valor Application in Case 16-23. As Chair of ANC3D, I asked both Commissioner Holmes and Whalen to immediately correct the record in this proceeding.¹ I am unaware whether they have done so. Thus, this letter is necessary and critical to assure that the Zoning Commission is not misled and possesses true and accurate information as it may relate to this proceeding.

Both submissions imply that because I, as Chair of ANC3D, may have violated ANC3D's Bylaws by declining to call a special meeting, as requested by these two Commissioners, to further consider the Valor application, then ANC3D's official vote on December 6, 2017 in favor of Valor's Application should not be afforded "great weight" by the Zoning Commission.

¹ Both Commissioners were also asked to inform the Zoning Commission that, in contravention of ANC3D's Bylaws, they used the Commission's letterhead giving the impression that such Commissioners were acting officially on behalf of ANC3D. The Bylaws expressly provide that official stationary is reserved only for the Chair.

Commissioners Gates and Whalen state as follows in their submission:

We file this request for an Advisory Opinion into the case log for two reasons. First, we would like you to be aware that the issue regarding Chairperson Gardner's denial of our special meeting requests is outstanding. Second, when evaluating whether to give "great weight" to ANC3D's Resolution, we would like the ZC to be advised of the circumstances under which it was prematurely considered, and the fact that Chairperson Steve Gardner refused to allow the ANC to revisit this extremely important case at a special meeting.

Leaving aside the issue of whether an official and procedurally proper action of ANC3D must, under law, be accorded "great weight" by the Zoning Commission, it is imperative that the record be corrected. Yesterday, the Office of the Attorney General issued an advisory letter stating clearly and unequivocally, that I, as Chair of ANC3D did not violate ANC3D's Bylaws by declining to call a special meeting. In fact, the letter states that Commissioners Gates and Whalen could themselves have called a special meeting. For whatever reason, they chose not to call this special meeting to further consider Valor's Application.

In addition to the January 10, 2018 letter from the Office of the Attorney General, the record should also be corrected that, I as Chair, refused to allow the ANC to revisit this case. What is left unsaid in their submission is the express language in our resolution on December 6 that allowed any 3 Commissioners to place the Valor application on our January 10, 2018 agenda if there were "material and significant" changes in the application submitted to the Zoning Commission on December 22 as measured against the application presented to ANC3D at its December 6 regular meeting. Apparently, there were not, as 3 Commissioners never asked that the matter be placed on our agenda.² In addition, all Commissioners were informed that they could request that the Valor matter be added to our agenda, in accordance with DC law, at the beginning of our January 10, 2018 regular meeting. In fact, neither Commissioner Gates nor Commissioner Whalen did so. However, in order to absolutely assure that the ANC3D had a full and final opportunity to consider the Valor application prior to the Zoning Commission's hearing of January 11, I moved to place Valor's application on the January 10, agenda. Every Commissioner and every member of our audience, which had both proponents and opponents of the Valor application present, was given an unrestricted opportunity to further discuss the application. However, for the record, Commissioner Gate's motion to reconsider the December 6 vote by the Commission failed and the Commission voted affirmatively to support its December 6 vote in favor of the Valor application.

² The record should also reflect that both Commissioners Gates and Whalen voted in favor of the Valor application. It is hard to fathom why they could not elicit the support, at the very least, from the one Commissioner who voted against the application at the ANC3D December 6 meeting.

Thus, in light of the advisory letter from the Office of Attorney General, I respectfully request that the record be corrected, and that Commissioners Gates and Whalen's submission be stricken. Further, that the record reflect that Commissioners Gates and Whalen could have called a special meeting to consider Valor but did not do so. Further, that Commissioners Gates and Whalen had ample opportunity to request that the Valor be placed on our January 10, 2018 agenda and could not elicit the support of even one other Commissioner. Further, that neither Commissioner Gates nor Whalen asked that the Valor be placed on the agenda on January 10 regular meeting. Further, that Valor was, in fact, placed on the January 10 agenda by motion of the Chair and that after further discussion and deliberation, the Commission vote to reaffirm its December 6 vote in favor of the application. Therefore, the Commission's December 6 vote and resolution should unquestionably be afforded great weight by the Zoning Commission.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stephen Gardner". The signature is written in dark ink on a light-colored, slightly textured paper background.

Stephen Gardner
Chair

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

January 10, 2018

Stephen K. Gardner
Chairperson
Advisory Neighborhood Commission 3D
4545 W Street NW
Washington, DC 20007

Re: Questions Concerning Proposed Special Meeting

Dear Chairperson Gardner:

Two Commissioners have requested a special meeting to reconsider a December 6, 2017 vote of the ANC. You asked us to resolve, on an expedited basis, two questions related to that request:

- (1) Under ANC 3D's Bylaws, may the Chairperson of ANC 3D exercise reasonable discretion in determining whether to call a special meeting when two Commissioners request one?**

Yes. A request for a special meeting from two Commissioners (or ten residents) does not obligate the Chairperson to call a special meeting.

Two years ago, we were asked whether your ANC's Bylaws (unchanged since that time) permitted the Chairperson to call a special meeting¹ without a request from two Commissioners or ten residents.² We concluded in a November 10, 2016 letter that the answer to that question depended on which of two reasonable interpretations of the Bylaws was correct, which meant that the question was one for the ANC, not us, to decide.³ Here, our answer is different.

¹ We have interpreted the phrase "to call a special meeting" in the context of ANC 3D special meetings to mean: 1) to decide that a meeting shall take place; 2) to decide of when and where the meeting will be held; and 3) to notify fellow Commissioners and the public of the location, time, and agenda for the meeting through the ANC's normal procedures.

² See Letter from William Spence Spencer *et al* to the Hon. Karl Racine, May 2, 2016 (on file).

³ See Letter from Karl Racine, Attorney General, to Advisory Neighborhood Commission 3D Commissioners, Nov. 10, 2016, at 2-3, available at <https://oag.dc.gov/sites/default/files/dc/sites/oag/publication/attachments/to%20anc3d%20re%20bylaws%2011-10-16.pdf> (last visited Jan. 5, 2018).

Regardless of which Bylaws interpretation is right, the Chairperson is not required to call a special meeting when two Commissioners request one.

The Bylaws provision at issue is Article V, Section 3(B), which states in pertinent part:

Special meetings of the Commission may be called by the Chairperson, by written request of two (2) Commissioners or upon petition of ten (10) residents, 18 years or older, of the Commission area.

Our 2016 letter explained the two ways that this language could reasonably be read. One possible reading is that the Chairperson has exclusive discretion to decide whether a special meeting will be called, but he or she may not call one unless “other Commissioners or ANC residents request one.”⁴ The other possible reading is that a special meeting may be called (1) by the Chairperson; (2) by written request of two Commissioners; or (3) upon petition of ten residents. Under that reading:

the Chairperson has the power to call a special meeting, and even if a Chairperson does not call a special meeting, two Commissioners (by request) or ten residents (by petition) may nonetheless call one.⁵

That second reading would authorize someone other than the Chairperson (here, two Commissioners) to call a meeting, but even under that reading, the Chairperson would not be required to call the meeting him- or herself.

(2) Does the ANC’s 8-1 vote in its December 6, 2017 meeting signify its overriding will and express intention with respect to calling a special meeting?

That is a factual question for the ANC, not us, to determine, especially since the views and preferences of individual Commissioners can and do evolve over time. For example, even if the “will” of the ANC as expressed in its December 6, 2017 public meeting did not favor a special meeting, that fact does not affect the Commission’s authority to reconsider that measure in a special meeting called in accordance with the Bylaws.

If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

⁴ *Id.* at 2.

⁵ *Id.*

By:



JOSHUA TURNER
Assistant Attorney General
Legal Counsel Division