

**SPRING VALLEY – WESLEY HEIGHTS  
CITIZENS ASSOCIATION**  
**Established 1952**  
4601 TILDEN STREET NW  
WASHINGTON, DC 20016

**NEIGHBORS FOR  
A LIVABLE  
COMMUNITY**  
3700 University Ave. NW  
Washington, DC 20016

February 12, 2018

The Honorable Anthony Hood, Chair  
D.C. Zoning Commission  
441 4<sup>th</sup> Street NW, Suite 200S  
Washington, D.C. 20001

**RE: Z.C. Case No. 16-23: Valor Development, LLC – Voluntary Design Review For Square 1499, Lots 802, 803, 806, and 807; Response of Spring Valley-Wesley Heights Citizens Association (SVWHCA) and Neighbors for a Livable Community (NLC) to the Commission’s Inquiry**

Dear Chairman Hood and Commissioners:

The Spring Valley-Wesley Heights Citizens Association (“SVWHCA,” the “Citizens Association” and the “Association”) and Neighbors for a Livable Community (“NLC”) are separate organizations. However, consistent with the approach favored by the Zoning Commission for organizations that hold similar views on a project, SVWHCA and NLC have joined with the Spring Valley West Homeowners Corporation as a single party (“Spring Valley Opponents”) in the above referenced case. In response to the inquiry of the Commission for “whatever you can give us” on membership information for SVWHCA and NLC, we are submitting a single response consistent with our participation in this case as a single party, rather than separate responses. In response thereto, the Citizens Association and NLC submit the following:

1. At the continued zoning hearing in the above referenced case, William F. Krebs, Esquire, testified on behalf of the Citizens Association in his capacity as its First Vice President. His statement in opposition raised a number of specific objections to the proposal, including, but not limited to: the net loss of 27,000 square feet of retail space, thereby displacing DeCarlos Restaurant, a beauty shop and salon, Wagshall’s catering office, back kitchen and Barbecue outlet; the massive size of the proposed project which is wholly out of character with both the existing residential neighborhoods and the existing commercial/retail space; anticipated parking difficulties and traffic congestion as a result of this project, as well as the inappropriateness of using the untested Design Review Process for this application when the applicant has yet to decide on fundamental elements of the proposed project such as whether the second building will be all condominium units, all rental units or a mixture of the two (and, if it is a mixture, what the ratio would be among rental to condominium units); whether they will receive as many as 300 parking units through negotiations with American University or as few as 15.

2. Mr. Thomas M. Smith testified on behalf of NLC in his capacity as Executive Vice President, in opposition to the application. His statement in opposition raised a number of specific objections to the proposal, including, but not limited to: (a) the project is incompatible with the zoning classification for the site, as outlined in Subtitle G, Chapter 4, Section 100.4 of the zoning regulations; (b) the project is incompatible with the Comprehensive Plan; and (c) the project is incompatible with the Design Review Standards outlined in Subtitle X, Chapter 6 of the zoning regulations, Sections 600.4, 600.5, 604.5, and 604.7. Moreover, the design for Windom Walk would create unsafe pedestrian conditions at the site and the excess density of the project has prompted Valor to recommend installation of a Hawk signal along a busy, but compact commercial block. According to the testimony, Valor's own traffic study showed that the project would result in worsening traffic conditions at several intersections in Spring Valley, including 49<sup>th</sup> Street and Massachusetts Avenue; Massachusetts Avenue, 49<sup>th</sup> Street, and Fordham Road; and Massachusetts Avenue and Van Ness Street. And finally, NLC noted it was not opposed to mixed use development at the site, but could not support a project with the density proposed by Valor.

3. Neither the applicant nor any of the other proponents of the plan had any questions on cross-examination for "Spring Valley Opponents" other than the representatives of the two ANCs: Commissioners Jonathan McHugh (for ANC 3E) and Troy Kravitz (for ANC 3D). (Spring Valley is within the boundaries of ANC 3D, not ANC 3E.) The two ANC Commissioners did not ask any questions relative to testimony presented about density, reduction in retail space, compliance of the project with zoning regulations, or the impact the organizations asserted the project would have on Spring Valley.

4. Although the ANC Commissioners were charged with testifying with respect to the position of the ANCs, Mr. Kravitz in his direct testimony presented some sort of merger between allegory and astrophysics, totally unrelated to the substantive merits of the application at issue and appeared to be a personal attack directed to one of the ANC commissioners who opposed the project.

5. Consistent with the lack of focus on the merits of the project in their direct examination, the ANC Commissioners directed their attack on the internal operations and organization of the Civic Association and the NLC. Clearly this was an attack on the "opposers" for being "opposers" since they asked no such questions of any of the other associations that supported the application. They focused their questioning on the membership of the Association and its structure.

6. Mr. Krebs and Mr. Smith (who was appearing on behalf of NLC but is also the Treasurer for the SVWHCA) responded that the SVWHCA Bylaws provide that all residents of Spring Valley and Wesley Heights are considered members of the Association. Mr. Kravitz asserted that several residents have signed something stating they are not members and do not wish to be members of the Association. The document referenced by Mr. Kravitz was not directed to the Association and the Association has no independent knowledge of the document or any specific action requested.

7. Since this Commission resolved the issue of whether the Association could participate as a party along with NLC and Spring Valley West as joint parties in this case, Mr. Krebs was not tasked with addressing nor authorized to speak to the internal governance of the Association and instead was instructed to focus on the merits of the application. Mr. Smith did not even appear as a representative of the Association let alone an authorized representative. Nevertheless, Mr. Smith responded to questions about SVWHCA membership in order to be cooperative and provide additional historical background although the questions were not germane to the hearing or the testimony provided by the SVWHCA or NLC. The specifics of an established Association's Articles of Incorporation fall outside the scope of the

Valor hearing. It is interesting to note that the two ANC Commissioners would limit their interrogations on internal governance only to the parties in opposition in this case.

8. As Mr. Krebs testified, the Association was formed in 1952. The Citizens Association is incorporated as a domestic nonprofit organization and registered with the District of Columbia Corporations Division of the Department of Consumer and Regulatory Affairs. Its Articles of Incorporation state the following about membership:

“Article II. Membership

A member of the Association may be any person 18 years or age of older, who resides or conducts business at a fixed location within the boundaries of the Association. All households within the boundaries are members of the Association.”

The Articles of Incorporation outline the boundaries of the Association as the following:

“Beginning at Ward Circle; thence northwest on the west side of Massachusetts Avenue to Westmoreland Circle; southeast on Dalecarlia Parkway to Loughboro Road; east on the North side of Loughboro Road and Nebraska Avenue to Foxhall Road; south on Foxhall Road to Cathedral Avenue; west on Cathedral Avenue to 49<sup>th</sup> Street; south on 49<sup>th</sup> Street to Fulton Street; east on Edmunds Street to Foxhall Road; south on east side of Foxhall Road to Edmunds Street; east on Edmunds Street to Glover-Archbold Park; north along Archbold Park to New Mexico Avenue; north on West side of New Mexico Avenue to Nebraska Avenue; east on Nebraska Avenue to beginning of Ward Circle; and Westover Place (exclusive of the campus of American University).” Westover Place was included in the boundaries of the Association at their express request.

The Articles of Incorporation also identify the decision-making process for the Association. Article III, Section 3 states the following:

“The Board shall be authorized to act upon all business of the Association when the Association is not in session and upon urgent matters requiring action prior to any meeting of the Association. The Board shall also have the authority to levy dues as considered appropriate.”

This information also was included in the party status application filed in this case.

Contrary to the assertion of ANC 3E, the Articles of Incorporation do not mandate dues as a requirement of membership.

9. All services and programs of the Association are open to any resident within the Spring Valley-Wesley Heights boundaries cited in the Articles of Incorporation. The Association publishes a quarterly newsletter that is distributed electronically to residents within the boundaries. The newsletter also is distributed to residents outside the boundaries who request in writing to be included in the newsletter distribution list.

10. SVWHCA has actively participated in matters affecting its residents since 1952. Members who choose to engage in those activities vary from issue to issue. Although initial activities of the association focused on gardening, books, and social events, the Association transitioned over the years to focus more on policy issues affecting residents’ quality of life. In the late 1980s, for example, the SVWHCA spearheaded the effort to obtain historic designations for the shopping/retail centers on both sides of Massachusetts Avenue, N.W. The association worked with developers on new residential housing developments in the neighborhood, including Spring Valley Court and Spring Valley West, as

well as the construction of new commercial office buildings in the neighborhood in the early 1990s. The Association also – by necessity – worked closely with the U.S. Army Corps of Engineers when World War I chemical munitions were discovered in the neighborhood during the construction of new homes in Spring Valley West. The Association has continued to work with the USACE for the last 25 years on remediation and neighborhood clean-up. Two SVWHCA Board members currently serve as members of the USACE Restoration Advisory Board (RAB). The Association was a party in the Zoning Commission proceedings with respect to every campus plan submitted by American University and the Wesley Theological Seminary. Those most interested in the historic designation were not necessarily the same as those that became involved in the campus planning issues.

11. Most recently, among the issues the Association confronted over the last two years have been AU’s multiple requests for relief from its on-campus housing obligations under the approved campus plan; Washington REIT’s proposal to build a new in-fill building at the Spring Valley Shopping Center; Millie’s proposal to convert the former Chicken-Out and historic Exxon station into a full restaurant and bar; AU’s application to construct the new Science Building; the Association’s grievance against AU for asserting AU breached the Collaborative Agreement; and the instant application. At the same time, the Association has dealt with traffic, crime, and parking issues in the neighborhood. We have just initiated a new effort to deal with speeding on neighborhood streets largely as a consequence of cut-through traffic.

12. That which is significant is that different members of the community have been active as to specific issues usually depending on the impact that issue might present to them as individual homeowners. For these purposes the critical fact is that they were not required to “join” the Association to participate in these efforts when they became active nor were they required to “quit” when they stopped. The SVWHCA is positioned to be the residents’ advocate when needed. But, we also readily acknowledge that some residents, especially residents who have moved more recently to the neighborhood, may be unfamiliar with the Association, its history, or its mission, and that their perceptions and visions may differ greatly from those for which the Association has fought for over the years. That, however, does not diminish the advocacy role that such associations play within the District of Columbia.

13. Following the close of the hearing, the Association began to explore how to provide a membership list. The SVWHCA maintains a mailing list of all addresses within its boundaries. That would identify all persons/households known to the Association to meet the membership eligibility assumptions in the Articles of Incorporation. This list is proprietary and confidential. While the identity of the residents of the defined area may be relatively easily assembled, the same is not true of the compilation of email addresses. We do not share or publish this list for others to use either for commercial or other purposes.

14. Believing that the ANCs do not really want a universal listing of Spring Valley and Wesley Heights residents, the open question is: for what are they looking? It appears that they want a list of residents actively involved with the Association’s activities. This concern is magnified by the way the issue arose. The ANCs did not raise the issue until after the Commission had already granted joint party status to the three opposing associations. The ANCs so-called cross examination included no questions relating to the substance of the direct testimony of any of the associations. All of their questions were far outside the scope of the direct testimony. The most disturbing aspect of the ANC Commissioners’ examinations is that they abused their official position as ANC commissioners and misused the Zoning Commission’s fact-finding authority to pursue what appears to be a personal

vendetta. While the commissioners were authorized to testify on behalf of their respective ANCs to convey the ANCs support of the project, at no time did the ANC authorize the commissioners to pursue a witch hunt as to the members of organizations that did not agree with them with respect to this project. The ANC 3D Commissioner launched into this examination with the terse instructions to answer only with a “yes” or “no” – not “yes or no but with an explanation.” Generally, the questioner in these circumstances is only interested in his question, not in the answer. The most famous and well-known question confined to a “yes” or “no” answer is, of course: “Yes or no – have you stopped beating your wife yet?” That question of course forces the responder to either admit that he continues to beat his wife or deny that he continues to beat his wife, but the question does not allow him to simply say “I have never beaten my wife.”

15. Mr. Kravitz appeared to have finalized his list of questions even before the hearing because his questions were designed to have no relevance to the direct testimony of the witnesses. Rather, he hoped to lay a trap where the associations would have to admit either they had no members (which is not true), were operating outside their missions and Articles of Incorporation, or provide him with a list identifying those people who work with the Association in opposition to positions taken by the ANC collectively or Mr. Kravitz individually.

16. The one thing that Mr. Kravitz did not want was the truth. The organization considers all “households” within the boundary to be” members “and it recognizes that any individual person who is a member of such a household or works in the neighborhood can be a “member.” Functionally, the Association has implemented those provisions to allow any person who is a member of the household to participate in the Association’s activities to the extent they desire without any further application or process.

17. We assume that Mr. Kravitz as an ANC Commissioner already has or has access to a listing of the households within the boundaries at least of his district. To the extent that he is looking for a listing of residents who have been active in any of the causes espoused by the Association, we, respectfully, decline to respond. To be required to produce our membership list under these circumstances without a particularized showing of need constitutes a violation of the members’ First Amendment rights to association, to petition the government, and to assemble – as well as to the implied right to privacy found in the First Amendment. The Association of course remains willing to work with the Zoning Commission to provide whatever information it properly requires in fulfilling its mission with whatever protections may be reasonable

18. We are particularly cognizant of the need to protect residents’ privacy against cyber bullying or other forms of harassment or intrusions on their privacy. The ability to protect residents from such misuses of proprietary information secures the long-standing relationship between the citizens association and residents. Like many other citizens associations, the SVWHCA remits fees to the District of Columbia government that ensure its compliance with the Business Organizations Code. A citizens association, like SVWHCA, is not an “ad hoc” group of residents that forms around a single issue. This distinguishes it from the Committee for Responsible Development (CRD), which was accepted separately as a party in this case. Nevertheless, we do not believe that the Zoning Commission should require parties to submit lists of members or donors to demonstrate their “existence” or right to party status to represent their constituencies and interests. There are other means for the Zoning Commission to assess organizations’ rights to participate as parties in a zoning case, if the Zoning Commission feels this to be necessary.

19. Unlike SVWHCA, the NLC is not a neighborhood citizens' organization. NLC is a D.C. non-member, non-profit corporation established in 1987 by concerned neighbors of American University (AU) – Mr. Robert Herzstein, Mr. Charles Hamilton, and Mr. Dennis Paul – to protect the quiet, long-established neighborhoods surrounding American University, including Spring Valley and American University Park. Mr. Paul is currently the registered Agent for the group. NLC is a social welfare organization registered with the District of Columbia Corporations Division of the Department of Consumer and Regulatory Affairs and its mission is outlined in its Articles of Incorporation as follows:

“The Corporation is organized and operated for the promotion of social welfare, particularly to (a) promote the planning and use of the campus of American University and other university campuses within the District of Columbia to be consistent with the stability and serenity of the neighboring residences and the residential communities in which they are located; (b) to promote and preserve the campus of American University in such a manner that the University is able to serve its function and fulfill its educational mission in a manner which is consistent with the residential communities that surround it and the recognition that this very diverse campus is located in a residentially zoned area and that it uses that land subject to a special exception; (c) to promote the planning and use of commercial property adjoining residential property in Ward 3 of the District of Columbia, in particular the neighborhoods of Spring Valley, Wesley Heights, and American University Park so as to ensure those uses do not adversely affect the stability and serenity of the neighboring residences and residential communities; and (d) for any other lawful purpose system consistent with its status as a nonprofit organization under the District of Columbia law.”

20. Article III, Section 3.01 stipulates the following:

“The Corporation shall not have members. All powers that applicable law provides to members shall be exercised by the Board of Directors.”

Under its bylaws, the organization may “from time to time establish honorary titles for persons who make contributions to the Corporation” that may include the word “member,” but, as the bylaws state: “Inclusion of such term shall not give any such person legal rights as a ‘member’ of the Corporation.”

The organization is governed by a Board of Directors. Article IV, Section 4.01 states the following:

“The business and affairs of the Corporation shall be managed under the direction of the Board of Directors. The Board of Directors shall possess, and may exercise, any and all powers granted to the Corporation under the District of Columbia Nonprofit Corporation Act and its Articles of Incorporation, subject to any limitations set forth in the Articles of Incorporation.”

This information was included in the party status application filed in this case.

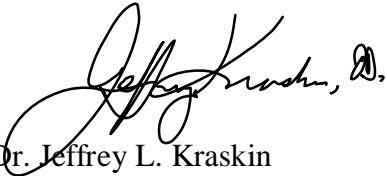
21. The organization is funded through donations and its donor list is proprietary.

22. Like SVWHCA, NLC has been actively involved in zoning issues in the neighborhood, including AU's Campus Planning process, since NLC's establishment in 1987. The NLC was granted party status for the 1990 AU Campus Plan, the 2001 Campus Plan, and the 2011 Campus Plan proceedings and in zoning cases involving the Wesley Theological Seminary. The NLC also participated in zoning cases involving the expansion of Sibley Hospital. The NLC's purpose is to provide a uniquely neighborhood-based broad perspective relating to community concerns and objectionable impacts resulting from development and growth in the neighborhoods within the vicinity

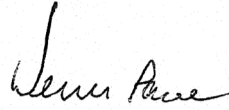
of universities, non-profit institutions, and commercial properties. It functions as an advocacy think-tank and works with neighborhood groups and issue experts to assess issues relevant to the organization's mission.

23. Finally, we consider it inappropriate for an ANC or any other governmental entity to intrude into the internal operations of a private organization beyond that stipulated in the city's regulations for incorporation. The spectacle of ANC Commissioners actually seeking to limit neighborhood engagement in the city's affairs, including zoning, by probing and judging the internal operations of citizens' and other neighborhood groups is quite stunning. We view this as an overreach of governmental authority intended to harass and discourage participation in the civic affairs of the District of Columbia.

Sincerely,



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Citizen Association  
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## Certificate of Service

We hereby certify that on February 12, 2018, copies of the attached were sent by mail or email to the following:

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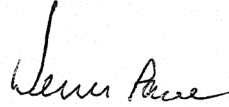
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