



AMERICAN UNIVERSITY

W A S H I N G T O N , D C

June 23, 2016

Dr. Jeffrey Kraskin
President, Spring Valley-Wesley Heights Citizens Association
4601 Tilden Street, NW
Washington DC, 20016

Re: Grievance filed by Spring Valley –Wesley Heights Citizens Association

Dear Dr. Kraskin:

Thank you for your June 9, 2017, letter. You have requested a meeting between the University and representatives from Spring Valley-Wesley Heights Citizens Association (“SV-WHCA”) to discuss its grievance concerning the Neighborhood Collaborative (“Collaborative”) pursuant to the Community Liaison Committee’s Mediation Program Guidelines. In particular, you object to the formation and rules of the Collaborative as adversely affecting the workings of the Community Liaison Committee (the “CLC”) and have asserted that the Collaborative should be repealed in its current form. Without addressing each statement in your letter, the University offers the following information to facilitate a constructive dialogue.

July 14, 2016 Zoning Commission Public Hearing (“Hearing”)

- 1) AU was unable to complete construction of the East Campus Buildings before the beginning of the fall 2016 semester to comply with the Zoning Order to provide 590 beds. Thus, the University requested an extension to fall 2017 to meet its obligation. The Zoning Commission held a public hearing on the University’s request on July 14, 2016.
- 2) ANC 3D voted 7-1 to conditionally approve a resolution supporting AU’s request for relief from the Zoning Order. The ANC 3D conditions/concerns expressed at that time include: AU’s failure to control growth of its undergraduate student population, the operations of the CLC, and the sequence for completion of the East Campus buffer building.
- 3) ANC 3D also called for an additional Zoning Commission hearing to require the University to show cause why a cap should not be imposed on AU’s full-time undergraduate population and to assess whether AU’s undergraduate enrollment growth has created objectionable conditions for residents.
- 4) At the Hearing, then ANC 3D Chairman Tom Smith presented testimony about the University’s growth in undergraduate enrollment, AU’s failure to meet its housing requirements in the past and that the 67% housing requirement in Condition 5 of Zoning Order 11-07 has not

served as a cap on undergraduate enrollment. Mr. Smith asserted that the increase in undergraduate enrollment was creating traffic, parking, and other pressures on the community, including greater use of the AU athletic fields. Mr. Smith also asserted that the CLC had not been effective in addressing these issues and encouraged additional steps by the Zoning Commission to prompt AU to reach a resolution with residents on compliance issues and to address the spike in undergraduate student enrollment. These concerns were echoed by Dr. Jeffrey Kraskin, President of SV-WHCA, and Benjamin Tessler, a resident of Westover Homes.

5) At the end of the Hearing, the Zoning Commission requested that the University provide information on three issues: American University's undergraduate enrollment, the effectiveness of the CLC, and the sequencing of the construction of the buffer buildings on the East Campus. The Zoning Commission urged the University to address the concerns raised by ANC 3D and SV-WHCA through continued dialogue and suggested that AU consider the Georgetown partnership model with its neighbors. Below is an excerpt from the Hearing:

Tom Smith: "I mean, the ideal solution would be the way the Georgetown University Community Partnership solves their problems....At some point in time all the parties have to agree to sit down and work together and make that commitment. But it requires a process, and the CLC is not the Georgetown University Community Partnership. And I hate to point it out as a gold standard, but as we are also a part of that. And when we compare that versus the CLC it's night and day." (Tr. p. 80-81)

Commissioner May: "when Georgetown came here and they kind of tried to bully their way through an approval and this Commission stood up and frankly gave the university a bit of a tongue lashing on where they were falling down. And they took it to heart and they really did turn things around, and they hired a great facilitator who helped them get through it. And it really made a difference." (Tr. p. 110-111)

Vice Chairman Miller: "And in terms of the comments about a facilitator, it may be [the maybe] I am familiar with that facilitator in the Georgetown case. I'm sure the university is as well. I think maybe it would be useful to engage that facilitator sooner, rather than later." (Tr. p. 114)

Post Hearing Talks

6) The University took these comments seriously and promptly sought to bring together ANC 3D and SV-WHCA leadership to address the concerns expressed at the Hearing. A representative of Neighbors for a Livable Community ("NLC") was also included at the request of SV-WHCA.

7) The parties met numerous times between August and November 2016. The discussions resulted in an Agreement which outlined joint recommendations to the Zoning Commission concerning undergraduate enrollment, housing requirements, and the operation of the CLC.

Terms of the Agreement

8) The parties agreed to a number of significant issues, including:

- * The University would continue to count 200 off-campus master-leased beds (such as the Berkshire apartments) towards the number of beds that it is required to have available for full-time undergraduate students for the remainder of the 2011 Campus Plan.
- * The University would continue to count up to 330 on-campus triples in the calculation of the number of beds that is required to have available for full-time undergraduate students for the remainder of the 2011 Campus Plan.
- * The University would not pursue a Further Processing application for the development of the South Hall residential building during the remainder of the 2011 Campus Plan.
- * The CLC would assess how the CLC's operations and structure could be enhanced.
- * The University acknowledged concerns over potential impacts of increased undergraduate enrollment.
- * SV-WHCA and ANC 3D acknowledged AU's desire for flexibility to manage its undergraduate enrollment within the existing overall enrollment cap.
- * Enrollment concerns, as well as future housing developments, would be addressed through a newly formed Neighborhood Collaborative, which would report its work to the CLC.
- * Nothing in the recommendations precluded the parties from advocating for or opposing an undergraduate enrollment cap before the Zoning Commission at some later date.
- * The University recognized the benefit of more routine dialogue with its neighbors who live immediately adjacent to the University to address the daily operations of the University that affect its neighbors. The Neighborhood Collaborative would also be able to address facilities planning, parking, transportation, student conduct, as well as matters that may assist in planning for the next campus plan.
- * The parties also recommended that the Collaborative: consist of the groups who were parties to the last campus plan; recognize that ANC Commissioners who represent neighborhoods immediately adjacent to the campus be permitted to participate to the extent they wished; and that organizations within the Collaborative may change occasionally to include new groups representing neighborhoods immediately adjacent to the campus. The final Agreement is attached.

9) Ultimately, every recommendation documented in the Agreement was approved unanimously by ANC 3D.

Post Hearing Submissions

10) On November 16, 2016, the University submitted its post hearing materials to the Zoning Commission, including the Agreement.

11) On December 8, 2016, the University, SV-WHCA and ANC 3D revised the Agreement after receiving input from CLC members. Those revisions allowed for: 1) ANC Commissioners who represent neighbors immediately adjacent to the campus to participate in the Collaborative and 2) the CLC to address its own operations and structure during its upcoming meetings.

12) Following these revisions, SV-WHCA and ANC 3D each expressed the hope that the Agreement would set the stage for continuing dialogue between AU and its neighbors. In fact, ANC 3D in its post hearing submission highlighted the value of the Collaborative as a forum to resolve disputes before there is a need for intervention by the ANC and the Zoning Commission.

13) Meanwhile, Ward 3 Vision submitted a response to the University's post hearing submission. Ward 3 Vision argued that the University's initial post hearing response went beyond the original subject matter of the case by attempting to alter the CLC's structure without giving adequate notice to the affected parties.

14) At its public hearing on December 12, 2016 deliberating on AU's modification request, the Zoning Commission approved the University's application and accepted the bulk of the parties' recommendations. While applauding the parties for coming together to create a process that would help strengthen the CLC and enhance dialogue between the University and its neighbors, the Commission stated that it would not incorporate any recommendations involving the CLC or the Collaborative in its Order, noting that any change to the CLC may affect people for whom the July 2016 proceeding did not provide adequate notice. The Commission suggested that any issue surrounding the workings of the CLC--- and by extension the Collaborative--- could be taken up at a later date when the entire community has had the opportunity to offer input in a public forum.

The Formation of the Collaborative

15) In good faith, the University informed its neighbors, including SV-WHCA, that it would move forward with the concept of the Collaborative regardless of whether it was required by the Zoning Commission. As we stated publicly, the University does not believe a Zoning Order is required to create more opportunities for meaningful exchanges with its neighbors.

16) The University then informed its neighbors that it would retain Don Edwards of Justice & Sustainability Associates, the professional facilitator whom Georgetown University used, to help get the Collaborative off the ground. Contrary to what SV-WHCA has represented, the University's decision to retain Mr. Edwards was well-intentioned and viewed as a critical component to a successful launch of the Collaborative and to our ability to enhance our relationship with our neighbors. Invitations for an initial meeting of the Collaborative were sent out on March 21, 2017.

17) Since that time, SV-WHCA and NLC have declined to participate in any meetings of the Collaborative. This is particularly troubling since the initial meetings of the Collaborative were intended to address the formation of the group, its ground rules, membership and structure – the very things that serve as a basis for this grievance. The following reasons were given:

- * The University should run the meetings itself because the facilitator is merely a filter and pawn of the University.
- * The initial invitations for the Collaborative meeting included individuals who were not included as members of the group in violation of the terms of the Agreement.
- * The process for establishing the Collaborative is “corrupted”, “dirty” and the “antithesis” of what was agreed to among the parties, in large part, because: 1) too many ANC Commissioners have been permitted to participate and 2) a new Spring Valley neighborhood association had been allowed to participate. These developments, according to SV-WHCA and NLC, politicized the Collaborative and defeated its purpose.
- * The protocols and guidelines established by the Collaborative are: 1) too rigid, 2) require the members to agree in advance that they will defer to the “consensus” of the group, and 3) unfairly restrict participation in the Collaborative to one representative from each organization.
- * The University, by presenting the Hall of Science building proposal in a Collaborative-sponsored meeting, is attempting to strong-arm SV-WHCA and NLC into participating in the Collaborative despite their principled objections.

18) SV-WHCA believes the University has “turned its back” on the Agreement reached between the parties, although it is not entirely clear to us why. It is also important to note that the University and representatives from SV-WHCA and NLC have met in person on three occasions to discuss these issues. During these meetings, the University has continued to urge the two groups to participate in the Collaborative and to make their views known so that they may be properly considered by the members of the Collaborative.

Where Now

19) We believe the Zoning Commission wanted the University and its neighbors to build upon the progress made last summer and fall. That is one of the reasons we retained a facilitator, well-known for his successful work in civic engagement and dispute resolution, to help us move forward. We want a consensus-based approach that gives the University and the community a chance to build trust and resolve issues proactively.

20) The University has not deviated from the recommendations it made to the Zoning Commission last winter, nor do we believe that SV-WHCA’s complaint is a proper subject for a grievance under the CLC’s Mediation Guidelines. But, even if it is, the grievance is not ripe to invoke the CLC’s mediation procedures.

21) First, the mediation guidelines require that “any grievance must allege that the University has violated an express condition of the Zoning Commission’s Order.” Any grievance regarding the newly formed Collaborative fails to meet this threshold. While the Agreement provides insight into what the parties recommended to the Zoning Commission, it is not binding and may evolve, as the Zoning Commission itself contemplated. Moreover, SV-WHCA does not represent the only interested parties to the creation of the Neighborhood Collaborative and the Collaborative is not the subject of a Zoning Commission Order. Therefore, it is not the proper subject of a grievance under the CLC mediation guidelines. Second, to the extent the grievance is about the CLC and its operations, the grievance is clearly untimely because the CLC itself has not adequately addressed the topic of the CLC and its operations. That subject must be discussed fully within the CLC before its grievance and mediation procedures are invoked. As the mediation guidelines state, “[t]he parties will make every effort to resolve disputes during regularly scheduled meetings of the Community Liaison Committee (CLC)”.

22) At its most recent meeting in early June, the CLC began to discuss the newly formed Collaborative, the CLC’s operations and their interplay. You and Tom Smith walked out of the meeting after the reports. You did not stay for the second portion of the discussion which dealt with the CLC and the Collaborative. This behavior alone suggests that the grievance is not appropriate at this time since SV-WHCA has not made every effort to resolve the issue within the CLC.

23) We believe the CLC members should discuss the operations of the CLC and the Collaborative in a meeting of the CLC. The focus should be how to enhance the working relationship between the University and the neighborhood and clarify the purpose of and distinctions between the two forums. The University is not tied to any one solution or path. If those discussions fail to resolve SV-WHCA’s concerns about the CLC and its interplay with the Collaborative, then all members of the CLC who are unhappy with the resulting situation would be free to pursue the issue pursuant to the CLC’s mediation guidelines. In short, SV-WHCA’s request for mediation does not appear to be appropriately addressed to the University under the terms of the CLC procedures, at least at this stage in the dispute.

24) The topic of the CLC, the Collaborative and how these groups interact will be on the CLC’s meeting agenda for September. We will ask Mr. Edwards to facilitate the discussion.

25) As for your concern about the proposed Hall of Science, please be advised that an additional meeting will be scheduled on August 7, 2017 to discuss the details of the proposed building and to receive input and feedback from the community. This meeting will be public, sponsored by the CLC and the Collaborative, and will include a site visit. The University will not file a Further Processing application with the Zoning Commission until this meeting is held.

Thank you for bringing your concerns to our attention.

Sincerely,

A handwritten signature in black ink that reads "Linda Argo". The signature is written in a cursive, flowing style.

Linda Argo
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