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Minutes of the December 4, 2007 meeting of Advisory Neighborhood Commission 1-D

These minutes accepted at the January 8, 2008 meeting.

Call to order

[7:12 pm] Chair Gregg Edwards called the meeting to order at 7:12 pm. Present were three of the five seated ANC1D commissioners, Gregg, Dave Bosserman, and Jack McKay, constituting a quorum.

Public discussion

[7:13 pm] The meeting was opened to public discussion. Greg Simmons, Jeannette Noltenius, Barbara Hayden, Claudia Schlosberg, Mitchell Backfield, and Adam Hoey spoke. Commissioner Jane Zara arrived during the public discussion.

Minutes of previous meetings

[7:30 pm] No corrections being offered by any commissioners, the minutes of the November 20 meeting were declared accepted.

Treasurer's report

[7:34 pm] Jane Zara said that the third-quarter and fourth-quarter FY07 financial reports had been turned in to the auditor.

This was followed by informal reports from Dave Bosserman and Gregg Edwards.

Mayor's Agent approval for Walbridge Place

[7:42 pm] Jack introduced this resolution:

Resolved, that ANC1D advises the Mayor's Agent to approve the permits for the mechanical lift and adjacent staircase for the Lucas residence, 3228 Walbridge Place NW.

Rationale: Two important principles underlie this advice. The first principle is *aging in place*: residents should, if at all possible, be allowed to spend their last years in their own homes, with modifications as necessary to cope with the debilitations of old age. It is cruel to force longtime residents to leave the comfort of their family homes because other residents

want to view "historically correct" fronts of buildings as they drive by. The second principle is *equal access*. This means that residents should be able to enter and exit their homes in dignity, through the front, versus being forced to use back doors accessed via alleys. It means also that they should be able to welcome visitors, or receive emergency caregivers, through the fronts of their homes, and not have to tell arrivals that they must make their way through alleys to a back door.

The Fair Housing law specifies that "reasonable accommodation" must be provided to achieve these ends. If the Lucas home were an architectural treasure or historical monument, then one might argue that any substantial physical changes could be "unreasonable". But in fact, the Lucas home is an undistinguished row house, built as economical housing for Federal employees early in the Depression. It is devoid of architectural interest, and is of no historical significance. Consequently, substantial changes to the external physical appearance of the building are not "unreasonable".

ANC1D believes that the needs of the aging residents far outweigh the extremely modest historical value of this house. The modifications proposed by the owner are reasonable, and hence are required by the Fair Housing Act, as well as by simple human sympathy for this aging couple, who have lived in this home for half a century.

Resolution passed, 4 to 0.

Trash on public space

[7:45 pm] Jack introduced this resolution:

Resolved, that ANC1D advises the Public Space Office of the District Department of Transportation that District law does not prohibit a properly closed trash container on public space.

Rationale: the regulation commonly cited as a total prohibition of trash containers on public space, in particular on public parkings, is the following:

DCMR 24, Public Space and Safety

24-1000. PROHIBITED DEPOSITS: GENERAL PROVISIONS

1000.1 No person shall throw, cast, deposit, drip, scatter, or leave; or cause to be thrown, cast, laid, deposited, scattered, or left in or upon any street, avenue, alley, highway, footway, sidewalk, parking, or other public space in the District of Columbia; any of the following:

- (a) Dirt, mud, ashes, gravel;*
- (b) Trees, sawdust, shavings, hay, straw;*
- (c) Offal, vegetable matter, garbage;*
- (d) Coal, cinders;*
- (e) Paper or refuse matter of any kind; or*
- (f) Any dead animal or putrescible matter of any sort.*

This regulation does not mention trash containers, and, by omission, implies that the purpose of the law is only to prevent the littering of public space with loose trash, not to ban the placing of a closed trash container on public space. This is the sensible interpretation of the law, as well. A ban on littering is plainly in the public interest. It is not clear that a trash container, properly closed and meeting District regulations, is harmful to the public interest.

District regulations also state explicitly that trash containers may be allowed on public space:

24-1108. STANDARDS FOR AMENITIES AND STREET FURNITURE

1108.1 Subject to approval by the Public Space Committee and with the recommendation of the Committee, benches, trash receptacles and other street furniture and amenities may be installed in the public space.

If “trash receptacles” are permitted on public space, then plainly there is no prohibition against trash containers on public space, as has been claimed on the basis of paragraph 24-1000.1.

The stretching of the interpretation of these regulations to include containerized trash would be harmful to the public interest in Mount Pleasant, where a number of residents and businesses have no choice but to keep their trash containers on their public parkings for lack of access to an alley.

This is a matter of immediate interest with respect to the Bestway Market and Don Juan’s Restaurant, two Mount Pleasant business establishments that have kept closed trash containers on their parking adjacent to 17th Street.

Resolution passed, 4 to 0.

Voluntary agreement terminations

[7:47 pm] Jack introduced this resolution:

Resolved, that ANC1D advises the Alcoholic Beverage Control Board to include voluntary agreement protestants with standing for their consideration of voluntary agreement terminations.

Rationale: Voluntary (cooperative) agreements are permanent attachments to liquor licenses, implicitly renewed along with the liquor license. Hence, a protest of a license renewal is implicitly a protest of the existing voluntary agreement, and implies that that voluntary agreement must be terminated and replaced with a different form.

Thus, a petition by a licensee for termination of a voluntary agreement amounts to the first step implied by the protest of the renewal, namely termination of an existing agreement. The only difference is that termination does not imply a new agreement, whereas the protest of the renewal does.

Because the termination step is inherent in the protested renewal, the protestants with standing for license renewal must automatically be participants in the negotiation of voluntary agreement termination. The termination of the existing agreement is not a distinct entity, but is simply one component of the protested license renewal.

Resolution passed, 4 to 0.

ABRA, the ABC Board, and ANC resolutions

[7:49 pm] Jack introduced this resolution:

Resolved, that ANC1D advises the Alcoholic Beverage Regulation Administration, and the Alcoholic Beverage Control Board, to respond to ANC resolutions according to the requirements specified in the District of Columbia Code.

Rationale: This ANC has delivered a number of resolutions to ABRA, and the ABC Board, but has never received a reply that meets the requirements of District law. In the case of

resolutions responding to notifications by ABRA of agency actions, ANC resolutions command “great weight”, which requires “acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns” [DC Code § 1-309.10(d)(3)(A)]. In the case of resolutions initiated by the ANC, the Code states that the agency “shall acknowledge the proposal in writing to the initiating Commission within 10 days of receipt of the proposal and shall issue a status report to the initiating Commission within 60 days of receipt” [DC Code § 1-309.10(h)(1)].

ANC1D recognizes that these legal requirements may be burdensome, and suggests that these responses be expeditiously handled via e-mail, obviating the additional time and cost of conventional postal mail.

Resolution passed, 4 to 0.

Revisions to text of ANC voluntary agreement B

[8:02 pm] Gregg asked that the ANC approve two changes to the text of the version B ANC voluntary agreement, following negotiations with Andrew Kline, counsel for Tonic and Radius.

Paragraph 8, beginning

“8. The Licensee or the night manager shall be electronically contactable via a telephone (may also add an e-mail or other messaging) service that is posted prominently on the premises next to the Licensee's posted hours of operation.”

to be replaced with

“8. The Licensee or the night manager shall be electronically contactable (e.g., text-messaging, e-mail,...) via a service that can be accessed at least via a telephone number. This phone number and contact code shall be posted prominently on the premises next to the Licensee's posted hours of operation.”

Change approved, 4 to 0.

Paragraph 11:

“11. This Cooperative Agreement supersedes any and all prior voluntary or cooperative agreements that previously applied to the license or the Licensee.”

to be replaced with:

“11. This Cooperative Agreement supersedes any and all voluntary or cooperative agreements that applied to the license or the Licensee previously entered into between the parties. Further, the Licensee may with three month's notice switch between Versions A and B of the ANC 1D Cooperative Agreement. If this option is taken, then this same option will be appended to Version A.”

Change approved, 4 to 0.

Petty cash replenishment

[8:23 pm] Jack requested that the ANC authorize a check in the amount of \$87.98 to replace cash withdrawn from the petty cash box. *Approved, 4 to 0.*

Combination of hearings

[8:25 pm] Claudia Schlosberg asked that the Commission advise the ABC Board to combine the entertainment endorsement hearings scheduled for December 15, and the license renewal and VA

termination hearings scheduled for December 30, to ease the burden on working people required to appear at such hearings. By unanimous consent, it was agreed that Jack, the Commission Secretary, would compose a letter to that effect for the Board.

Adjournment

[8:30 pm] By a four to zero vote, the commission agreed to adjourn the meeting.