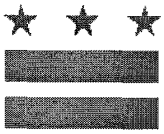
**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**Office of the Corporation Counsel**

**Economic Development Cluster**



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DISTRICT OF COLUMBIA
OFFICE OF ZONING

**MEMORANDUM**

**TO:** **Sherri M. Pruitt**
**Secretary, Board of Zoning Adjustment**

**FROM:** **Janice N. Skipper, Acting Chief**
**Land Use & Public Works Section**

**DATE:** **March 29, 2000**

**SUBJECT:** **BZA Application No. 16457 – Kass/Homes at Woodmont**

The Board of Zoning Adjustment ("Board" or "BZA") recently held a public hearing on an application filed by KSI Services, Inc. and Vertx/IDS (collectively "KSI" or "Applicant") to build a residential development called "The Homes at Woodmont" on Good Hope Road, S.E.[1] The BZA is scheduled to make a decision on this application on April 5, 2000. To aid the Board in its executive session discussion of this matter, the Land Use & Public Works Section offers the following comments concerning the legal issues in this case.

The Application

KSI, the contract purchaser of the subject property, requests BZA approval of special exceptions, under 11 DCMR §§ 410 and 2516, to allow the construction of a residential development in theoretical lot subdivisions in R-5-A and R-5-B districts on the south side of Good Hope Road, S.E. between 18th Street to the west and 24th Street to the east. The subject property is split into two parcels separated by a 200-foot wide portion of Fort Stanton Park, which is operated under the jurisdiction of the National Park Service ("NPS"). As proposed, the West Parcel – an irregularly shaped site of approximately 332,365 square feet (7.63 acres), with approximately 760 feet of frontage on Good Hope Road and 360 feet of frontage on U Street, S.E. – would be developed with 35 single-family detached houses.[2] The East Parcel – a rectangular site consisting of 355,227 square feet (8.15 acres), with approximately 535 feet of frontage on Good Hope Road – would contain 176 two- or three-bedroom rental apartments in 12 garden apartment buildings, along with a swimming pool, clubhouse, and exercise facilities. The West Parcel

[1] KSI's original application was denied by the BZA on November 5, 1999. The Board granted rehearing of the application on November 24, 1999.

[2] The Applicant states that KSI Services, Inc. is the site developer of The Homes at Woodmont. KSI Services, Inc. designed the development and plans to build and manage the apartment component. Vertx/IDS would construct the single-family houses.



BZA
Case No. 16457
Exhibit No. 101

Board of Zoning Adjustment
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CASE NO.16457
EXHIBIT NO.101

would have at least 70 off-street parking spaces and the East Parcel would have at least 184 parking spaces.

Both parcels are currently vacant. The East Parcel is located entirely in the R-5-A zone, while the West Parcel is split zoned with approximately two-thirds in the R-5-B district and one-third in the R-5-A district.

Special Exceptions

Pursuant to D.C. Code § 5-424(g)(2) and § 3104.1 of the Zoning Regulations, the BZA is authorized to grant special exceptions where, in the Board's judgment, the exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps. Pursuant to § 3104.1, the BZA must consider certain specified conditions in making a determination about whether to grant a special exception.[3]

New Residential Developments (R-5-A)

KSI proposes to construct 176 apartments in 12 garden apartment buildings on the East Parcel. Pursuant to 11 DCMR § 353.1, the Board must review all new residential developments in R-5-A districts (except those comprising all one-family detached and semi-detached dwellings) in accordance with the standards and requirements set forth in Section 410. Section 410 enumerates the conditions for approval of a special exception for development of "a group of one-family dwellings, flats, or apartment houses, or a combination of these buildings." § 410.1. These conditions include that:

- All buildings in the group of buildings shall be erected simultaneously, § 410.2;
- Front entrances of the group shall abut a street, front yard, or front court, § 410.3;
- No rear or service entrance shall abut a street, front yard, or front court unless located below the main floor, § 410.4;
- No exterior stairway shall be constructed above the level of the joists of the main floor unless located entirely within the building area of the group, § 410.5;
- No subdivision of the property shall be authorized until the Board has determined that:

  (a) there shall be adequate free access to the street from each separate dwelling, group of dwellings, or buildings resulting from the subdivision;

  (b) adequate access for fire protection and other purposes shall be provided by easement, fee, alley, or street; and

[3] Where an application seeks a special exception for apartments in an R-5-A district, the BZA is required by 11 DCMR § 3104.1 to consider conditions specified in 11 DCMR §§ 350.4(c), 353, 401.3, and 410.1 through 410.7.

(c) there shall be adequate yards, courts, light, and air for each dwelling, group of dwellings, or group of buildings resulting from the subdivision. § 410.7.

Section 410 also specifies that:

- The front entrances of not more than four one-family dwellings, nor more than four dwelling units per floor, shall face any street that abuts the lot; § 410.8;

- Vehicular access to all or part of the group shall be provided when the Board deems the access is necessary in the interest of public convenience and safety, § 410.15; and

- The erection of the group of buildings shall not affect adversely the present character of future development of the neighborhood, § 410.16.

Exceptions to Building Lot Control

For the West Parcel, KSI seeks a special exception to build 24 single-family detached dwellings on a theoretical subdivision, with 11 additional houses on record lots. The Applicant states that theoretical lots are also needed for the proposed apartment portion of the development.

The Zoning Regulations provide that two or more principal buildings may be erected on a single subdivided lot subject to BZA approval and to the conditions set forth in § 2516. The proposed development must not be likely to have an adverse effect on the present character and future development of the neighborhood. 11 DCMR § 2516.9. Another condition for approval of an exception to building lot control in a residential district is that all requirements of chapter 25, "Miscellaneous Zoning Requirements" – such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots – must be met. 11 DCMR § 2516.4. If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, § 2616.5 requires that:

- The front of the building shall be the side upon which the principal entrance is located;

- Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater;

- A rear yard shall be required; and

- If any part of the boundary of the theoretical lot is located in common with the rear lot line of the subdivided lot of which it is a part, the rear yard of the theoretical lot shall be along the boundary of the subdivided lot.

The Board may impose conditions with respect to the size and location of driveways, net density, height, design, screening, and location of structures, and any other matter that the BZA determines to be required to protect the overall purpose and intent of the Zoning Regulations. 11 DCMR § 2516.11. In providing for net density, the Board generally must require at least the following:

- The area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any required yard;
- Each means of vehicular ingress or egress to any principal building shall be 25 feet wide, but need not be paved for its entire width; and
- A turning area with a diameter of at least 60 feet shall be provided if there are not at least two entrances and/or exits from the means of ingress or egress.

11 DCMR § 2516.6(a)-(c). The Board may modify the latter two requirements if it finds that a lesser width and/or diameter would be compatible with, and would not likely have an adverse effect on, the present character and future development of the neighborhood, giving specific consideration to the spacing of buildings and the availability of resident, guest, and service parking. 11 DCMR § 2516.6(d).

Proposed Conditions

The Applicant, the National Park Service, and the Fairlawn Citizens Association, Inc. ("Fairlawn") have recommended conditions that should be imposed on the Homes at Woodmont development, if approved.[4] (Fairlawn remains opposed to the application but requested certain conditions in case the development is approved.)

KSI In its post-hearing submission, KSI set forth revised commitments that it stated should be integrated into the BZA's final order "absent final agreement with Fairlawn."[5] Many of KSI's proposed conditions are slated to begin "upon stabilized occupancy" of the apartments, rather than on a date certain, and are otherwise rather vague. Any conditions adopted by the Board upon approval of a special exception in this case should clearly specify the necessary action by the developer, including, when appropriate, the time by which the condition must be performed.

The conditions proposed by KSI are as follows:

➢ Community-based redevelopment efforts

1) KSI will make specified funds available:

[4] Because the hearing transcripts are not yet available, the discussion of proposed conditions reflects only the parties' written submissions.

[5] *See* Letter from Phil Feola to Sheila Cross Reid, dated March 13, 2000, Exhibit F.

a) Seed fund for Blight Removal/De-Densification ($25,000) – fund will be available upon apartment occupancy stabilization;

b) Seed fund for Redevelopment Ward 6 ($45,000) – 50% of fund will be available upon apartment occupancy stabilization. The remaining 50% will be available one year later; and

c) Seed fund for Redevelopment Ward 8 ($45,000) – 50% of fund will be available upon apartment occupancy stabilization. The remaining 50% will be available one year later.

2) KSI commits to working with the community to find resources (e.g., Fannie Mae Foundation, Meyers Foundation, the Department of Housing and Community Development, and the Federal Home Loan Bank) with which to leverage the seed funds.

➢ Traffic/Infrastructure

1) KSI will undertake a traffic study of the Good Hope Road Corridor:

a) KSI will work with the Fairlawn Civic Association, the Department of Public Works, and a professional traffic consultant to define the boundaries and scope of the study;

b) The study will include specific recommendations for improving the existing traffic conditions on Good Hope Road; and

c) Recommendations of the study will be presented to government agencies and representatives.

2) KSI will provide $15,000 for implementation of the recommendations of the traffic study. (An escrow fund will be put in place at time of the construction loan closing.)

3) KSI will fully subsidize monthly public transit fares for heads of household living in the Homes at Woodmont apartments.

4) KSI will hire engineers to undertake a study of the existing stormwater system along Good Hope Road, with an objective of identifying current breaks/breaches in the system. The study will be presented to government agencies and public officials in order that current deficiencies will be remediated.

➢ Schools/School Programs – pursuant to a Memorandum of Understanding ("MOU") of March 13, 2000 between KSI and William Lockridge, Ward 8 School Board representative:

1) KSI will support the enhancement of the school technology program at Ketcham and Stanton Elementary Schools. KSI commits to investing a minimum of $30,000 for program start-up (upon stabilized occupancy of the Homes of Woodmont apartments) with a $5,000 contribution for each of the ensuing 6 years. KSI will work with the

School Board representatives and school principals to design an appropriate technology program;

2) KSI will work with the Board of Education representatives, D.C. Public Schools, local banks, and foundations to try to leverage and expand the initial investment (through goods, services, and cash) three-fold over 10 years. The goal of this leveraging will be to ensure the long-term sustainability of the schools' technology programs; and

3) KSI will run an after-school program for youth who live in the Homes at Woodmont apartments (to be initiated at stabilization of the apartments). The programs will focus on art education and technology, and will be designed with input from the school board representatives in Wards 6 and 8. Preference will be given to local businesses in the area for contracting and services associated with the after-school program.

- Architecture/Site Layout

1) All building façade elevations will have brick elements substantially equivalent to the attached typical elevations for single-family and multifamily structures.

2) The proposed six single-family houses situated along Good Hope Road will have architecturally significant facades facing Good Hope Road with appropriate landscaping.

3) KSI will align the entrance road from Good Hope Road to the single-family site with the existing Marbury Plaza intersection.

- Development Phasing – development of the single-family and multifamily homes will occur concurrently. Construction of the multifamily component will not be initiated without bonding of the site work for the single-family homes.

- Ownership – KSI commits to owning and managing the Homes at Woodmont apartments for a minimum of 17 years after the first certificate of occupancy for the property is issued.

NPS The National Park Service listed numerous "concerns" regarding KSI's application.[6] According to NPS, its list differs from the Applicant's proposed conditions primarily with regard to the specific details of (1) the perpetual protection of landscape and forest plantings; (2) site and soil preparation for the plantings; and (3) the remediation of prior erosion and sedimentation problems during the construction phase. NPS stated that its recommended additions are intended to clarify and ensure the long-term success of the measures proposed by KSI. NPS recommends the following:

1. Large existing trees shall be "directionally cut" away from NPS property to avoid tree damage on NPS property from tree fall.

[6] *See* "National Park Service Concerns," submitted February 23, 2000, revised March 2, 2000 (BZA Exhibit 121).

2. KSI shall construct a drainage swale adjacent to the NPS property line and the West Parcel's 18th Street entrance road in order to collect excessive drainage runoff from the Park.

3. KSI shall utilize "super silt" fences on all NPS property lines adjacent to the proposed development during the construction phase.

4. NPS and KSI shall jointly provide construction monitoring during all phases of construction, especially during the site clearing and rough grading operations.

5. KSI shall present a site-clearing plan to NPS for review prior to site clearing.

6. KSI shall provide limited trail enhancements to the existing Fort Circle Trail pursuant to the direction of NPS. These shall include, but not be limited to, repairing culverts that have been damaged in Fort Stanton Park as a result of erosion from the East Parcel, and minor, low-impact repairs to three eroded sections of trail adjacent to the East Parcel. The end result shall be a stable, contiguous, usable foot trail.

7. On the East Parcel's line, KSI shall emplace plantings of native plant material in a natural, scalloped edge planting area adjacent to the NPS property, with tree quantity and species types that will ensure acceptable runoff quantity/quality. Plantings shall comply with NPS reforestation standards (previously provided to KSI and to the BZA) in terms of density, species selection, soil preparation, and maintenance. Proper soil testing and soil amendments shall be provided to increase plant material survival, and certain planting areas will have larger caliper trees in high impact view sheds from Fort Circle Trail.

8. KSI shall place a combination of evergreen and deciduous trees adjacent to the proposed apartment buildings facing the NPS property to help soften the buildings' architectural lines from views from the Fort Circle Trail.

9. KSI shall place meadow grass planting in the area between the apartment retaining walls and the scalloped edges planting to help insure acceptable runoff quality/quantity.

10. A "neighborhood" liaison shall be designated, based upon mutual agreement of KSI, NPS, and the ANCs within the project area, to monitor any construction violations.

11. All fencing along all NPS property lines abutting individual single family lots and the apartment parcel will be made of material to allow for maximum transparency. Selection of fencing material shall be coordinated with NPS; chain link fence shall not be utilized.

12. KSI shall utilize a certified arborist to review and provide guidelines for tree preservation of tree save areas adjacent to NPS property.

13. KSI shall provide permanent protection to all landscape and reforestation plantings (conditions 7 and 8) by deed of easement or other legal instrument binding on the property in perpetuity.

14. A 10-foot restrictive homeowner use easement (tree preservation easement) will be placed on the rear yards of the single-family homes abutting the NPS property.

15. KSI shall provide "surgical grading" along the property line between the NPS property and the East Parcel under the supervision of NPS to remove the existing fill currently on NPS property, with review by a certified arborist.

16. KSI shall control concrete truck wash waste and not allow it to drain onto the NPS property.

17. KSI shall not advertise the project's "views" since the goal is to screen these long-term with vegetation.

18. KSI shall address erosion and sedimentation problems associated with prior use of the property. This shall include an eroding gully along the south border of the East Parcel, which may involve wetlands permits and/or adjoining property.

19. The appropriate local review authorities shall be instructed to provide highest priority to mitigation of long-ranch viewshed impacts in the approval of detailed plans for site landscaping and choice of architectural details, colors, and textures.

Fairlawn Fairlawn recommends that, if the BZA grants KSI's applicant, the following conditions should be imposed:

- The certificate of occupancy for the apartment buildings should be linked to the completion of the single-family homes and the two should be completed for occupancy at the same time;

- All structures should be compatible with the existing structures in the community, with no aluminum siding; and

- The fronts of all the homes that will be built on the main thoroughfare should face the homes directly across the street on Good Hope Road.[7]

If you have any questions about this matter, please call Mary Nagelhout at (202) 442-9772.

JNS/mn
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cc: Jerrily Kress

[7] *See* Fairlawn Citizens Association, Inc., letter from Thelma Jones to Sheila Cross Reid, Chairperson, dated March 20, 2000; *see also* Thelma Jones' testimony, BZA Exhibit 122.