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March 27, 2000

Ms. Sheila Cross Reid
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20002

DISTRICT OF COLUMBIA
OFFICE OF ZONING
00 MAR 27 P 5:21

RE: BZA Application 16457

Dear Ms. Reid and Members of the Board:

The enclosed are copies of the Proposed Findings of Fact and Conclusions of Law (Draft Order) submitted by the Applicant, KSI Services, Inc., for your review and decision.

Sincerely,

Madeliene H. Dobbins

Enclosures

BZA
Case No. 16457
Exhibit No. 136

Board of Zoning Adjustment
District of Columbia
CASE NO.16457
EXHIBIT NO.136

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Proposed Findings of Fact and Conclusions of Law" (Draft Order) were mailed, postage prepaid, this 27th day of March, 2000, to:

ANC 6C
2019 Ridge Place, S.E.
Washington, D.C. 20020

ANC 8B
c/o MPD 7th District Community
1809 Savannah Street, S.E.
Washington, D.C. 20020

Mrs. Thelma Jones
President
Fairlawn Citizens Association
2217 T Place, S.E.
Washington, D.C. 20020

Madeliene H. Dobbins

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW (PROPOSED ZONING ORDER)

BOARD OF ZONING ADJUSTMENT
Application No. 16457

Application No. 16457 of Kass MA, L.L.C., pursuant to 11 DCMR 3108.1 (new 3104.1), for special exceptions under Subsections 410 and 2516 of the Zoning Regulations to allow the construction of 35 new single-family detached dwellings with garages in a theoretical lot subdivision (24 theoretical lots) and 176 luxury garden apartment units on theoretical lots in the R-5-A and R-5-B Zone Districts at premises bounded by Good Hope Road, S.E. between 24th Street, S.E. to the east and 18th Street, S.E. to the west (Square 5735, Parcels 219/96, 220/31; and Lot 804, Square 5763; and Parcel 219/38, Square 5736).

HEARING DATES: **May 5, 1999**
February 16, 2000
February 23, 2000

DECISION DATE: **April 5, 2000**

'00 MAR 27 P5:21
OFFICE OF ZONING
DISTRICT OF COLUMBIA

ORDER

PRELIMINARY MATTERS:

1. The Board of Zoning Adjustment granted party status to the Fairlawn Citizens Association, which was represented by Mrs. Thelma Jones, President, at the public hearing in this matter.

2. The Board held a hearing on this matter on May 5, 1999 and rendered a written decision dated November 5, 1999 denying the application. The Applicant filed a timely Motion for Reconsideration with the Board on November 8, 1999 and on November 24, 1999 the Board denied said Motion but determined that the information submitted by the Applicant in its Motion warranted a rehearing of the application. The Board ordered a rehearing de novo on the application. The decision herein is based on the record developed in the rehearing which was held in two sessions on February 16 and 23, 2000.

SUMMARY OF EVIDENCE:

1. The property is located in the Southeast quadrant of the District of Columbia on the south side of Good Hope Road, S.E., between 24th Street, S.E. to the east, and 18th Street, S.E. to the west. The total size of the property is 15.8 acres, although it is bifurcated by a portion of Fort Stanton Park operated under the jurisdiction of the National Park Service ("NPS").

2. The easternmost parcel, Parcels 219/96 and 220/31 in Square 5735 ("East Parcel"), of the property consists of 355,227 square feet (8.15 acres) of land area. This parcel is rectangular in shape and has approximately 535 feet of frontage on Good Hope Road, S.E. It is currently vacant with virtually no vegetation. It is located entirely in the R-5-A Zone District and abuts Fort Stanton Park on its western and southern boundaries.

3. The westernmost parcel, Parcel 219/38 in Square 5736 and Lot 804 in Square 5763 ("West Parcel"), of the property is irregularly shaped and consists of approximately 332,365 square feet (7.63 acres) of land area. It is also vacant. This parcel is split zoned with approximately two-thirds in the R-5-B Zone District and one-third in the R-5-A Zone District. This site abuts Fort Stanton Park on its south and east sides. It has 760 feet of frontage on Good Hope Road, S.E. and 360 feet of frontage on U Street, S.E.

4. The subject property is located between the Fairlawn and Woodland neighborhoods in Wards 6 and 8. The East Parcel is in Ward 8 and the West Parcel is in Ward 6. A mix of housing types characterizes the area surrounding the site. The immediate area of the subject

property is surrounded by well maintained communities of single-family dwellings, garden apartments such as Skyland Apartments, a 213-unit complex adjacent to the site on the southeast, and high-rise apartments, such as the 672-unit Marbury Plaza complex located to the north of the subject site. The nearest shopping area to the subject property is the Good Hope Marketplace Shopping Center located at Good Hope Road and Alabama Avenue, S.E., which is less than ½ mile from the site. The Shopping Center is anchored by a large Safeway supermarket.

5. Good Hope Road is a major arterial with significant Metro bus service. It is a route for several bus lines going to and from downtown Washington, and connecting bus and Metrorail service to areas throughout the District and region.

6. The Applicant is a joint venture between KSI Services, Inc. and Vertx/IDS. KSI Services, Inc., the contract purchaser of the subject property, is one of the Washington area's largest real estate companies, specializing in the development of planned residential communities and rental apartments. The Applicant presented evidence to the Board that it has developed communities, which are home to over 20,000 people and have a total build-out value of approximately $5 billion. Vertx/IDS is a regional real estate services company that formed in 1996, combining

two existing development companies. It brings a total of 34 years experience in the construction business to this project. It has developed residential communities in the District, Baltimore, Richmond and suburban Maryland including the Woodridge community in Northeast Washington.

7. The Applicant's representatives testified that its plan for the subject property is to create a new, mixed use luxury housing community including 35 single-family detached houses, 176 garden apartments, recreational areas, a swimming pool, a clubhouse and open space on theoretical lot subdivisions in the R-5 Zone District. The apartments will be two bedroom/two bathroom and three bedroom/two bathroom units. These large units (average unit size is over 1,000 square feet) will be technology ready and provide all the amenities demanded in today's apartment marketplace. Existing multifamily rental housing stock in the area is at least 25 years old and primarily characterized by small units with one bathroom and few amenities. The Homes at Woodmont single-family houses will be three bedroom/two bath models with brick facades, full basements and garages.

8. The Applicant's representatives testified that over 800 apartment units could be built on the property under existing zoning. The applicant

proposes a development plan at a significantly lower density that includes, at the urging of the community, single-family detached housing.

9. The Applicant's representatives testified that both parcels are depicted on the Comprehensive Plan Generalized Land Use Map as being in the Moderate Density Residential Land Use category, and that the proposed development is consistent with this land use designation from a density and use standpoint.

10. The Applicant's representatives testified that the approval of the special exceptions will provide a needed high quality addition to the housing stock and increase home ownership opportunities and the tax base in Wards 6 and 8, and the city as a whole. The Applicant introduced into evidence its market study that shows that there is a pent-up demand for quality new housing in the area for both single-family detached and apartment units. Recent market data shows occupancy rates of more than 98% in rental apartments East of the River and in Washington, D.C. Furthermore, the applicant suggested that VERTX/IDS has generated an extensive list of households who wish to purchase single-family dwellings at the Homes at Woodmont.

The Homes at Woodmont will provide the quality new housing that many middle class, East of the River and District residents currently go to Prince George's County or other suburbs to find.

11. The proposed development is referred to as "The Homes at Woodmont". The Applicant indicated that KSI Services, Inc., has developed similar planned communities throughout the Washington Metropolitan Area. The Homes at Woodmont community consists of two components: the development of 35 single-family detached homes and 176 units of apartments in 6 multi-family buildings. As is typical in its planned communities, KSI will develop the land, sell single-family parcels to appropriate single-family homebuilders (in this case, VERTX/IDS), and build a multifamily component that it then manages. The Applicant indicated that the project is economically feasible only if the multi-family component is constructed, because the multifamily component will bear a major portion of the development land costs and pre-development costs. The following information identifies key features of the single-family homes and multifamily homes:

a. Single-Family Homes at Woodmont (West Parcel)

(1) Construction of 35 units - 24 units on a theoretical

subdivision and 11 units on record lots.

(2) The single-family homes would be constructed on approximately 7.6 acres.

(3) Combined lot occupancy would be 15 percent (40 percent permitted).

(4) Floor area ratio .3 (.9 permitted).

(5) The size of each lot would range from 5,500 s.f. to 7,500+ s.f.

(6) Construction of a 25-foot wide private roadway for access to 35 houses.

(7) Garages for each unit.

(8) Construction of a new private roadway from 18th Street.

(9) Establishment of a homeowners/tenants association.

b. Apartment Homes at Woodmont (East Parcel)

(1) 176 rental units

- two-bedrooms/two-bathrooms (925 square feet)
- two-bedrooms/two-bathrooms (995 square feet)
- three-bedrooms/two-bathrooms (1,175 square feet)

(2) Six garden apartment buildings constructed on approximately 8.1 acres.

(3) Construction of a private roadway from Good Hope Road, connecting to Wagner Street, S.E..

(4) Height of buildings - 3 and 4 stories.

(5) Floor area ratio .64 (.9 permitted).

(6) Lot occupancy 20 percent (40 percent permitted).

(7) 184 parking spaces - to include spaces for visitors and physically challenged persons.

(8) Gated community with controlled access.

(9) Operated by a professional management company, KSI Management, Inc.

(10) Amenities - pool, fitness center, clubhouse, after-school enrichment, business center, children's play area, initiation of a Rent-To-Buy Program where residents would accrue equity in their apartment units that would eventually go toward the purchase of a home.

12. The Applicant's hearing presentation involved testimony from several witnesses including a civil engineer, a landscape architect/site planner, an environmental engineer, a geotechnical engineer, and a transportation consultant, who were recognized as experts in their respective fields by the Board. A community development specialist

summarized the applicant's significant outreach efforts to the community, and presented the community's written and verbal support of the project.

13. The Applicant's site planner/landscape architect testified that the development respects the land's existing topography, creates generous and extensively landscaped buffers to Fort Stanton Park, and is arranged to minimize existing adverse soil and environmental impacts on the surrounding properties. He also testified that the project was completely within the guidelines and restrictions of the property's existing zoning with regard to building height, FAR, density, lot occupancy and yard requirements.

14. The Applicant's site planner indicated that both components of the project are matter-of-right uses and that the project meets all zoning requirements of the R-5-A and R-5-B districts. No variances or other deviations from the Zoning Regulations are required. The Board, however, is required to review theoretical lot subdivisions, under Section 2516 of the Zoning Regulations, and the site plan review of anything but single-family detached dwelling units in the R-5-A District under Section 410. Accordingly, two special exceptions are required by the Zoning Regulations for the type of development that is proposed.

15. The Applicant's civil engineer testified that the layout of the site maximizes open space, minimizes the amount of impervious surface, controls soil erosion and is designed to prevent all discharge of storm water onto adjacent land. Further, environmental engineers stated that the existing wetlands, both on site and off site, will be protected and enhanced to the maximum extent possible. A wetland delineation was completed on both properties, which meets federal standards. Limited mitigation will occur on the western parcel and has been approved by the United States Army Corps of Engineers which has exclusive jurisdiction over the issue.

16. The Applicant's transportation expert prepared and submitted a Traffic Impact Analysis and concluded in the report that based on Department of Public Works standards, the proposed development would not create significant capacity, safety or operational deficiencies within the study area road network, and would also not adversely impact the health, safety and general welfare of roadway users. The transportation expert also stated that the proposed parking plan was more than adequate to accommodate the project's needs. He introduced the results of an automobile ownership and parking survey of the neighboring Skyland and Park Naylor apartment complexes that have the same socio-

economic profile as the Applicant's proposed community. The survey determined that car ownership ratio for apartment units at these locations is .83 and .72 spaces per apartment respectively, much less than the one space per apartment (1:1 ratio) provided by the Applicant. He also reinforced this conclusion with an analysis of the census tracts surrounding the site, which demonstrated a .68 space per apartment ratio.

17. The major findings of the traffic study are:

a) The key intersections within the study area currently operate at acceptable Levels of Service, with the exception of Good Hope Road at 25th Street, SE during the morning peak hour period. This intersection is signalized, and a solution to the existing problem is to make minor adjustments in the signal timing and phasing. The result would be additional capacity and greater efficiency of the intersection, depending on the time of day and the directional flow of traffic.

b) The traffic levels of usage for all key roadways considered have remained generally stable over the past several years; and on some roadways, traffic volumes have decreased.

c) A study (license plate survey) conducted along Good Hope Road, SE within vicinity of the study area indicates that over 75 percent of the vehicles are registered out-of-state. In conjunction, travel time surveys along Pennsylvania Avenue between Southern Avenue, 1-295, and Branch Avenue show extreme levels of congestion.

d) Analysis of traffic volumes projected to the year 2001 shows that levels of service will continue to be acceptable with the exception of Good Hope Road at 25th Street, SE during the morning peak unless the signalization of this intersection is adjusted.

e) It is projected that the parking supply for the proposed development would be adequate.

f) Transit service along the Good Hope Road corridor has adequate capacity to accommodate potential demand from the proposed development.

18. The Applicant is proposing to provide 224 parking spaces. Of the total number of spaces, 184 would be provided for the apartments and

40 for the single-family homes. The Applicant indicated that based on a study of the area and similar types of projects the firm has constructed, the number of proposed parking spaces would be sufficient to satisfy the project's parking needs.

19. A portion of Fort Stanton Park, divides the single-family homes and the garden apartments. The Applicant indicated that concerns regarding storm water drainage and treatment were discussed with the DC Department of Public Works, Storm Water Management Branch. As a result of those discussions, the Applicant was informed that the Park Service property would not be impacted by storm water from the site. Specifically, storm water would be collected from the site, held in a storm water detention vault, and piped out through a closed conduit system under Good Hope Road. The Applicant indicated that significant work had been undertaken to address environmental issues at the site. The work included a wetland delineation completed on both properties, which meets federal standards, discussions with the District's Department of Health, Division of Environmental Services, discussions with the U.S. Army Corps of engineers, and several environmental impact studies.

20. The Applicant's experts testified that they had conducted an extensive environmental evaluation of all aspects of this proposal. This

detailed analysis concluded that project will not have an adverse impact on the environment. In fact, due to the stabilization of the soils and extensive plantings on the East Parcel, which is a land fill, and use constraints that will be placed on the West Parcel, the adjacent Fort Stanton Park will be improved environmentally.

21. The Applicant's Community Development specialist outlined the pro-active exhaustive approach that it took with the community, reaching out to accommodate the concerns and present positive solutions to existing problems. She testified that this outreach effort has resulted in several commitments made by the Applicant to the community that include:

(a) The investment and leveraging of a portion of the development's profits towards community-directed and focused activities such as the renovation of abandoned or dilapidated buildings, and a grant/loan fund for community-based priorities;

(b) Establishment of a rigorous local hiring process for work associated with this development;

(c) Entering legally binding agreements with ANC 6C, ANC 8B and the Frederick Douglass Community Improvement Council; and

(d) The Applicant's commitment of a minimum 15-year ownership and maintenance of the rental apartments.

In its community outreach, the Applicant worked to ensure that community concerns and ideas were aired, considered and resolved where possible. The preliminary contacts with the community began with a series of small meetings with members of various community organizations and advocacy groups.

In addition to the small meetings, the Applicant sponsored tours for members of the community to its existing properties in Virginia and Maryland and to the Vertx/IDS development in Northeast Washington. The Applicant provided fact sheets about the project, information about KSI and Vertx/IDS and examples of their other developments to members of the community who attended the meetings and tours.

In addition to the materials that were provided to members of the community, the Applicant provided copies of its environmental, geo-technical, market and traffic and transportation studies to ANC 6C, ANC 8B, Fairlawn Citizens Association and the Frederick Douglass Community Improvement Council.

After approximately 30 community meetings and four tours for the community, KSI has garnered the support of the following organizations:

(a) Advisory Neighborhood Commission 6C

(b) Advisory Neighborhood Commission 8B

(c) Councilmember Sharon Ambrose (Ward 6)

(d) Councilmember Sandra C. "Sandy" Allen (Ward 8)

(e) Frederick Douglass Community Improvement Council

(f) Anacostia Economic Development Corporation

(g) Concerned Citizens of Anacostia

(h) William Lockridge, Ward 8 Representative, District of Columbia Board of Education

(i) Ketcham Elementary School

(j) Our Lady of Perpetual Help Church

(k) Building Bridges Across the River

(l) Covenant House, Washington

(m) Metropolitan Police Department, 7th District

(n) Allen Chapel African Methodist Episcopal Church

(o) Ward 8 Business Council.

22. The Board received letters from Ward 6 Councilmember Sharon Ambrose and Ward 8 Councilmember Sandra Allen supporting the project.

23. Further, the Board received letters of support from Councilmember Phil Mendelson (At Large), Councilmember David Catania (At Large), Councilmember Harold Brazil (At Large) and Councilmember Charlene

Drew Jarvis (Ward 4), who is Chair of the Council Committee on Economic Development.

24. The District of Columbia Office of Planning ("OP"), by written report and testimony delivered at the public hearing, recommended approval of this application. The Office of Planning noted that the proposed project meets all of the specific criteria contained in Section 410 and 2516 of the Zoning Regulations and that the project is not inconsistent with the Comprehensive Plan. OP stated that the project appears to be one that is intended to have a stabilizing effect on the neighborhood while cleaning up an existing landfill site and, thus, improving the edge of an important national park. Further, the project will provide a quality of housing not otherwise available for sale or rent in the area and is expected to attract people who are currently moving to Prince George's County. Further, OP concluded that rather than having an adverse impact on the area, the development will have the effect of encouraging needed reinvestment in this neighborhood. It will clean up an unsightly landfill situation that has existed in the area for many years and that any impacts on the park and on traffic will be mitigated by this proposal. The Office of Planning noted that the application proposes a density that is only 26% of the permissible density under the existing zoning and that the quality of the development with its associated amenities, the physical environment

created, the ongoing management and maintenance with regard to the apartments are all positives that will benefit the neighborhood and the District of Columbia.

25. Representatives of the National Park Service presented testimony at the public hearing. The NPS representatives expressed concern over the potential ecological impact that the proposed development will have on the adjacent Fort Stanton Park. Specifically, they were concerned for its wetlands, flora and fauna, the view of the proposed buildings from the park land, vistas of the circle park ridge, and the impact of the condition of the soil (rubble fill) on the subject site. The Park Service representatives testified, however, that if the Board adopts the conditions proposed by the NPS, which have been agreed to by the Applicant, its concerns would be mitigated. The NPS representative requested that the Board also ask the Applicant to continued to work with the Park Service to address its concerns as the project progresses. The Applicant has agreed to this.

26. The NPS requested the Board to incorporate the following conditions in its Order:

(a) Large existing trees shall be "directionally cut away from NPS property to avoid tree damage to NPS property from tree fall.

(b) A drainage swale shall be constructed 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.

(c) "Super silt" fences shall be placed on all NPS property lines adjacent to the proposed development during the construction phase.

(d) NPS and the Applicant shall jointly provide construction monitoring during all phases of construction, which will be especially important during the site clearing and rough grading operations.

(e) A site-clearing plan shall be presented to NPS for review prior to site clearing.

(f) The Applicant shall provide limited trail enhancements to the existing Fort Circle Trail pursuant to the directions of NPS. These will include 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.

(g) On the East Parcel's property line, plantings of native plant materials shall be placed in a natural scalloped edge planting area adjacent to the NPS property, with tree quantity and species types that will insure acceptable runoff quantity/quality. Plantings shall comply with NPS reforestation standards in terms of density, species selection, soil preparation and maintenance. Proper soil testing and soil

amendments will be provided to increase plant material survival and certain planting areas will have larger caliper trees in high impact view sheds from the Fort Circle Trail.

(h) A combination of evergreen and deciduous trees shall be placed adjacent to the proposed apartment buildings facing the NPS property in order to help soften the buildings' architectural lines from views from the Fort Circle Trail.

(i) A meadow grass planting shall be placed in the area between the apartment retaining walls and the scalloped edges planting to help insure acceptable runoff quality/quantity.

(j) A "neighborhood" liaison shall be designated, based upon mutual agreement between Applicant, NPS and ANC's with the project area, to monitor any construction violations.

(k) All fencing along all NPS property lines abutting individual single-family lots and the apartment parcel shall 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.

(l) A certified arborist shall be used by the Applicant to review and provide guidelines for tree preservation of tree save areas adjacent to NPS property.

(m) The Applicant shall provide permanent protection to all landscape and reforestation plantings (Conditions (g) and (h) above) by

deed of easement or other legal instrument binding on the property in perpetuity.

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

(o) "Surgical grading" along the NPS East Parcel property line shall be done by the Applicant under the supervision of NPS to remove the existing fill currently on NPS property with review by a certified arborist.

(p) The Applicant shall control concrete truck wash waste and not allow it to drain onto the NPS property.

(q) The Applicant shall not advertise the project's "views" since the goal is to screen these in the long-term with vegetation.

(r) Applicant shall address erosion and sedimentation problems that have been associated with prior use of the property. This shall include an eroding gully along the south borer of the East Parcel, which may involve wetlands permits and/or adjoining property.

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

27. The D.C. Department of Housing and Community Development (DHCD), by memorandum dated April 12, 1999, supported the application. DHCD indicated that the multifamily garden apartment buildings would add to the stability of the existing garden apartment community. The proposed development complies with Sections 410 and 2516 of the Zoning Regulations. The single-family dwellings will add needed, high quality housing to East of the River housing stock. The opportunity for home ownership and the tax base of Wards 6 and 8 will be increased. The development will be in harmony with the general purpose and intent of the Zoning Regulations and Map.

28. The Department of Public Works (DPW), by reports dated May 14, 1999 and January 11, 2000, stated that the proposed development can be accommodated within an acceptable level of service, the roadway system can handle traffic generated by the development, and that the parking spaces that the Applicant is proposing are in compliance with the requirements of the Zoning Regulations and will be adequate to minimize parking spillover onto the neighboring residential area.

29. Advisory Neighborhood Commission 6C, by letter dated November 15, 1999 and testimony delivered at the public hearing, supported the application. The ANC urged the Board to approve the application to

allow this major investment in the community to go forward. ANC 6C entered into the record an Agreement between it and the Applicant that assures: 1) a resident-based Community Committee will be implemented to participate in some project-related decision making; 2) a local hiring plan will be instituted; 3) the Applicant will establish a community-directed fund for neighborhood improvement; and, 4) the Applicant will own and manage the apartment component for a minimum of 15 years.

30. The Board received a letter from Advisory Neighborhood Commission 8B, dated April 24, 1999, in support of the application. The letter states that the project is needed to encourage investment opportunities in Ward 8 in order to build the economic tax base needed to improve schools, encourage influx of businesses, and improve the job market.

31. Several witnesses, residents of the area, testified in support of the application, including a representative from the Frederick Douglas Community Improvement Council, who introduced an Agreement between the Council and the Applicant. These witnesses presented testimony suggesting that the construction of the project will help lift the East of the River Community economically. The Ward 8 representative of the District of Columbia School Board testified in support of the project,

and suggested that an Agreement would be reached between the Applicant and the Ward 8 representative.

32. A number of residents of the area appeared at the public hearing in support of the application. They testified that the subject application represents the type of privately funded development so very much needed in the Southeast community and they did not anticipate any negative impacts to result from the development due to traffic and parking, and urged the Board to grant the application.

33. Ms. Thelma Jones, on behalf of the Fairlawn Citizen's Association, a Ward 6 citizens association, and herself testified in opposition to the application. Mrs. Jones questioned the project's handicapped accessibility, fire department access to the apartment buildings, the formulation of homeowner bylaws, the rationale for rental rates, and the number of dwelling units. In essence, her opposition was to the introduction of new apartment units in the area, notwithstanding the fact that the proposed apartments are in Ward 8 and not within the boundaries of Fairlawn. The Association stated support for the single-family dwellings, but concern for the Applicant's plan to build apartments on part of the subject site. The Fairlawn residents

stringently voiced their objection to any more apartment buildings being built in the community.

34. The Fairlawn Citizens Association also submitted a petition, on behalf of approximately 150 residents, indicating that the community is strongly opposed to the project. The petition indicates that the residents would prefer to have single-family homes constructed on the site because rental apartment units would increase the density of the area, create congestion, and stretch limited community services. Ms. Jones indicated that residential projects have been constructed in close proximity to the site where there is deterioration, absentee ownership, vandalism, lack of maintenance, abuse and drug infestation.

35. Fairlawn residents testified that the Applicant did not satisfactorily address the community's concerns about soil erosion and water runoff. Specifically, when rain falls heavily, there is water build up on some parts of Good Hope Road. Within the vicinity of the site, water seeps up from an underground stream. There is water leakage into the basement of homes that are located close to the site.

36. Several community residents testified that there is a significant amount of existing traffic congestion in the neighborhood. Local traffic,

when intermingled with commuter traffic, causes a negative impact on the local roadways. If the neighborhood's population were significantly increased, current traffic bottlenecks would spillover onto local roadways.

37. Based on the Board's recommendation, after the February 23rd hearing the Applicant met with the Fairlawn Citizens Association to answer their questions about the development and to the maximum extent possible provide solutions to the Association's concerns. The Applicant has submitted a list of commitments it is ready to make to the Fairlawn Citizens Association and the broader community, in response to these and other questions and concerns that have been raised.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The application was properly noticed.

2. The application complies with the provisions of 11 DCMR Sections 410, 2516 and 3108.1 of the Zoning Regulations.

3. There are no variances being requested as a part of this application.

4. The proposed project will substantially advance the intent and purposes of the Zoning Regulations and the Comprehensive Plan.

5. A significantly more dense, with a greater building height, apartment project, similar to Marbury Plaza, with as many as 800 units could be built on subject site.

6. A special exception use is deemed compatible with other uses permitted in a particular zoning classification provided that certain requirement are met. In reviewing application for special exceptions under the Zoning Regulations, the BZA's discretion is limited to determining whether the proposed exception satisfies the requirements set forth therein.

7. Sections 410 and 2516 of the Zoning Regulations are both designed to ensure adequate control, and site plan review, of new residential development. This application does not seek extraordinary zoning relief. All parts of the project are consistent with the requirements of the Zoning Regulations including but not limited to density, floor area ratio, building height, lot occupancy, parking, setbacks and yards. As noted, over 800 units could be built on the site under existing zoning guidelines.

8. All developments in the R-5-A Zone Districts, except for single-family detached, must be approved by the Board of Zoning Adjustment as a special exception pursuant to Section 410 of the Zoning Regulations.

9. The Applicant proposes to construct 176 unit luxury garden apartments on the East Parcel consistent with the special exception conditions set forth in Section 410 in the R-5-A Zone District. All of the individual apartments in the buildings will be erected

simultaneously. All front entrances of the group abut a front yard or front court.

10. The Applicant has designed the luxury garden apartment project to assure the creation of a high quality living environment for the enjoyment of future occupants and visitors. There will be adequate access to the street from each building. There will be adequate access for fire protection and other purposes provided by the private roadway easement. There will be adequate yards, courts, light, and air for each building. The project fully complies with each of the intent and conditions of Section 410 of the Regulations. Most importantly, this development will be equal in quality, and provide an amenity package for its residents, equal to any in the region.

11. Section 2516 of the Zoning Regulations permits a theoretical subdivision in order for two or more principal buildings to be erected on a single subdivided lot.

12. The application meets all the requirements of Section 2516. All of the dwellings will front on a private roadway or a public street. Further, the area of land that forms the private means of ingress/egress is not included in the area of any theoretical lot or in any yard. The planned roadway, providing vehicular ingress and egress, to the new single-family dwellings will be 25 feet wide and paved. There are two means of vehicular ingress or egress serving the project. Each of the dwelling units will have its own driveway leading to off-street (garage) parking. There are curb-parking opportunities for visitors along the planned roadway. All of the proposed building heights will be measured from the finished grade at the middle of the front of the building.

13. The proposal complies with the substantive provisions of Section 2516, and the proposed development will not have an adverse effect on the present character and future development of the neighborhood. The development of the site with architecturally attractive

well-constructed single-family detached dwellings will complement the surrounding area.

14. The design of the proposed residential development will be architecturally functional and visually pleasing to its future inhabitants and sensitive to its environment. The new development has been designed in terms of its size, location of driveways, net density, height, design, screening, and location of structures, so as to be harmonious with existing development on neighboring properties and will enhance the features of the site.

15. The project will not cause any adverse effect on neighboring properties. Based on the DPW report and the analysis of the Applicant's Traffic Consultant, the impact on the street network will be negligible and the amount of parking provided will be adequate. The Board is persuaded that the parking analysis of the Applicant's Transportation Consultant is detailed and sound.

16. Based on the Office of Planning report and testimony of the Applicant's witnesses, the Board finds that the project is consistent with the Comprehensive Plan. The Land Use Element of the Plan lists the property in the Moderate Density Residential Category. The project is clearly consistent with this Plan designation.

17. The proposed project is scaled appropriately to enhance the character of the area and there will be no adverse impact due to construction of this residential community.

18. The Board finds that the Applicant's site planner/landscape architect, civil engineers and traffic engineer presented sound, credible evidence that the project will not have a negative impact on neighboring properties or the surrounding community.

19. The Applicant has worked closely, and extensively, with the community and a majority of community organizations support the application. The Applicant is committed to continuing its work with the

community and community groups such as the Fairlawn Citizens Association throughout the life of the development.

20. ANC 6C and ANC 8B both support the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the Applicant is seeking special exception approval in order to develop the subject property, located off of Good Hope Road, S.E., with 35 new single-family dwellings with garages and 176 luxury garden apartment units, in the R-5-A and R-5-B Districts. The granting of such special exception relief requires that the Applicant demonstrate that it has complied with the requirements of Sections 410, 2516, and 3108.1 of the Zoning Regulations.

The Board concludes that the Applicant has met the applicable burden of proof. The Board concludes that the project will not be detrimental to the public good, and the new residential development of the site as proposed is not likely to become objectionable to adjoining and nearby property. Further, the new residential development will be in

harmony with existing uses on neighboring properties, including the Fort Stanton Park system. The application is not inconsistent with the policies set forth in the Comprehensive Plan. The subject site is well served by public facilities, including transportation, and shopping opportunities. The Board concludes that the application will not impair the intent, purpose or integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board concludes that it recognizes the support of ANC 6C and ANC 8B and gives great weight to their positions of support for the project.

Accordingly, it is hereby ordered that the application be **GRANTED**, SUBJECT to the following Conditions:

1. The single-family component of the project shall be developed in accordance with the site plan submitted with Applicant's post-hearing submission dated May 17, 1999 with no more than 35 dwelling units as shown on Exhibit 57A of the record.

2. Development of both Parcels shall be started simultaneously.

3. The apartment portion of the project shall have no more than 176 units and at least 184 parking spaces and be developed as shown on the plans marked as Exhibit---- of the record.

4. The Applicant shall effectuate the proffers made to the NPS as listed in Summary of Evidence No. 25 of this Order.

VOTE: _____ (_____- to approve).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT:

Attested By:_____
Jerrily R. Kress
Director

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY WITH THE PROVISIONS OF D.C.LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE TITLE 1, CHAPTER 15 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO

COMPLY WITH ANY PROVISIONS OF D.C.LAW 2-38, AS AMENDED, SHALL BE PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR SECTION 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.