GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16457 of Kass MA, L.L.C., as amended, pursuant to 11 DCMR 3108.1 (new 3104.1), for special exceptions under Subsections 410 and 2516 to allow the construction of 33 new single-family detached dwellings with garages in a theoretical lot subdivision and 176 luxury garden apartments in the R-5-A and R-5-B Districts at premises bounded by Good Hope Road, SE, between 24th Street, SE to the east, and 18th Street, SE to the west (Square 5735, Parcels 219/96, 220/31 and Square 5765, Lot 804 and Parcel 219/138).[1]

HEARING DATE: May 5, 1999
DECISION DATE: June 2, 1999

ORDER

SUMMARY OF EVIDENCE:

A. Record of Evidence

The application was advertised for the construction of 33 single-family dwelling units; however, the project consists of 37 single-family units. Four units would be constructed on record lots, as a matter-of-right.

The site is located in the Southeast quadrant of the District of Columbia, on the south side of Good Hope Road, SE, between 24th Street to the east and 18th Street, SE to the west. The site (15.8 acres) consists of two parcels of land: the East Parcel and the West Parcel. A portion of Fort Stanton Park that fronts on Good Hope Road separates the two parcels.

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

The West Parcel consists of Square 5765, Lot 804 and Parcel 219/138. The West Parcel is vacant, irregularly shaped, and contains approximately 332,365 square feet (7.63 acres) of land area. The West Parcel has a frontage of 760 feet along Good Hope Road and 360 feet along U Street. The West Parcel abuts Fort Stanton Park on its southern and eastern boundaries. The

[1] The application was corrected to reflect the correct square and parcel numbers.

Case No. 16457
Exhibit No. 66

Board of Zoning Adjustment
District of Columbia
CASE NO.16457
EXHIBIT NO.66

West Parcel is split-zoned with approximately two-thirds in the R-5-B District and one-third in the R-5-A District.

The subject property is located in the Fairlawn/Woodland neighborhoods. The East Parcel is located in Ward 8 and the West Parcel is located in Ward 6. A mix of housing types characterizes the area surrounding the site. To the north and west of the site are single-family dwellings. To the north, northeast and southeast of the site are garden and high-rise apartment buildings. The multi-family dwellings include: the 672-unit Marbury Plaza high-rise building; the 213-unit Skyland Garden Apartments; and, the 231-unit Park Naylor Apartments. The Good Hope Marketplace Shopping Center, which is located at Good Hope Road and Alabama Avenue, is the nearest commercial area to the site. Ketcham Elementary School is located to the west of the site at 15th and U Streets, SE, and the Anacostia Branch Public Library is located directly to the north of the site at 18th Street and Good Hope Road. Metrobus provides transportation service to the area.

The proposed development is referred to as "Woodmont". The Applicant indicated that the firm, KSI Services, Inc, has developed similar planned communities throughout the Washington Metropolitan Area and manages all of its properties. The planned residential community consists of two components: the development of 37 single-family detached homes and 176 units of apartments in six multi-family buildings. The Applicant indicated that the project is economically feasible, only if the multi-family component is constructed. Without construction of the apartments units, the single-family component would not be possible. The Applicant committed to long-term ownership and control (25 years or more) of the apartment component. The following information identifies key features of each component:

- Single-Family Homes at Woodmont (West Parcel)

    1. Construction of 37 units - 33 units on a theoretical subdivision and four units on record lots.
    2. The owner-occupied 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, Wagner Street SE. Access to 33 dwelling units would be from the private street. Four units would have access from Good Hope Road.
    7. One or two-car garages for each unit.
    8. Construction of a new private roadway from 18th Street.
    9. Establishment of a homeowners/tenants association.

- Apartment Houses at Woodmont (East Parcel)

    1. 176 rental units
       40 two-bedrooms/two-bathrooms (925 square feet)
       76 two-bedrooms/two-bathrooms (1010 square feet)
       60 three-bedrooms/two-bathrooms (1175 square feet)

    2. Twelve garden apartment buildings constructed on approximately 8.1 acres.

    3. Construction of a private roadway from Good Hope Road.

    4. Height of buildings - 3 and 4 stories.

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

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

    7. 176 parking spaces – to include spaces for visitors and physically challenged persons.

    8. Gated community with controlled access.

    9. Operated by a management company.

    10. 48 units are ADA (American With Disabilities Act) accessible.

    11. Amenities – pool, fitness center, clubhouse, after-school enrichment and computer training and children's play area. Initiation of the Rent-To-Buy Program. Residents would accrue equity in their apartment units that would eventually go toward the purchase of a home.

Zoning

The Applicant 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 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, which is proposed.

Traffic/Parking

The Applicant submitted a Traffic Impact Analysis (Exhibit 33, Tab D). The study concluded that the area surrounding the site would be adequate to accommodate the proposed development. Minor capacity deficiencies would occur at two intersections (AM peak hour only) due to congestion along the major commuter routes. The proposed development, however, would not create any significant capacity, safety, or operational deficiencies within the study area road network, and would not adversely impact the health, safety and general welfare of roadway users.

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.

   The intersection is signalized, and a solution to the problem could be making 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, I-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.

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.

The Applicant is proposing to provide 216 parking spaces. Of the total number of spaces, 176 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.

Environmental Evaluation

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. In addition, every effort would be made to assure adequate pest management control.

The Applicant indicated that extensive work was undertaken on environmental issues at the site. The work included a wetland delineation completed on both properties, which meets federal standards, and discussions were held with the District's Department of Health, Division of Environmental Services.

B. Report of Government Agencies

Council member Sharon Ambrose, indicated in correspondence dated May 5, 1999, that she supports the citizens of the Fairlawn community in their opposition to the application. Councilmember Ambrose stated that the citizens are very concerned that the density of the apartment buildings being proposed will erode the basic residential character of their community. The Fairlawn community suffers from a growing number of badly maintained and some abandoned multi-family buildings. The Council member indicated that while the townhouses are compatible with the development objectives of the Comprehensive Plan, the proposed apartments move the community in a different direction.

The DC Department of Housing and Community Development (DHCD), by memorandum dated April 12, 1999, supported the application. DHCD indicated that the multi-family 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 (Exhibit 31).

The Department of Public Works (DPW) stated that the proposed development can be accommodated within an acceptable level of service -- the roadway system can handle traffic generated by the development (Exhibit 53). DPW stated that the 216 parking spaces that the Applicant is proposing are in compliance with the requirements of the Zoning Regulations. However, it appears that the proposed upscale development would generate more parking demand. To accommodate both residents and their guests and to minimize parking spillover into the neighboring residential area, the Applicant should be required to provide 1.1 parking spaces per dwelling unit, or 22 additional parking spaces.

C. Advisory Neighborhood Commission (ANC) Comments

The single-family component of the project would be located in Ward 6 (ANC 6C) and multi-family component would be located in Ward 8 (ANC 8B). Advisory Neighborhood Commission 6C did not submit any comments on the application.

Advisory Neighborhood Commission 8B submitted a letter stating that the Commission is not opposed to the plan for construction of the 176 apartment units; however, the Commission has some reservation (Exhibit No. 37). In the past, properties have been developed in the community, only to be deserted by developers after profits were received. The deserted developments have become havens for crime and other uses. The Commission wants some assurance that the Applicant will manage the properties for at least 25 years. Commission

members would prefer to have single-family homes built on the site to build the economic tax base needed to improve schools, encourage new businesses, and improve the area's job market.

D. Testimony of Opponents

Thelma E. Jones represented herself and the Fairlawn Citizens Association. By correspondence dated April 26, 1999, the Fairlawn Citizens Association voted, unanimously, to oppose the application. The citizens' association representative stated that the Applicant made a presentation on the proposed project at its January 19, 1999 meeting. Plans were presented and information given to the Board at the public hearing that was not discussed with the community. In addition, at the community meeting, residents stringently voiced their objection to any more apartment buildings being built in the community; however, they welcomed and supported single-family dwellings (Exhibit 56).

The Fairlawn Citizens Association submitted a petition, on behalf of approximately 150 residents, indicating that the community is strongly opposed to the project (Exhibit 39). 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 (to include overcrowding at Ketcham Elementary School). 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. In addition, the Skyland Apartments, Altamont Apartments, and Marlbury Plaza are apartment complexes that have a high vacancy rate.

Ms. Jones and four other community 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 approximately two to four-feet of water that 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.

The 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.

The Frederick Douglass Community Improvement Council presented testimony in opposition to the application because the project would cause increased congestion in the community (Exhibits 34 and 52). The Council's president, Carolyn Johns Gray, supported the position taken by the Fairlawn Citizens Association.

The National Park Service testified that the site is problematic because it contains major environmental and design problems. The Park Service representatives indicated that they did not receive an updated set of plans on the project until the day prior to the hearing; therefore, their review was based on plans that were initially filed. In order for the project to not have a negative impact on Park Service land, more substantive information about how the Applicant would treat the site so that it is more environmentally sensitive would be required.

The property abuts Fort Stanton Park. The parkland is a part of the Fort Circle Park system, which is essential to the Nation's Capitol for many reasons, including preservation of the wooded forest ridge that creates the topographic bowl of the city. The elevation in the vicinity of the site is very high (an average of 200 feet). The tree cover on top of that is approximately 90 feet. Therefore, from a marketing perspective, the proposed development would have significant views. The Park Service representatives indicated that approximately 50 feet of the buildings would be visible above the treetop or the tree line of the ridge. This would be of detriment to the sight line of the parkland. Further, the height of the apartment buildings would be 62 feet, which means that these buildings would be visible from the Anacostia Freeway - one of the areas that becomes the viewing point for this wooded ridge around the Potomac River.

The apartment complex would be constructed on substantially fill land and there is massive erosion on the site. The Park Service representatives indicated that the rubble site has been a source of problem since 1986. They were dissatisfied with submitted plans concerning the stability of the rubble fill, how erosion and water run-off from the rubble would be treated, and whether the site is capable of sustaining the level of development that is proposed. The Park Service representatives indicated that it would be the Applicant's responsibility to screen the site with the appropriate vegetation.

The Fort Circle Parks are contiguous to or adjoining wetlands. The single-family homes would be constructed on wetlands and the District government requires preservation of wetlands. The Park Service representatives stated that they were not sure how much of the wetlands in that area could be disturbed. In addition, the site is of great concern because there is a potential for rare and endangered plants and animals to be destroyed.

The project would cost more than one million dollars; therefore, based on the District's Department of Health requirements, an Environmental Assessment would be required, and possibly an Environmental Impact Statement. Important design elements to be considered for this project are: placement and orientation of the buildings, height, and screening capabilities. The Park Service is not necessarily opposed to the project in principle; however, more specific plans are required. For example, plans would be required to show how the slopes between the garden apartments and the Park Service property would be treated, and what mitigation efforts would be used to offset any potential adverse impacts.

FINDINGS OF FACT:

The Board finds that significant environmental concerns exist at the site. The Applicant at the public hearing did not satisfactorily address these concerns, nor did the Board receive post-hearing submissions from the Applicant or the Park Service to allay the environmental concerns. The Applicant did not address the specific environmental concerns of the National Park Service. Information was not provided concerning how the vistas from the apartment buildings would affect the sight line from Federal parklands, to include Fort Stanton Park and the wooded ridge around the Potomac River. The apartment buildings would be constructed on land that is a rubble fill and there is on-site erosion. There are slopes between the garden apartments and the Park Service property. The single-family dwellings would be constructed on wetlands. There are rear species of invertebrates and vegetation on Park Service land that could be affected by the proposed development. Plans were not filed by the Applicant to identify how the aforementioned problems with the site would be treated, and to ensure the Board that these problems would not have negative impacts on the surrounding residential neighborhood.

The Board finds that if an Environmental Assessment report were required for this project that process is not within its purview; it is under the auspices of the District of Columbia Department of Health.

The Board finds that residential developments have been constructed along other Federal parklands without negative impacts. However, reasonable and appropriate mitigation measures have been used so that these developments do not have a detrimental impact the abutting communities. The Board was not convinced that the Applicant explored all appropriate environmental mitigation measures at the site.

The Board supports and encourages the single-family residential component of the project. However, the Board finds troubling the density of the project's multi-family component. The Board received substantial testimony from community residents that, in the vicinity of the site, there are many apartment buildings that have a high vacancy rate; that commuter traffic, when mingled with local traffic, causes congestion on the area's roadways; and, if not managed properly, on-site parking would spill-over onto the streets. As such, if the area's residential population were significantly increased, existing difficulties would be exacerbated. In addition, the Board takes note of Council member Sharon Ambrose's comment, which states that the proposed apartment development moves the community away from the objectives of the Comprehensive Plan for the Fairlawn neighborhood.

The Board finds that the application meets the zoning requirements for specific items such as lot occupancy, floor area ratio, and setbacks. However, the Board does not agree with the Applicant that the project is a matter-of-right development. The Zoning Regulations require that the Board review all residential developments in the R-5-A and R-5-B districts, except single-family detached and semi-detached dwelling units.

The Board considered the views of ANC 8B but was unable to give "great weight" to the ANC's position. The ANC's written report did not follow the requirements identified by Section 3307 the Zoning Regulations. Specifically, the report did not indicate: that the ANC gave proper

notice of the public hearing to the community; when the ANC's meeting was held to consider the application; if a quorum was present at the public meeting; and, the vote on the motion to adopt the report to the Board.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record and findings of fact, the Board concludes that the Applicant is seeking special exceptions under Subsections 410 and 2516 to allow the construction of 33 new single-family detached dwellings with garages, and construction of 176 garden apartment units on theoretical lot subdivisions. The special exceptions must meet the criteria set forth in Section 3108.1 (new 3104.1) of the Zoning Regulations which requires that the application be in harmony with the general purpose and intent of the Zoning Regulations and Map and not tend to affect adversely the use of neighboring property. The Board is of the opinion that there are significant environmental issues that were not addressed by the Applicant. Those issues would have serious negative impacts on the community. The Board is of the opinion that the density of the proposed apartments would cause negative impacts on the community, as a result of additional vehicles associated with traffic and parking. For these reasons, the Board concludes that the Applicant has not met the burden of proof. It is therefore **ORDERED** that the application be **DENIED**.

VOTE: 3-1 (Sheila Cross Reid, Anthony Hood and Betty King to **DENY**; Jerry Gilreath opposed to the motion.)

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

ATTESTED BY: _____
JERRILY R. KRESS
DIRECTOR

FINAL DATE OF ORDER: NOV - 5 1999

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 FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (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 A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3125.9, "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6."

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

10.29.99/BAB

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16457

As Director of the Office of Zoning, I hereby certify and attest that on NOV - 5 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:
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