JORDAN KEYS & JESSAMY, LLP
ATTORNEYS AT LAW
SUITE 700
1400 SIXTEENTH STREET, N.W.
WASHINGTON, D. C. 20036-2217
(202) 483-8300
FACSIMILE (202) 328-6153

ALLISON R. H. ALVARADO
KATHLEEN A. CAREY+
RACHEL C. EVANS+
SHIREEN JAYATILAKA+
RONALD C. JESSAMY
GEORGE R. KEYS, JR.+
O'NEIL S. KING+
KAREN J. MILLER+

+Also Admitted in Maryland

OF COUNSEL:

JOANNE DODDY FORT
HAROLD E. JORDAN
CHARLES J. OGLETREE, JR.

December 10, 2002

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D.C. OFFICE OF ZONING
2002 DEC 10 PM 4:16

Geoffrey Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 Fourth Street, N.W. - Room 220 South
Washington, D.C. 20001

Re: Board of Zoning Adjustment Application No. 16836 - The Washington Home and Hospice

Dear Mr. Griffis:

On behalf of the Applicant in the above-referenced special exception proceeding, we herewith submit twelve (12) copies of the Applicant's Proposed Findings of Fact and Conclusions of Law.

We hereby certify that on December 10, 2002, a copy of Applicant's Proposed Findings of Fact and Conclusions of Law were mailed, first class, postage prepaid, to the following parties:

Citizen Concerned About the Home's Expansion
c/o Jonathan P. Graham, Esq.
Williams & Connolly LLP
725 12th Street, N.W.
Washington, D.C. 20005-5901

Advisory Neighborhood Commission 3F
P.O. Box 39290
Washington, D.C. 20016

Very truly yours,

George R. Keys, Jr.

Enclosures

BZA
Case No. 16836
Exhibit No. 116

Board of Zoning Adjustment
District of Columbia
CASE NO.16836
EXHIBIT NO.116

APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN BOARD OF ZONING ADJUSTMENT APPLICATION NO. 16836 -
THE WASHINGTON HOME & HOSPICE

Application No. 16836 of The Washington Home & Hospice pursuant to 11 DCMR § 3104.1 for special exceptions under 219 to add four (4) bed hospice addition to an existing 201-bed health care facility and to enlarge the existing parking lot from seventy-five (75) to one hundred seventy three (173) parking spaces in an R-1-B Zoning District at premises 3720 Upton Street, N.W. (Square 1825, Lot 818).

HEARING DATES: April 2, June 25, July 9, and October 15, 2002
DECISION DATE: December 17, 2002

SELF-CERTIFICATION

The Applicant filed a self-certification form for relief pursuant to § 3113.2.

PRELIMINARY MATTERS

Requests for Party Status. ANC 3F was automatically a party in this proceeding. The Board considered a request for party status from a group of neighbors calling themselves the Citizens Concerned About the Home's Expansion ("CCHE") represented by one of its members, Jonathan P. Graham. CCHE claimed that, as immediate neighbors of the Applicant's facility, they would be adversely affected if the Board were to grant the special exception. The Board conferred party status on CCHE and designated Mr. Graham as its sole spokesperson for the purposes of presenting its opposition and for cross-examination. At the continuation of the public hearing held on June 25, 2002, ANC 3C requested a waiver of the Board's rules and leave of the Board to become a party to the proceeding on the grounds that although the subject property is not within ANC 3C, it is immediately adjacent to ANC 3C boundary and constituents of ANC 3C are directly affected by the operation of the applicant's facility. The request of ANC 3C for party status was denied.

Request for Postponement of the Public Hearing. At the commencement of the public hearing on April 2, 2002, ANC 3F requested postponement of the public hearing on the grounds of inadequate notice of the special exception application and to permit the Applicant and its neighbors who oppose the special exception application an opportunity to continue discussions that may narrow the differences on the application. After due consideration, the Board denied the request for further delay in this application.

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Motion to Compel. Prior to the June 25, 2002 continuation of the public hearing, CCHE filed a motion with the Board to compel the production of certain documents and information which it had requested in writing of the Applicant, or alternatively, to strike evidence submitted by the Applicant related to the requested information. The Board determined that it lacked the power to require disclosure of information at the request of a party outside of the context of the public hearing and, accordingly, denied CCHE's motion to compel and the motion to strike evidence.

Bifurcation of the Requested Relief. In the interests of administrative efficiency, the Board decided, *sua sponte*, to bifurcate the two elements of relief in this special exception application since the Applicant had completed its entire case on both issues. The Board ordered that it would hear the entire case pertaining to the hospice addition at the continuation of the public hearing on July 9, 2002, and set aside time on its September 10, 2002 calendar to hear the remainder of the case pertaining to the parking lot expansion. At its September 10, 2002 public meeting, the Board determined not to bifurcate the case and scheduled the final hearing date for October 15, 2002,to conclude the entire case.

PUBLIC HEARINGS. Public hearings on the application were held on April 2, June 25, July 9, and October 15, 2002, at which times testimony and evidence were provided by the Applicant and its witnesses and experts, by the Office of Planning, DDOT and by ANC 3F and CCHE.

SUMMARY OF TESTIMONY

1. Applicant's Case. The Applicant presented its case on the hospice addition and the parking lot expansion through the testimony of Lynn C. O'Connor, its Chief Executive Officer, Jeff McGee, its Director of Facilities Management; and the following expert witnesses: Erwin N. Andres of Gorove/Slade Associates, Inc., its parking consultant; Laurie Dickeson, RA of Amos, Bailey Arnold & Associates, Inc., its architect; John Armentrout, its construction project manager; Liling Tien, ASLA, of P.E.L.A. Design, Inc., its landscape architect, James E. Long, P.E., of Delon Hampton & Associates, its civil engineer.

A. Expansion of the Hospice.

The Applicant is the only Medicare/Medicaid approved provider of impatient hospice care in the District of Columbia. The Applicant stated that the four-bed hospice addition was needed to meet the current and anticipated demand for end-of-life care in the District

of Columbia. The addition of four beds will have minimal employment effect, since the mandated staffing ratio is one registered nurse per six hospice beds and by that measure the existing hospice is already over-staffed, so that the four-bed addition to the hospice represents an increase of less than a one full-time employee equivalency.

The Applicant introduced into evidence the Notice of Final Action and Findings of Fact, issued on September 20, 2001 (the "Certificate of Need"), by the District of Columbia State Health Planning and Development Agency ("SHPDA") which found that as a result of high occupancy levels of the existing nine-bed hospice unit and the general prevalence of diseases leading to terminal illness in the District of Columbia, the Applicant was justified in seeking to expand its hospice facility. On July 30, 2001, ANC 3F voted to support the Applicant's Certificate of Need application for the four-bed hospice addition.

The Applicant's architect described the proposed 2,077 square foot addition as a one-story edifice made of the same masonry materials with the same details as the existing facility and designed to be unobtrusive. The addition would contain four patient rooms and an access corridor connecting to the existing hospice area. The proposed addition would extend the facility only twelve feet (12') to the north in the direction of Upton Street, but the projection would still be approximately 160' from the property line along Upton Street. The addition represents a 1.6% increase in the total gross floor area of the existing facility and a 3.8% enlargement of the first floor building footprint. No trees would be affected by the construction of the hospice addition.

The Applicant's construction manager stated that construction staging, building materials and construction vehicles would be handled on-site and not on the public streets. Construction would occur only on weekdays between the hours of 7:00 a.m. and 4:00 p.m. Access of heavy construction vehicles would be routed only from Wisconsin Avenue, a route which has been coordinated with the Metropolitan Police Department. These construction-related commitments have previously been communicated by the Applicant to ANC 3F and the community.

B. Enlargement of the Parking Lot

The Applicant's chief executive officer testified that the Applicant's facility has a resident population of 201 made up of three types of residents: long-term care patients with disabling conditions due to aging or dementia; sub-acute care patients who are in for relatively short rehabilitative stays prior to going

home; and hospice patients in terminal condition. Each type of patient has visitors, either family, pastoral or medical. The Applicant's facility has almost 300 employees, two-thirds of whom are present during the day-shift from 7:00 am to 3:30 pm. The Applicant's facility also relies on community volunteers to provide many services to patients and their visiting families. The Applicant provides $4 million in uncompensated care each year to D.C. residents from an operating budget of $18 million and relies on its charitable donors to cover that deficit.

Circumstances for the facility have changed since the parking space ceiling was established in 1985. Not only has the employment base increased due to more intense staffing requirements, but the sub-acute care section of 36 beds, which requires more intensive visits by physicians and other specialists (physical therapists, occupational therapists, speech pathologists, dieticians), did not exist in 1985.

The Applicant faces a very competitive environment for recruiting employees given the nationwide nursing shortage and has to maintain salary competitiveness. Based on interactions with employees, additional parking is an important issue for employees, many of whom have second jobs, or frequently work unscheduled overtime. At present, there are 35 unfilled nursing positions at the facility. In her judgment, Ms. O'Connor believed that transit subsidies would be a diversion of scarce financial resources, and only reward the significant number of employees already taking public transit, not induce those already driving to change their mode of transportation. Further, the facility must compete with other long-term care facilities that offer more parking for physicians, who complain about the difficulty in finding parking at the facility or on nearby streets.

During each shift change there is a 30-minute overlap, so that the evening shift arrives at 3:00 pm while the day shift does not leave until 3:30 pm. The purpose of the overlap is to allow the nursing shifts to exchange information about patient condition and needs and to ensure that adequate staffing is available at all times. This essential shift overlap puts even more pressure on parking in the late afternoon. Employees, who have no recourse but to park in the residentially-restricted parking spaces along Upton Street, are leaving work at intervals during the day in order to move their vehicles to avoid being issued parking tickets. This is disruptive to the work routine at the facility.

The Applicant's current parking enforcement policy require every employee to display a parking emblem that hangs from the rear-view mirror. Visitors are required to sign in on the

visitor's log identifying their vehicle by license number. The parking lot security operates 24 hours a day and during periodic patrols vehicles that do not clearly belong to either an employee or a visitor are issued a notice advising them that the vehicle is illegally parked. The Applicant does not make a policy of having the police issue citations or towing illegally parked vehicles feeling that many visitors may forget to comply with all of the formalities of signing in.

The Applicant's parking consultant testified that his firm conducted studies over a period of three mid-week days in May, 2001 to ascertain the parking demand on the lot and the adjacent streets. The studies confirmed the extent of over-parking and illegal parking on the site. At peak periods, which occur between 11:00 am and 1:00 pm, there were an average of 136 vehicles parked in the existing lot, when only 75 are authorized. In 1985, the Applicant requested 116 spaces for its operations and was limited to 75. The lack of adequate parking is a historic fact. In addition to vehicles on the parking lot, there are visitors and employees parking on adjacent streets who are also part of the parking demand.

Surveys of employees for peak period usage indicated that 66% of the employees drive themselves to work, 20% take public transit, 10% arrive by car pool and 4% walk to the facility. Employee demand accounts for 134 parking spaces without considering the impact of family or administrative visitors, volunteers or physicians. Examinations of visitor logs at peak periods found that four spaces are needed for hospice volunteers, four for hospice visitors, three for physicians and three for administrative visitors for a total of 17 additional spaces. Current demand does not include the additional parking required by the addition of 4 hospice beds, the need for additional number of spaces to allow for efficient circulation within the parking lot and to handle those times when special events (board of directors' meetings, physician and resident education programs, volunteer training) add to normal demand. By having adequate parking on site, the Applicant benefits the adjacent community by reducing the circulation of traffic within the neighborhood searching for unrestricted parking.

There are 50 fewer unrestricted parking spaces on adjacent streets than there were in 1985, as a result of neighborhood pressure to convert those spaces to residentially-restricted parking. That fact makes it more difficult for the Applicant's employees and visitors to find on-street parking. Of the 400 on-street parking spaces surveyed, 88 are unrestricted and 312 are residentially-restricted. During the peak periods, 80% of the unrestricted parking spaces are occupied and only 50% of the

restricted spaces. The parking consultant's conclusion was that there is insufficient unrestricted parking on adjacent streets to accommodate the parking over-flow from the facility if the parking lot is limited to the 75 authorized spaces. Any further reduction in the availability of unrestricted parking spaces on adjacent streets will have an adverse effect on the Applicant's employees and visitors. The parking consultant made no study of the potential impact of transit subsidies for the facility's employees, but noted that the current transit utilization of 20% compares very favorably to the 11% figure for another health care institution, the National Institute for Health, which is located directly at a Metrorail station and has significant transit subsidies for its employees.

The Applicant's civil engineer described the existing condition of the parking lot and the lack of storm water management for the site, either in terms of quantity control or quality control. The parking lot when built complied with the then applicable regulations. The parking lot expansion increases the drainage area from .43 acres to .89 acres, and the Applicant would now be required under current environmental regulations to provide storm water management only for this increase. Instead, the Applicant proposes to provide storm water management for the whole watershed drainage area within the site, including the entire parking lot, by installing two underground sand filters each with two chambers to provide both quantity and quality control of storm water run-off generated by the site. This improvement is an upgrade over the current conditions and to the extent that the facility has been blamed by residents for localized flooding during heavy rainstorms, the storm water improvements proposed for the site will be a positive benefit for the immediate community. The Applicant's civil engineer opined that bioretention of storm water was not a feasible or practical alternative for this site because of subsurface conditions and need to make extensive alterations to existing topography. With respect to the greenspace requirement of the District of Columbia parking lot regulations, the Applicant's civil engineer testified that the 5% requirement does not have to be distributed evenly throughout the parking lot, and can include all landscaped area within the logical extension of the curb-line of the parking surface.

The Applicant's architect described the existing parking lot and the character of the surrounding landscaped area with the 10-foot berm along Upton Street and the large mature trees at the crest of the berm. She explained that the parking lot was designed deliberately to take advantage of the berm and reduce the visibility from Upton Street. In her opinion, the existing parking layout was inefficient and the new design allows over twice as many

vehicles to park with only a 40% increase in impervious surface. The interior greenspace comprises 7% of the total parking area and exceeds with local requirements. The existing parking lot has 12% interior greenspace. The existing lighting fixtures will be replaced with 12-foot pole lights and 3-foot bollard-type fixtures with box-shaped hoods which cast light downward to illuminate the parking and walkway surfaces. The lighting will be high-pressure sodium and consistent with street lighting along Upton Street with a warm, yellow tone.

The Applicant's landscape architect testified regarding the planning objectives for her landscape concept for the area surrounding the proposed parking lot: (1) to preserve the park-like setting; (2) to consider moving trees that would be impacted by construction; and (3) to add new trees and shrubs to enhance the area. Of the approximately 185 trees on the entire site, over 55% will be untouched by construction. Of the 80 to be removed, 33 (principally the many 15-foot crepe myrtles in the grove behind the cupola) can be saved and transplanted elsewhere on the site. The mature trees on the berm should not be affected and steps will be taken during construction to protect their critical root zones. The landscape plan proposed the planting of 45 new deciduous trees and 131 evergreen and flowering shrubs and flowering trees arranged on the perimeter of the parking area to screen and beautify the site. The proposed parking area will actually sit lower than the existing parking area which will enhance the perimeter screening effect of the existing and new plantings.

The Applicant's project manager who will oversee construction of the hospice and the parking lot, which, if done concurrently, will take approximately six months, stated the several commitments the Applicant would make during construction: (1) all construction staging would be done on site; (2) no work before 7:00 am or after 4:00 pm; (3) all construction vehicles parked on site; (4) no weekend work unless the two-day paving process commences; (5) access to site to site only from Wisconsin Avenue along Van Ness or Quebec Streets to 37th Street; and (6) use of single axle dump trucks for the three weeks of heavy truck traffic. The Applicant has established a preliminary landscape budget of $100,000, which would include the cost of lighting fixtures.

Mr. McGee, the Applicant's facility manager, testified to the results of a visitor and parking survey conducted by the Applicant's staff on April 11, 2002. Hourly checks of vehicles parking on the site demonstrated a peak count of 136 at 1:00 pm and overall conformed closely to the parking counts made a year earlier by Applicant's parking consultant. On that day, Mr. McGee reported a total of 150 visitors on the sign-in logs with peaks of 22

visitors at 12:00 pm and 4:00 pm. He further reported that most visitors stay between 2-4 hours at the facility. He described the Applicant's parking enforcement policy. He actually observed workers at the Friendship Post Office parking on 37th Street and on Upton Street and stated that in his opinion these workers did not make use of the Applicant's lot because of the likelihood of their being blocked in by other vehicles, since their work shift ends before the Applicant's day shift ends.

2. Government Reports.

A. Office of Planning. By written report, dated March 26, 2002, the Office of Planning recommended approval of both special exceptions under § 219 of the Zoning Regulations and finds no adverse impact on the neighboring properties. In making its recommendation OP relies on the Zoning Regulations requirement that the Applicant provide adequate, appropriately located and screened parking for occupants, employees and visitors and concludes that an expanded parking lot will alleviate overflow parking on the nearby streets.

B. Division of Transportation. By its initial written report, dated March 15, 2002, the District Division of Transportation ("DDOT") had no objection to the application and endorsed the parking lot expansion as a means of improving traffic circulation and eliminate the number of cars cruising the neighborhood in search of on-street parking. At the times of their site visits, DDOT found on-street parking completely full and that all of the vehicles in the parking lot displayed the parking decals of the Applicant. By supplemental report, dated June 25, 2002, DDOT added to its initial report based on additional information and a further site visit and recommended cutting the proposed parking by 10%, or 17 spaces. DDOT opined that, if the parking lot were better managed and a transit plan adopted, the circulation factor could be eliminated and that the remaining 156 spaces would be an optimal number. DDOT believed that the reduction in parking spaces could be used to increase the landscaped area.

3. ANC 3F Report. On June 17, 2002, at a public meeting at which a quorum was present, ANC 3F unanimously passed a resolution opposing the special exception application. The resolution, however, contains no specific objection to the proposed hospice addition. The quite-detailed resolution focuses entirely on the community's objections and concerns regarding the impact of the proposed parking lot enlargement. At the public hearing on July 9, 2002, ANC Commissioner Philip Kogan, in whose single-member district the Applicant's facility is located, stated that to the extent that the hospice addition imposes an additional parking

burden on the facility the ANC's objection to additional parking is also an objection to the hospice enlargement. On information and belief, ANC 3F has now voted to support the 4-bed addition to the hospice at its regularly scheduled public meeting on November 20, 2002.

ANC 3F Testimony. Mr. Kogan testified and submitted a petition signed by 53 neighbors opposing the project. ANC 3F stated that the proposed parking lot was too large for a residential neighborhood. Such a parking lot would encourage more drivers to enter a high volume traffic area already suffering from surrounding institutional and commercial uses. In the view of ANC 3F, the proposed parking lot would have an adverse visual effect on the neighborhood with the removal of 50 trees, the endangerment of several mature trees and the introduction of a large expanse of apshalt. ANC 3F believes the Applicant has failed to offer evidence justifying the need for 173 spaces, because the Applicant has failed to disaggregate its data to demonstrate the various components of peak usage, failed to institute transit incentives, makes unwarranted assumptions about the number of vehicles parking on the street as being part of the Applicant's parking demand and over-estimating the parking spaces required by the hospice addition. ANC 3F believes that the Applicant should utilize transit incentives, valet parking, and alternate off-site parking opportunities before considering the enlargement of the parking lot. ANC 3F objects to the loss of the existing landscaped island which mitigates the visual effect of the parking lot as seen from nearby residences and believes that The Applicant should be required to enhance the landscaping at the 38th Street end of the site. ANC 3F believes that local regulation requires that the Board encourage public transit usage and not endorse employer-supplied parking as an inducement to attract employees.

4. Persons in Support of the Application. Henry Guyot, a resident living at 4108 38th Street, N.W., testified in support of the application and submitted a petition signed by 48 residents of the neighborhood supporting the Applicant's request for special exception relief for additional parking and expressing no opposition to the hospice addition.

5. Parties and Persons in Opposition to the Application. Richard Danzig, appearing as representative on behalf of CCHE in the absence of Mr. Graham at the July 9, 2002 public hearing, stated that the Applicant was not entitled to the relief requested because of its failure to abide by prior orders of this Board governing the subject property, i.e., maintaining parking spaces in excess of the number authorized by the 1985 order. In addition, he noted that the Applicant had failed to maintain constant employment

levels in spite of past promises to be do so. He noted that construction traffic would severely impact the immediate neighbors.

At the October 15, 2002, public hearing, Jonathan Graham presented the views of CCHE through the testimony of two expert witnesses: Christopher Gay, a transportation planner; James Urban, a landscape architect and urban arborculturist; and through several local residents: Joseph Handwerger, a local architect and neighbor, Barbara Behler, Wayne R. Curtis, Jane MacLeish, Richard Danzig, Jonathan Zuck, Dina Curtis, Sharon Flank, Thomas A. Frazier, Mark Bravin and Martha R. Frazier.

Mr. Graham reviewed the history of this facility and the several agreements with the community regarding parking and landscape issues. He noted that as recently as 1997 in connection with its request to the Board to add 12 beds to the facility the Applicant indicated at that time that its authorized parking was adequate and now five years later it requests to more than double the authorized number of spaces.

Ms. Behler testified that she has personally counted 89 striped parking spaces on the Applicant's parking lot instead of the 75 authorized. She also presented data of her observations of the parking lot usage over a period of nine days showing an average of 116 vehicles on the parking lot, although she acknowledged that the counts were taken at different times each day and she did not know if the time she made her count represented the peak utilization of the parking lot on that particular day. She displayed photographs showing vehicles parked on the lawn along 37th Street and in fire lanes. She reported having observed a Maryland driver parking on the Applicant's parking lot and not going into the Applicant's facility. She further noted that at least 6 of Applicant's employees cooperate to maximize the parking potential by utilizing tandem parking.

Mr. Christopher Gay testified that he reviewed the parking study presented by the Applicant and made personal visits to the site on September 4th and 6th to observe traffic conditions in the morning rush hour. It is Mr. Gay's opinion that enlarging the parking capacity of the Applicant's facility would simply draw more vehicles into the neighborhood. Mr. Gay considers the Applicants' parking study to be an 'unconstrained parking demand estimate" that simply took the peak numbers and failed to look behind those numbers to understand what drove demand for different sub-groups of users. Mr. Gay thought that alternate parking locations, mass transit subsidies, parking fees for visitors and a more carefully managed parking facility present options to the Applicant. Mr. Gay examined visitor logs for three days in April, 2002, and concluded

that of the 33% of visitors, who both signed in and out with times noted, the majority (78%) stayed less than 2 hours, which means that they could have parked on the street in residentially-restricted parking spaces. Mr. Gay acknowledged that his conclusions were based solely on the visitor logs, and that he was not present at the site during the dates of the visitor logs, did not know the status of the parking lot at the time of visitors' arrival nor did he know if any visitors failed to sign the visitor logs.

James Urban reviewed the Applicant's site plan, landscape plan, tree inventory and existing conditions plan. In Mr. Urban's opinion, the tree inventory was deficient in not displaying more factors affecting tree condition and health, but he stated that these judgments were subjective and relied on a matrix of factors. Mr. Urban believed that contrary to the Applicant's expert's testimony, 6 trees would be affected by the construction, 3 of them seriously. Special mitigation effort would have to be undertaken for these affected trees and their survival would still be doubtful. Mr. Urban had difficulty in looking at the topographical plan in determining whether more retaining walls would be necessary in the construction of the parking lot which would have a correspondingly greater effect on certain of the mature trees. Mr. Urban believes the Applicant's budget, while sufficient for the purchase of the specified plant stock and transplanting the trees and shrubs to be saved, is insufficient to deal with soil and drainage problems. Newly planted and transplanted trees will require a great deal of attention in the first two years. Mr. Urban thinks the Applicant's plans change the character of the landscape from a series of filters over a larger area and putting the same amount of trees into a more compressed area, as along 37th Street, which in his view would dramatically change the site's landscape appearance. Mr. Urban also felt that the small islands shown in Applicant's plans are undersized to support mature tree growth. Mr. Urban also believed that it is possible to permit some infiltration on this site at least to the extent currently occurring, though he has done no actual studies of the site nor examined the test borings done by Applicant's civil engineer.

Joseph Handwerger who lives on Upton Street directly across from the Applicant's facility, testified regarding the impact on the view from his home. He presented photographs and a projection to demonstrate that the existing parking lot is clearly visible from the second and third floors of his house.

Peter Espensheid, an Advisory Neighborhood Commissioner from ANC 3C, read a statement embodying the resolution of ANC 3C opposing the application on the grounds that the Applicant should

not be rewarded for its non-compliance with prior orders of the Board.

Barbara Behler, a resident of the 3600-block of Tilden Street, N.W., expressed her concern about any increase in traffic in the immediate area which would be attributable to an enlargement of the existing hospice.

The remaining witnesses from the immediate community opposing the parking lot portion of the Applicant's special exception request cited their reliance on buying their real estate near such a well-maintained landscape that existed at the Applicant's facility, that their views from their upper stories will be degraded by an enlarged parking lot, that existing street conditions are dangerous for pedestrians during rush hours, that the Applicant is violating an agreement with the community to retain all open land for landscaping, that the Applicant has not complied with prior commitments regarding its parking lot, that the Applicant has not adequately studied its parking problem or consulted with the neighborhood, and that storm water run-off from an enlarged parking lot remains a concern.

FINDINGS OF FACT:

1. The subject property is located at the southwest corner of the intersection of 37th and Upton Streets, N.W., is known as premises 3720 Upton Street, N.W. and is zoned R-1-B.

2. The subject property is rectangular in shape and contains 249,537 square feet of land area (5.73 acres).

3. The subject property is improved with a three-story, 201-bed health care facility for skilled, intermediate, sub-acute and hospice care.

4. The surrounding area is zoned R-1-B and is developed primarily with single family detached dwellings to the north and east of the subject property. To the south and west, the subject property abuts large institutional uses, including the Sidwell Friends School and the U.S. Postal Service Friendship Post Office. Diagonally across 37th Street to the southeast is Hearst Elementary School.

5. The subject property is subject to two prior orders of the Board of Zoning Adjustment: Application No. 14283, a 1985 decision which approved the erection of the current building to replace an existing health care facility on the subject property; and

Application No. 16263, a 1997 decision which authorized the increase of twelve (12) beds to the health care facility.

6. The Applicant has received a Certificate of Need from SHFDA, which constitutes an official government concurrence with the public need for the requested expansion of the existing hospice.

7. The subject property is located in the R-1-B zoning district and its use as health care facility for not more than 300 persons is a conforming use in such a district subject to special exception approval by the Board, contrary to ANC 3F's assertion that the Applicant's facility is a "non-conforming structure in an R-1-B neighborhood". The District of Columbia Generalized Land Use Map (May 1995) prepared by the D.C. Office of Planning and accompanying the District of Columbia Comprehensive Plan identifies the subject property as "institutional use."

8. The existing improvements on the subject property are substantially under-built with less than 50% of the allowable FAR and a similar percentage of the allowable lot occupancy represented in the existing structure on the subject property. The proposed addition of 2,077 square feet to a facility containing 133,661 square feet on 249,537 square feet of land area is a *de minimis* alteration of existing conditions.

9. The low-scale architectural profile of the proposed addition to the hospice, when combined with its distance from the nearest property boundaries and from the nearest residential neighbors across Upton Street, N.W., make it unlikely that the addition to the hospice will have any adverse impact on the neighborhood and none has been alleged by persons and parties opposing the application.

10. Other than a marginal potential increase in parking demand for visitors to the addition to the hospice, which the Applicant's parking consultant estimated to be four (4) parking spaces, the opponents of the application have asserted no objective basis to sustain a finding that the hospice addition will, in accordance with the general special exceptions standards of the Zoning Regulations set forth at § 3014.1, adversely affect the use of neighboring property. The Board finds that no adverse impact contemplated under wither § 219 or § 3014.1 is likely to occur as a result of the four-bed hospice addition.

11. Under Section 219.3 of the Zoning Regulations, the Board must be satisfied that the Applicant affords ". . . adequate, appropriately located and screened off-street parking to provide

for the needs of occupants, employees and visitors to the facility." Accordingly, the first, logical task for the Board is to determine what is "adequate parking" for this facility. Section 219.5 then requires the Board to consider whether the Applicant's facility, as modified in such way as to provide "adequate parking," has an adverse impact on the neighborhood because of "traffic, noise, [or] operations ..."

12. Based on the testimony of all parties, government agencies and persons appearing in this application, the Board believes that the seventy-five (75) parking spaces authorized in 1985 are plainly inadequate to satisfy the parking standard set forth in Section 219.3 of the Zoning Regulations, especially in view of the daily existing conditions on the site, the increase in the number of the Applicant's employees since 1985, the change in the nature of patient care at the facility which now involves more sub-acute and hospice care with correspondingly more medical and family visitors than long-term nursing care, and the reduction of fifty (50) unrestricted on-street parking spaces in the immediate vicinity of the facility since the Board's previous examination of parking issues.

13. The evidence presented establishes that at the times of peak utilization between 11:00 a.m. and 1:00 p.m., there are an average of 136 vehicles parked in the Applicant's existing parking lot, 61 in excess of the number authorized by this Board's 1985 order. In addition to operating outside of this Board's 1985 order, a potentially dangerous situation may have been created with the reported, occasional blockage of fire lanes and access for emergency vehicles.

14. The testimony of the Applicant's parking expert and the observations of the Office of Planning and the Department of Transportation confirm that unrestricted on-street parking is largely occupied during the most critical hours of the day. On average there are only eighteen (18) unrestricted parking spaces at peak hour, which are clearly insufficient to park the excess number of vehicles daily using the Applicant's lot. There was no evidence that the availability of residentially restricted parking is a problem for the community, in fact, to the contrary, the record supports the view that on-street parking is readily available for community residents.

15. The Board is inclined to concur with the conclusions of DDOT that an enlargement of the existing parking is essential to avoid the negative effects of overflow on neighboring streets, that the Applicant could through more aggressive management and monitoring of the parking lot achieve more efficient utilization

and that a ten percent (10%) reduction in the number of parking spaces to approximately 156 parking spaces is not an unreasonable goal.

16. Given the siting of the existing building, the Board believes that the proposed parking is in an appropriate location on the site. By expanding the paved parking area by 18,410 square feet (a 40% increase over existing conditions), the Applicant's plan efficiently adds 98 additional parking spaces (a 160% increase). The site, even after the proposed enlargement of the parking lot and the hospice addition, will be more than 50% greenspace. We note that the Applicant's parking lot design does away with the existing landscaped, center island and reduces the greenscape within the parking lot perimeter, both of which the Board deems to be significant detractions from existing conditions.

17. The Applicant proposes, in connection with the planned construction of an expanded parking lot, to install storm water management systems to control both water quantity and quality on the site, which when built was not required to have such systems. The Applicant's proposal goes well beyond what it is required to do by regulation with respect to storm water management. Thus, the proposed improvements represent an enhancement to the local environment and respond directly to the community's and ANC 3F's concerns about existing storm water run-off.

18. The Applicant's construction will necessarily have an impact on existing landscaping, and it may be true that the actual impact on certain trees may be greater than can be known with certainty at this time. However, the few mature trees within the zone of danger are of such an age that their replacement by smaller, and surely younger, specimens is inevitable within a few years in any event. The Applicant has been, in the opinion of the Board, a good steward of the landscape of the site and its proposed landscape budget appears adequate to maintain the quality and quantity of trees, shrubs and other plantings on the site as a screen to the parking lot. The placement of the expanded area of the parking lot does not diminish the effectiveness of the berm along Upton Street as a visual barrier.

19. The Board finds that the essential complaint of the adjoining neighbors is that their views from their homes will be changed by the Applicant's construction of an expanded parking lot and that the change is aesthetically not to their liking. The Board, while remaining sensitive to the need to encourage the retention of urban greenspace, is unwilling to grant to the neighboring community a "visual easement" that would prohibit an otherwise lawful alteration of property. The general standard for

special exception relief set out in Section 3104.1 cautions the Board to be alert to conditions which will "... affect adversely the use of neighboring property..." Neither ANC 3F nor any opposing witness made or alleged any connection between the Applicant's proposed alterations to the site and the diminished use of their property.

20. The Board does not believe that this application is an appropriate context in which to consider the implementation of the air quality planning objectives of Section 1403.5 of the D.C. Comprehensive Plan. This application is not about "air quality" nor have there been any allegations in the record that local "air quality" is imperiled by the enlargement of the parking lot in question. Moreover, this particular section of the Comprehensive Plan suggests that the District government encourage public transit usage "in connection with discretionary government approvals." Gladden v. D.C. Board of Zoning Adjustment, 659 A.2d 249, 255 (D.C. App. 1995) instructs the Board that in the case of special exceptions, "[t]he Board's discretion is limited to a determination whether the exception sought meets the requirement of the regulation." The Board does not have the ability to wander through the various regulations and policy objectives of the city unrelated to the particular zoning case before it and imposes conditions in its orders based upon extraneous considerations.

Decision. At a special public meeting conducted on December 17, 2002, the Board voted as follows: ___-___ to grant the application for a special exception pursuant to § 219 of the Zoning Regulations to construct a four-bed hospice addition to the existing health care facility in an R-1-B district and to enlarge the existing parking lot subject to certain conditions.

CONCLUSIONS OF LAW AND OPINION

The Board conclude that it has accorded ANC 3F the "great weight" to which it is entitled. The record reflects that ANC 3F opposed the application but failed in its resolution or in its testimony to propound any facts or to introduce any evidence that related to a rational basis to oppose the hospice addition other than its presumed contribution to the demand for parking at the facility. In the findings above, the Board has responded to each of the claims made by ANC 3F in opposition to this application.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception to construct a four-bed hospice addition and to enlarge the existing parking lot in accordance with the plans presented with the application. Accordingly, it is

ORDERED that this special exception application to erect a four (4) bed hospice addition to an existing health care facility and to enlarge the existing parking lot is **GRANTED;** provided that:

(1) the Applicant presents to the Board for its consideration a revised parking plan that limits the number of parking spaces to not more than 156, affords a landscaped island, running north-south through the middle of the proposed parking area which will have the effect of breaking up the expanse of the parking area, and conforms to the extent feasible to the perimeter boundaries of the proposed parking area;

(2) the Applicant identify a community liaision during the period of construction in order to ensure adequate information is shared in a timely manner with ANC 3F and neighboring residents;

(3) the Applicant adhere to the construction commitments affirmed by John Armentrout on the record of the public hearing on June 25, 2002 and also referred to in this decisional document at paragraph ___ above; and

(4) the Applicant will retain and consult with an arborist during construction activity near mature trees on the perimeter of the proposed parking lot.

VOTE: __-__-__ (_____, to approve; _____,to oppose)

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

Each concurring Board member approved the issuance of this order.

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TOW YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1, OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (2001). THIS ORDER IS CONDITIONAL UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.