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December 10, 2002

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VIA HAND DELIVERY
Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: Board of Zoning Adjustment Application 16836
The Washington Home

Dear Mr. Griffis:

Enclosed for filing please find the Proposed Findings of Fact and Conclusions of Law submitted on behalf of the Citizens Concerned About the Home's Expansion.

Residents of our community have asked me to thank you and the other Members of the Board for the time and attention you have given this matter over the past few months.

Very truly yours,

Jonathan P. Graham

BZA
Case No. 16836
Exhibit No. 117

Board of Zoning Adjustment
District of Columbia
CASE NO.16836
EXHIBIT NO.117

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In Re: **Application No. 16836** of The Washington Home d/b/a The Washington Home & Hospice of Washington for a special exception under section 219 of the District of Columbia Zoning Regulations, 11 DCMR, to (i) construct an addition to the existing 201-bed facility to add four additional hospice beds and (ii) to enlarge the existing 75 space parking lot to 173 spaces all at 3720 Upton St. N.W., Lot 818 in Square 1825.

Subject Property:

Lot 818, Square 1825
3720 Upton Street, N.W.

Citizens Concerned About the Home's Expansion

Jonathan P. Graham
Mark N. Bravin
725 Twelfth Street, N.W.
Washington, D.C. 20005

Dated: December 10, 2002

BZA Application No. 16836

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application No. 16836 of The Washington Home d/b/a The Washington Home & Hospice of Washington for a special exception under section 219 of the District of Columbia Zoning Regulations, 11 DCMR, to (i) construct an addition to the existing 201-bed facility to add four additional hospice beds and (ii) to enlarge the existing 75 space parking lot to 173 spaces all at 3720 Upton St. N.W., Lot 818 in Square 1825.

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED ON BEHALF OF THE CITIZENS CONCERNED ABOUT THE HOME'S EXPANSION

Hearing Dates: April 2, 2002, June 25, 2002, July 9, 2002, October 15, 2002.

Decision Date: December 15, 2002

FINDINGS OF FACT

A. Applicant's Lot and Surrounding Neighborhood

1. The Washington Home's ("TWH") lot is located in an R-1-B residential neighborhood surrounded by houses. TWH's lot is bordered by Upton Street to the North, Wisconsin Avenue to the West, the Sidwell Friends School and the Phoebe Hearst Elementary School to the South, and Tilden Street to the East. Thirty-eighth Street intersects Upton St. across from TWH.

2. Tilden and Upton Streets are filled with single family detached residences. Thirty-eighth Street across from the home is filled with single-family and semi-detached residences. The residences on all these streets were built between the 1920s and 1950s. A number of the residents of the area have lived there over 30 years and the attractiveness of the neighborhood has attracted a number of new residents in recent years.

3. TWH has leased a significant parcel of its land on the west or Wisconsin Avenue side of its property to the U.S. Post Office. That property contains a significant building and parking facilities and buffers TWH from Wisconsin Avenue.

4. The applicant's lot is sited within ANC 3F. The property was formerly sited in ANC 3C.

5. In connection with TWH's application to the Board, neighborhood residents formed a group named Citizens Concerned with the Home's Expansion ("CCHE") which has party status in this proceeding.

6. TWH, ANC 3F, and CCHE agree that TWH's grounds and landscaping are currently attractive and suitable for a health care facility operating under a special exception in an R-1-B zoned residential neighborhood.

B. History of Special Exceptions Granted to TWH

7. In 1985, TWH requested a special exception to demolish its then-existing facility and to build a 189-bed facility with a 116 space parking lot in the residential neighborhood.

8. The neighborhood and TWH were able to resolve most concerns about the building and landscaping in 1985, but disagreed about the appropriateness of building such a large parking facility on the lot.

9. Because they could not agree on the amount of parking that was appropriate, the matter was submitted to the Board and TWH and the neighborhood agreed that the Board's decision would be "final and binding on the parties and there will be no appeal thereof." Ex. 87; Oct. 15 Tr. 372-73 (Danzig).

10. This Board granted the applicant the request to build a 189-bed facility but permitted it to build a parking lot for 75 vehicles only.

11. In 1997, TWH applied for a special exception to add 12 beds to the facility.

12. In its formal Statement to the Board in September 1997, TWH stated that: "The current parking arrangement was the product of extensive community input. The most immediately affected neighbors are opposed to any change in the existing parking plan. Accordingly, the Home will maintain the existing number of parking spaces on the site and there are no changes to the layout associated with the request. The small increase in beds will not generate a demand for any additional parking spaces. There will be only three additional employees per shift and they are likely to travel to The Home via public transportation." Statement of Applicant, BZA Application No. 16263 (Sept. 3, 1997) at 6 (emphasis added).

13. Also in September 1997, the president of TWH, Ms. Sandra Long, provided a Statement to the Board in support of the application for 12 more beds that stated: "We have adequate, appropriately located and screened off-street parking to provide for our needs. The immediate neighbors have requested a retention of the current number of parking spaces in connection with this application. The facility will meet all applicable code and licensing requirements." Statement of Sandra Long at 2 (emphasis added).

C. The Ward 3 Plan

14. The Ward 3 Plan found at D.C.M.R. Title 10, Chapter 14, states that a major theme for Ward 3 is "[p]rotecting the Ward's residential neighborhoods" and notes that Ward 3's "most outstanding characteristic is its low density, stable residential neighborhoods." § 1400.2. Accordingly, "controlling redevelopment" is another major theme of the Ward 3 plan in order to preserve the strong residential character of the neighborhood and the quality of life therein to make the District more attractive to potential residents. § 1400.2(b).

15. One policy goal advanced in the Ward 3 plan is to "[d]iscourage encroachment of nonresidential uses into residential areas." § 1402.4(g).

16. Another policy goal of the Ward 3 plan is to improve air quality and thus to "[e]ncourage institutional and large corporate residents to promote public transit usage and discourage employee reliance on single-occupant vehicles; this should be a condition when possible in connection with discretionary governmental approvals." § 1403.5(a)(3).

17. Institutions that wish to expand in Ward 3 and act cooperatively with the neighborhoods in which they exist must keep the Ward 3 plan in mind.

D. TWH's Current Application, the ANC Resolutions, and the Hearings To Date

18. TWH has applied for a special exception to construct an addition to the existing 201-bed health care facility to accommodate an additional four beds and to enlarge its parking lot from 75 spaces to 173 spaces.

19. In September 2000, TWH asked ANC 3F to approve an addition of four beds but did not request it to act on any request for parking. Apr. 2 Tr. 78-79 (testimony of TWH president Lynn O'Connor). In July 2001, ANC 3F voted to approve the certificate of need alone; no specific proposal for construction of an addition or parking was before it. July 9 Tr. 292-94 (testimony of ANC Commissioner Kogan).

20. TWH presented its construction/addition and parking lot plans to ANC 3F on March 18, 2002 and June 17, 2002.

21. On June 17, 2002, ANC 3F unanimously voted, 7-0-0, to oppose the application.

22. On June 24, 2002 ANC 3C also voted, 6-0-1, to oppose the application.

23. On November 18, ANC 3F unanimously voted 7-0-0 to continue its opposition to the proposal to expand the parking lot, but withdrew its objection to the Washington Home's request for a four bed addition in the referenced application "so long as the approval of a four bed addition by the Board is not linked to changing the existing parking lot (defined as

the existing perimeter, shape, and height of the currently paved parking area including the existing islands as landscaped). The Resolution also recommends that the applicant be encouraged to improve the existing parking situation by: (1) restriping of spaces; (2) developing parking lot management procedures and controls that would utilize the parking lot more efficiently and improve the availability of parking spaces for Washington Home visitors and staff; and (3), in accordance with testimony presented by ANC 3F and DDOT and in conformance with the Ward 3 Comprehensive Plan (DCMR 1403.5), implementing a program to reduce demand for parking to include incentives and guidelines for increasing the use of mass transit and decreasing reliance on automobiles by visitors and staff. ANC 3F continues to adhere to its resolution of June 17, 2002, opposing the requested parking lot expansion and design." Nov. 30, 2002, ANC 3F Letter to BZA attaching Nov. 18, 2002 Resolution.

24. At the end of the June 25, 2002 hearing the Board decided to bifurcate the proceedings between the request to construct a small addition and to construct a significantly larger parking lot.

25. On July 9, 2002, the Board heard testimony and received evidence limited to the request to construct an addition.

26. On August 6, 2002, the Board decided to withhold its decision on the construction of an addition until after it had heard the remainder of the case.

27. On October 15, ANC 3F and CCHE presented their cases in opposition to the application. In addition, a number of neighbors and ANC 3C made statements in opposition to the application.

E. TWH's Failure to Comply with this Board's 1985 Order.

28. Applicant obtained a special exception in 1987 that limited it to 189 beds and 75 parking spaces.

29. In 1997 TWH obtained a special exception to add 12 beds and represented to the neighborhood and to the BZA that it needed no additional parking and that the additional employees it would hire would likely use public transportation to commute to work. The ANC and neighborhood did not oppose the application based on this representation.

30. Between 1985 and 2002, TWH increased the number of nurses it employed from 166 to 203 and its total number of employees to 298. *Compare* Ex. 13 at ¶ 15, (1985 Board Order) *with* Ex. 32 at 5 (noting employees currently employed.)

31. Without applying for a special exception or notifying the neighborhood or any city authorities, TWH has re-striped its parking lot to create at least 89 spaces, 14 more than permitted by the Board's 1985 Order. Only 3 of those spaces would even be considered "legal" by a parking consultant. June 25 Tr. 87 (Andres); Oct. 15 Tr. 274, 276 (Beelar); Ex. 83 at 5.

32. Moreover, TWH submitted to the Board in its application an "existing conditions plan," that does not accurately show how the site has been striped, but instead indicates that only 75 spaces are being used on the site today. Oct. 15 Tr. 271 (Beelar); Ex. 82 at 3 & 4.

33. Without applying for a special exception or notifying the neighborhood or any city authorities, TWH contends that it allows more than 130 cars to park in its 75-space permitted lot on a routine basis. *See* Ex. 32 (G/S Parking Analysis). TWH's neighbors count an average of 116 cars parked on the lot during peak periods. *See* Ex. 83. In any

event, the number of cars parked on the lot significantly exceeds those permitted by the Board's 1985 Order.

34. TWH operates its parking lot in violation of this Board's prior Order. TWH admits that it is operating in violation of this Board's 1985 Order. Apr. 2 Tr. 111 (O'Connor).

35. TWH allows cars to park in violation of the fire codes. Apr. 2 Tr. 89 (testimony of TWH president Lynn O'Connor).

36. TWH provides free parking to its employees and visitors. It wishes to provide additional free parking to its employees and visitors. Apr. 2 Tr. 109 (O'Connor).

37. TWH has no program to encourage public transportation use by its employees. Apr. 2 Tr. 71-73 (O'Connor).

38. Although TWH asserts it met with Sidwell Friends School administrators to discuss TWH's "expansion plans," Ex. 32 ¶ 17, it has never discussed methods of opening up or resolving its parking issues with Sidwell. Oct. 15 Tr. at 283-84 (B Beeler).

F. TWH's Disregard of Its Commitments to the Neighborhood.

39. In 1985, TWH agreed that it would be bound by the Board's Order on the number of allowable parking spaces. Ex. 87. It further agreed that the Board's Order would be considered final and binding and that it would not appeal it. *Id.*

40. This proceeding, only 17 years later, is effectively an appeal of the Board's 1985 Order.

41. TWH's refusal to obey the order over the last 17 years is a dramatic display of contempt for the process of negotiation and agreement with the neighborhood (not to mention contempt for the Board's authority).

42. As testimony from several neighbors who were involved in the 1985 negotiations and who still live in the neighborhood reveals, the neighborhood relied on TWH's good faith and has

been surprised and feels a sense of betrayed it to learn of TWH's flagrant disregard for its 1985 commitments. Tr. 368 (McLeish); 373 (Danzig); 388-89 (Frazier).

43. The neighborhood perception is that TWH believes that it can disregard its past misconduct, disregard its failure to live up to its agreements, and disregard this Board's 1985 Order. TWH has projected an attitude in discussions with neighbors that "we can do as we like" and adopt the most drastic solution imaginable to provide free parking for its employees. Oct. 15 Tr. 373-374 (Danzig).

44. Nor has TWH properly communicated and listened to the concerns of the residents of the area. This neighborhood has numerous people with expertise in the very matters at issue here. Yet such input was not sought. Oct. 15 Tr. 381 (Zuck).

45. Instead, TWH has attempted to project an impression of listening, but it has done just the opposite. Oct. 15 Tr. at 363 (W. Curtis); 382 (Zuck);

G. TWH's Parking Analysis

46. TWH hired a parking consultant, Gorove/Slade Associates, Inc., to provide a report and testimony to justify its request to add 98 spaces to the 75 the Board previously granted it.

47. Because the Gorove/Slade Parking Analysis ("G/S Parking Analysis") prepared January 15, 2002 was submitted by TWH as its primary justification for increasing the size of the parking lot so dramatically, its analysis and conclusions merit close scrutiny. Ex. 32.

48. The G/S Parking Analysis is an unconstrained demand parking analysis. It purports to measure total demand for parking at TWH, *i.e.*, how many cars associated with TWH would park in TWH's lot if there were no constraints at all on parking. Oct. 15 Tr. at 303 (Gay). Gorove/Slade was not hired to determine methods of reducing the need for parking at TWH, or analyzing parking configurations that would maximize the use of the space in

the existing parking lot, or analyzing methods by which TWH could gain control over its lot, or considering whether this number of spaces is appropriate in a residential neighborhood under the Ward 3 plan. TWH's plan is purely need driven and does not purport to accommodate the neighborhood and the Ward 3 plan in any way.

49. The G/S Parking Analysis concludes that 173 spaces is justified by adding up the number of cars at the facility at peak periods – an hour in the middle of the day on the busiest three days of the week. See Ex. 32 at 5-6, 9; June 25 Tr. at 106 (Mr. Andres describing numbers as coming from the "average high peak" period during the week). The analysis claims that an average of 136 cars park on the lot during these peak periods, that 17 cars parked on the street are assumed to be associated with TWH, that 4 additional spaces will be needed for the hospice addition, and that 16 are needed as a "circulation factor." Because these numbers total 173, the G/S Parking Analysis concludes this is the appropriate number of parking spaces.

50. As TWH's parking expert acknowledged, the G/S Parking Analysis would have arrived at the same total number of supposedly required spaces no matter what type of neighborhood TWH was located in. June 25 Tr. at 96 (Andres). The parking expert followed this methodology because in its experience "working with institutions in the District, it's been our experience that the institutions are usually I guess compelled to provide onsite parking." June 25 Tr. 96 (Andres). In this case, however, neither the District nor the neighborhood has ever asked TWH to provide additional parking.

51. Even assuming that simply adding up the demand for free parking created by an expanding institution in a residential neighborhood were the appropriate method of analysis, the individual components of the G/S Parking Analysis are subject to serious question.

52. First, the G/S Parking Analysis was based on data collected on three days in May 2001, more than a year and one-half ago. Ex. 32 at 5. That data was then incorporated into a report written nine months later, in January 2002. Manual parking counts were done that concluded that the three-day average for the number of cars parked on the lot was 136. Ex. 32 at 5. This year, however, from April to July 2002, several neighborhood volunteers spent a considerable amount of time at the site counting the cars parked there at peak hours on nine different days. Oct. 15 Tr. 274-75 (Beeler); Tr. 387 (Flank); Ex. 83 (Beelar chart), Ex. 110 (Flank Letter). The average number of cars parked on the lot during the peak hours of the peak days identified by TWH was only 116 cars, some 20 fewer than those counted a year earlier in the G/S Parking Analysis. Ex. 83; Oct. 15, Tr. 275 (Beelar). TWH has provided no explanation for this significant discrepancy in the number of cars parked in its lot during peak periods. The inconsistency in the data raises the question of whether it can be relied upon in determining the unconstrained demand for parking number.

53. Second, the G/S Parking Analysis assumes, without data, that 17 of the parking spaces on the street are being used by cars associated with TWH. See Ex. 32 at 6, 9; Tr. at 97 (Andres). It is an "estimate" only; no data was collected from street parkers about where they were going. *Id.* Moreover, counsel to TWH, conceded that even the figure of 17 cars was at "peak use." CCHE's expert noted that there was no backup for the number of 17. October 15 Tr. 303 (Gay).

54. Third, the G/S Parking Analysis stated that the proposed addition of 4 beds to the facility will "account for 6 additional car trips over the day with 4 new employees and approximately 2 additional visitors per day." Ex. 32 at 9. The G/S Parking Analysis also states that the increase in amount of services required for the additional 4 beds "will be

linearly proportional to the increase in beds." *Id.* Notwithstanding its expert's report, TWH through counsel asserted to the Board at the July 9, 2002 hearing that the four additional beds will not generate more employment although TWH conceded that additional visitors including medical professionals and family members would be attracted to the facility. July 9 Tr. 270-71.

55. Fourth, the circulation factor appears to be double counting given the "peak" period analysis used by TWH's parking expert. Oct. 15 Tr. 303 (Gray).

56. Fifth, not hired to do anything but count total demand. It did not break out the demand by type of user, i.e., visitor, doctor, administrative employee, nurse, etc., which is a way of achieving a better understanding of who is using and needs to use the parking facility. October 15 Tr. 304 (Gay).

57. TWH has claimed its lot is overcrowded because it has more employees that drive than can park in the lot. When the neighbors counted cars at the peak periods, however, they found that there were between 63 and 77 cars parked in the lot with TWH hang tags. Oct. 15 Tr. 387; Exhibit 110 (Flank Letter).

H. TWH Did Not Ask Its Experts to Conduct Critical Analyses that Would Have Assisted It, the Board, and the Neighborhood Accurately to Assess Need for Additional Parking in the Neighborhood.

58. TWH did not ask its parking experts to come up with any means of providing more parking other than simply calculating how many free parking spaces would be used if they were built. It did not collect or analyze the data that would have led to the conclusion that there are other ways of handling employee and visitor transit that do not involve paving over yet more green space.

59. TWH does not know how many visitors to its facility come by car and does not take any steps to track that data, June 25 Tr. at 198 (McGee), so it cannot say how much visitor parking is required. Nor has it actually counted the number of cars in its lot associated with its employees or subgroups of employees.

60. TWH did not ask its parking expert to determine how many visitors (as opposed to employees) were in the lot on the days it surveyed, June 25 Tr. 92, so it cannot say with precision where its demand for parking is coming from.

61. TWH did not ask its expert to determine how many cars with Zone 3 stickers were parked in its lot, and TWH itself does not know how many people with Zone 3 stickers park in its lot, June 25 Tr. 91 (Andres), 203 (McGee), even though such cars could be parked in the abundantly available Zone 3 parking a few feet from TWH.

62. TWH did not ask its parking expert to determine how many people used the lot less than two hours and thus could have used the abundant Zone 3 spaces; TWH itself does not know the answer to this basic inquiry. June 25 Tr. 93 (Andres); 203 (McGee). This calculation could have been done, but never was. *Id.* (Andres).

63. TWH did not ask its parking expert to determine, and does itself not know, how many people parked in the lot and walked over to Sidwell Friends School, the Post Office, or the many businesses on Wisconsin Ave. June 25 Tr. 93.

64. TWH did not ask its parking expert to investigate how many TWH employees are parking in the paid parking lot at 4200 Wisconsin Ave. June 25 Tr. at 94-95 (Andres).

65. TWH did not ask its parking expert to consider how many fewer parking spaces would be required if TWH could persuade additional employees to use public transit. June 25 Tr. 98,

99-100 (Andres). Doing this would have required "an in-depth survey of employee sensitivity." Id at 104.

66. TWH's parking expert was not asked to do a study on transit alternatives. June 25 Tr. at 100.

I. The Office of Planning Report and Testimony

67. On March 26, 2002, the Office of Planning submitted a memorandum supporting the addition to the facility and enlargement of the parking lot. Ex. 36. The basis for its conclusion as to parking was flawed.

68. As to the parking lot, the Office of Planning memorandum stated that "[t]he intent of the parking lot expansion is to alleviate the current condition of overflow parking into the surrounding neighborhood and to provide parking relief from staff and visitors." It went on to recite, verbatim and with no analysis, data from the G/S Parking Analysis.

69. The Office of Planning also stated that "OP supports the efforts being made to address the concerns of the ANC and the community. OP will issue a supplemental report after further conversations with the applicant and community." Ex. 36 at 7.

70. As the Office of Planning representative acknowledged at the hearing, the Office of Planning has never spoken to the resident of the area about their views. Oct. 15 Tr. 172. It did not ask any residents if they were concerned, as the OP report had suggested, with overflow parking in the neighborhood. *Id.* at 173. Nor was OP aware whether the residents preferred overflow parking to building a new parking lot. *Id.* at 173. Nor did OP ask the residents whether they considered the prospect of building a significantly larger parking lot more of an encroachment on their residential neighborhood than contending with the purported overflow parking. *Id.* at 174.

71. OP's representative also acknowledged that it did no independent analysis of the parking situation, but that it relied entirely on TWH's parking expert and upon DDOT.

72. No supplemental report was ever prepared. The Office of Planning had subsequent communications with TWH, but never spoke with any member of the community, the ANC, or CCHE. *Id.* at 132 (recounting TWH's attempt to provide a new parking plan to OP that had not been provided to any other government agency).

73. As to landscaping, the Office of Planning stated that the "residential community included suggestions for various types of shrubbery and landscape plantings for the site and the applicant has agreed to incorporate the community's suggestions into a corresponding landscape plan." Ex. 36 at 6. There is no such agreement to CCHE's knowledge.

J. DDOT's Report and Testimony

74. On March 12, 2002, the District Department of Transportation (DDOT") submitted a memorandum supporting the expansion of the parking lot to 173 spaces. Ex. 31. It submitted this report without having discussed the matter with the ANC. Tr. 186 (Bah). On June 25, 2002 it submitted a supplemental memorandum reducing its level of support by 17 spaces to 156 spaces. Ex. 56. It recommended that TWH implement a Transportation Demand Management plan, explore the use of Metrocheks, and provide shuttle bus service to the two close-by Metro stations. In addition, DDOT recommended that TWH develop a policy and allocate spaces for visitors only and monitor and strictly enforce parking controls to ensure only employees and visitors to the health care facility use the parking lot. Ex. 56 at 2. Although its decision to reduce the number of parking spaces it thought was appropriate was correct, it did not do the underlying analysis that would justify even 156 spaces.

75. First, DDOT relied for its numbers on the G/S Parking Analysis – its first report simply adopted that number. Compare Ex. 31 (DDOT) with 32 (G/S Parking Analysis). Its report does not reflect that any work was done other than pure observation that the lot was overcrowded. Tr. 178 (Bah). Its recommendation to reduce the number of spaces by 10%, from 173 spaces to 156 spaces was thus the application of the assumption that parking need could be reduced by 10% if a transportation management plan were put into effect applied against the unchallenged base need of 173 proposed by TWH. It did not work up any of the numbers on its own.

76. DDOT did not assess how many people with Zone 3 permits were parked on the lot instead of in the street where they are permitted to park. Nor did DDOT assess how many visitors to TWH were visiting for 2 hours or less and thus were entitled to park in Zone 3 spaces. Tr. 195 (Booker). Nor did TWH share its visitor logs with DDOT so DDOT could assess how many visitors were present for 2 hours or less. Oct. 15 Tr. 199 (Booker). DDOT's representative conceded that, according to the G/S Parking Analysis, 142 of 312 Zone 3 spaces were open in proximity to TWH at peak hours. Oct. 15 Tr. 195 (Booker).

77. Second, DDOT did not perform any traffic study in the neighborhood and did no traffic counts. Oct 15 Tr. 188-89.

K. TWH's Lack of Control Over Its Lot Means It Cannot Say with Certainty Who Parks On It, for What Reason, and with What Degree of Need.

78. The testimony at the hearing demonstrates that management of the parking lot is effectively non-existent. In the words of TWH's Director of Facilities Management, parking in the lot is "catch as catch can," first-come, first-served. June 25 Tr. 199 (McGee). The DDOT witness testified that TWH had a laissez-faire parking management plan and that anybody parks where they can. Oct. 15 Tr. 179 (Bah).

79. TWH has established no hierarchy of need for free parking, or means of rationing that parking, that would rationally satisfy the competing needs of its different constituencies – doctors, employees, patient visitors, and administrative visitors. Instead, its submission to the Board is explicitly based on the notion that anyone that might want to park at TWH should be given a free parking space regardless of the effect on the neighborhood.

80. As the testimony of TWH employees, experts, and neighbors showed, TWH does not effectively control its lot.

81. There is no gating on TWH's parking lot; anyone may drive in and park without consequence. Oct. 15 Tr. 281 (Beelar)

82. TWH is aware that its own employees and other visitors park in illegal spaces to get closer to build an entrance even at times when numerous legal spaces are available. June 25 Tr. 90 (Andres); Tr. 203 (McGee); Oct. 15 Tr. 387-88 (Flank); Ex. 96 (Wiss) at 1.

83. People who use the lot are not necessarily parking in order to do anything at TWH. Oct. 15 Tr. 281-282 (Beeler – describing parker in lot who then scurried off to Wisconsin Ave. commercial area).

84. Numerous cars park in the TWH parking lot that are not displaying TWH hang tags, Ex. 83, although each employee presumably has one. June 25 Tr. 204 (McGee).

85. TWH does not require visitors to state their vehicle tag numbers in its visitor log. June 25 Tr. 198 (McGee).

86. Without a hand tag or a method of making certainly that only signed-in visitors are parked in the lot, it is impossible to tell whether all the cars parked in the lot are associated with TWH.

87. TWH has reserved parking spots for the chair of the board, the-employee of month, and one resident doctor. June 25 Tr. 90-91 (Andres), Tr. 199, 200-01(McGee). The parking spot for the board chair and the employee of the month frequently go unused and are simply left vacant, protected by orange traffic cones, even when the rest of the lot is full. Oct. 15 Tr. 276-77 (Beeler); Ex. 82 at 6 (picture).

88. TWH has places a large storage box in its parking lot taking up space that could be used by three additional cars. Oct. 15 Tr. 277 (Beelar); Ex. 82 at 7 (picture).

89. TWH has frequently discussed but never implemented a plan to reserve spaces for visiting doctors. June 25 Tr. 199-200 (McGee).

90. TWH has no transportation management plan. Tr. 187 (Bah).

91. TWH routinely allows, and even directs, cars to park in the green space, on the grass, and on the tree roots. Oct. 15 Tr. 277-78; Ex. 83 at 8 & 9 (pictures). It permits such parking even when parking spaces are available on the lot and when unrestricted spaces are available on the street. Oct. 15 Tr. 291, 292 (Beelar).

92. TWH allows its employees to park in visitor parking spaces. Oct. 15 Tr. 280; Ex. 83 at 13 & 14 (pictures).

93. TWH allows its employees, including its administrators, to park directly in front of "no parking" signs. Oct. 15 Tr. 279-80; Ex. 83 at 10-12 (pictures).

94. TWH does not prevent people from parking in its lot while conducting other business in the area. Oct. 15 Tr. 281 (Beelar); Ex. 83 at 16 (picture).

95. TWH has no effective enforcement; it does nothing more than place notes on cars asking them not to park in the lot. Oct. 15 Tr. 388 (Flank); Apr. 2 Tr. 88, 119 (O'Connor); June 25 Tr. 204 (McGee).

96. A particularly vivid example of how lack of control of the lot leads to misuse is that of visitors who are visiting for 2 hours or less. TWH's visitor logs, Ex. 84, indicate that 78% of the visitors who sign in and out stay at the home less than 2 hours. October 15 Tr. 306-08. There is no reason to believe that this percentage would change if all of the visitors to TWH had signed in and out. This is significant because there is abundant close-by parking available to visitors who will occupy Zone 3 spaces for up to two hours. Yet TWH is not able to distinguish who these visitors are or to encourage them to park on the adjacent street spaces.

L. TWH Has Not Explored Alternatives to Expanding the Size of Its Parking Lot.

97. The gap in information and lack of control of the parking lot make it impossible to assess what TWH really needs in parking even if it were allowed to have anything it wanted in the midst of a residential neighborhood that is already besieged by institutions.

98. Nonetheless, several factual conclusions are evident from the gaps.

99. TWH has no transit plan for its employees despite a central location between two Metro stops and next to five bus lines (in contrast to employers like NIH cited by TWH's parking expert as comparison).

100. TWH has tried no strategies to persuade its employees to stop driving to work. Providing incentives for not driving and disincentives for driving are effective in reducing parking demand. October 15 Tr. 305 (Gay). For example, providing Metrochek programs alone can be expected to reduce the drive-alone percentage by 5-10%. October 15 Tr. 311 (Gay). Reducing the number of employees driving will inevitably reduce the number of parking spaces needed.

101. TWH submitted no evidence suggesting that it had seriously examined other means of providing close by parking – not in commercial lots and not in church parking lots.

102. TWH has not taken into account readily available sources of neighborhood parking.

103. TWH has not talked to Sidwell Friends School administrators about how they might collectively deal with parking issues. Tr. 283-284 (Beeler).

104. The president of TWH testified that free parking was needed most for low-income shift workers who may need their cars to get to second jobs. Apr. 2 Tr. 65 (O'Connor). The biggest employee shift begins at 7:00 a.m. Parking is available at that time. June 25 Tr. 94 (Andres). It is not until 8:00 when the administrative staff begins to arrive, that there is difficulty finding parking spaces. TWH does not charge any of its employees, much less its higher income employees, for parking.

105. TWH has no transit plan and provides no transit-oriented benefits for its employees.

106. TWH has no valet parking system. NIH uses a valet system. June 25 Tr. 108 (Andres).

107. TWH's parking expert was not asked to do a traffic analysis and concentrated only on a parking analysis. June 25 Tr. at 100, 104. He did not consider how many fewer parking spaces would be needed if an effective transit plan were in place. June 25 Tr. 100 (Andres).

108. TWH's parking expert was not aware of DDOT's emphasis on transit-oriented neighborhood planning. June 25 Tr. 103 (Andres).

M. TWH's Plan to Increase the Size of Its Parking Lot and Add Four More Beds Will Exacerbate an Existing Traffic Problem.

109. TWH is located next to two schools. The Sidwell Friends School and the Phoebe Hearst School are located respectively adjacent to and catty-corner to TWH on 37th Street. The Post Office is located on the other side of TWH on property that TWH leased to it. Thus, in this residential neighborhood, there are four significant traffic generating institutions

creating traffic pressure. This pressure is particularly high during the morning and afternoon school drop-off and pick-up times. Oct. 15 Tr. 300 (Gay). In addition, a block away is a significant commercial strip on Wisconsin Avenue. Finally, throughout the day, but especially at rush hour, many commuters cut through from Wisconsin to Reno Road on Upton Street, right in front of TWH. Tr. 218 (Kogan). Collectively, traffic in this residential area is already at crisis levels. Tr. 370-71 (McLeish); 384-85 (D. Curtis); 386 (Flank).

110. TWH's construction manager, Mr. Armentrout, conceded that there is essentially a traffic jam every morning and afternoon in the neighborhood. June 25 Tr. 192.

111. Common sense dictates that creating yet more parking in a parking lot in a neighborhood close to significant commercial and institutional buildings will simply free up more street parking which will attract additional traffic. Oct. 15 Tr. 209 (Bah); 301-02 (Gay).

112. At the hearing in this case, TWH and DDOT representatives asserted that to some extent the demand for parking at TWH was fixed because so many people are now parking illegally. This makes only a little sense. Obviously, illegal parkers will be happier when their parking is legalized. But, for example, once at least 17 street parkers are taken off the street, that creates 17 free spaces on the street which means many more than 17 more car trips into the neighborhood by other local workers and visitors to the area who will be incentivized by the existence of additional free parking in the neighborhood. Moreover, the illegally parkers are, by definition, not entitled to the free parking they are enjoying in the midst of a residential area, much less the right to further congest District streets.

113. As the Director of DDOT, Mr. Tangherlini, has stated, free parking is a significant incentive for people to drive their cars: "If you are giving someone $200 a month [worth of

free parking], talk about an incentive to drive your car." Washington Post, p.1, July 8, 2002. He has also commented that "We cannot provide all the parking that everyone wants. The more parking you build, the more they demand. Its classic road building 101 that you actually increase demand. . . . We have to have the courage to say to some extent to say, 'I'm sorry, but there is no more parking." Northwest Current, Oct. 9, 2002. As the head of the commuter choice program for the Federal Transit Administration, Mr. Bill Menczer, has said, "It's pretty apparent . . . if you pay someone to drive to work by giving them free parking, they'll drive to work." Washington Post, p.1, July 8, 2002.

N. TWH's Construction Plan

114. TWH has not yet set forth its construction plans in detail. TWH's construction manager, John Armentrout, was unable to provide the Board with details about how construction would proceed that would minimize disruption to the neighborhood. Mr. Armentrout testified that TWH does not have any completed or finished plans and does not have any contractor input into the project. June 25 Tr. 179, 188-89. Nor has any preliminary pricing been done on the project. June 25 Tr. 182. Mr. Armentrout was unclear about how many trucks and truck loads would be necessary, had not yet located a contractor with "small tandem trucks," and had not yet thought about the quantities of gravel and asphalt that would need to be removed. June 25 Tr. 184-85. He did testify that truck traffic would be the heaviest during the "demolition phases and paving phases." June 25 Tr. 181. As Chairman Griffis noted, Mr. Armentrout's "speculation on the number of [truck] trips" was basically useless to" the Board. June 25 Tr. 185.

115. Although TWH has pledged to put $100,000 toward landscaping, TWH has no clear plan of how that money will be spent or what it will buy other than "a lot of material." June 25 Tr. 183.

116. TWH also acknowledged that it is adjacent to two schools, Sidwell Friends and Phoebe Hearst, that create enormous amounts of traffic in the morning and afternoons, June 25 Tr. 192-92, but has presented no plan about how it would deal with the safety and traffic problems presented by that school traffic.

O. Aesthetic Factors Relevant to TWH's Application

117. In accordance with Section 3104.1 of the Board's Rules of Practice and Procedure, 11 D.C.M.R. § 3104.1 (2002), the Board must determine if the special exception requested by TWH will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of the neighboring properties.

118. The Board finds that its determination as to possible adverse effects on the use of the neighboring properties, in this case, must take into account aesthetic factors relevant to TWH's application. Further, the Board finds that those factors in this case include consideration of the impact on the neighboring residents of TWH's proposed 40 percent increase in its on-site parking lot, which will convert approximately 18,410 sq. ft. of green space into additional paved on-site parking, extending by as much as approximately 30 feet closer to Upton Street on the north, approximately 40 feet closer to cupola at the northeast corner of the property, and by as much as approximately 40 feet closer to 37th Street. Also relevant to the Board's determination is TWH's plan to destroy at least 51 trees and "not more than 100" shrubs, to remove and possibly transplant up to another 31 trees, and to replace some of the existing trees and shrubs that follow the flow of the landscape with

young, immature trees and shrubs. June 25 Tr. at 154-55, 169-70 (Liling Tien, TWH's Landscape Architect for the Project).

119. The Board also finds that its determination of possible adverse effects on the use of the neighboring properties in this case must give due weight to the agreement negotiated between TWH and its neighbors in 1985, which committed TWH to certain landscaping obligations as well as a continuing commitment to maintain the current open space on the property as landscaped area.

120. Finally, the Board finds that its determination of possible adverse effects on the use of the neighboring properties must give due weight to the determination by the Board in Application No. 14283, in which the Board authorized TWH to construct a parking lot limited to only 75 spaces, and subject to certain conditions, and to TWH's admitted failure to comply with the Board's Order in that case.

121. TWH acknowledges that its current "facility was developed with a careful regard for existing landscaping and the need to screen the bulk of the building and the parking area from the residential dwellings across Upton and 37th Streets. The 14 mature trees atop the berm running along the north–eastern corner of the site afford a park-like setting, complemented by the 112 other flowering and ornamental trees existing on the site." Ex. 4, TWH Application (Dec. 21, 2001) at 3. This park-like setting is depicted in the photographs submitted by TWH as part of its Application. Ex. 5 (photos numbered 1-9).

122. TWH further acknowledges that in considering this Application, the Board is required by applicable standards and regulations "to judge the use in terms of its impact on adjacent property." July 9 Tr. at 348-49.

123. The TWH's existing building and grounds were built following the Board's approval in 1985 of a special exception, allowing for the prior building to be demolished and a new building constructed to house a 189-bed hospice and health care facility. A further special exception was granted in 1997 allowing TWH to reconfigure its structure to accommodate 12 additional beds. Ex. 4, TWH Application (Dec. 21, 2001) at 1

124. The special exception was approved by the Board in 1985 on the basis of a written agreement, dated May 8, 1985, between TWH and a group of neighboring residents identified as "Citizens Affected by TWH's Construction" (CAHC). That Agreement reflected a negotiated understanding between TWH and CAHC with respect to all aspects of TWH's proposed construction plans, except for the issue of parking spaces. Ex. 87 (Letter to Jared I. Falek, Exec. Dir. of TWH (the "1985 Agreement")).

125. Aesthetics and landscaping on the grounds of TWH bordering Upton and 37th Streets were a major part of the understanding reflected in the 1985 Agreement. The 1985 Agreement, in turn, was an integral part of, and was set forth verbatim in, the Board's 1985 Decision. Ex. 13, BZA Decision on Application No. 14283 (Sept. 4, 1985) at 7.

126. As part of that understanding, TWH assured the neighboring residents that its new building would represent an improvement to the neighborhood in terms of aesthetics. TWH and CAHC specifically agreed on landscaping, construction and other kinds of aesthetic variables which were very important to the evolution of the facility. July 9 Tr. at 309-310 (Danzig).

127. The 1985 Agreement provided that "[b]y the completion of [construction], the open land shown on the final site plan approved by the BZA will not be dedicated to any uses incompatible with the objective of retaining open land as landscaped area." It also provided

for TWH to spend "at least $100,000 in capital expenditures (exclusive of regular maintenance and of architect and landscape planning fees) for landscape planting visible from 37th Street or Upton Street." Ex. 87, 1985 Agreement, paras. 3-4.

128. ANC 3C supported TWH's application in 1985 "predicated on the understanding reached between the applicant and its neighbors." The ANC took exception to the application on the parking issue. Noting that the community wanted fewer on-site parking spaces than proposed by the applicant, the ANC "agree[d] that parking should be reduced partly because of [the ANC's] concern with the aesthetics of the site and partly because the applicant has not demonstrated a need to double the number of existing parking spaces . . . ." Ex. 13, BZA Decision on Application No. 14283 (Sept. 4, 1985) at 7.

129. The issue of how many parking spaces should be authorized as part of the special exception was submitted to the Board, by agreement of the parties, for a final decision. TWH initially requested 116 spaces, but later filed a motion to modify its application to strengthen the aesthetics of the proposed site. Specifically, TWH's modified application eliminated 18 spaces along the northeastern portion of the parking area and replaced them with "additional landscaping [which] would provide a further setback of the parking area from 37th and Upton Streets while providing for more screening and retention of existing trees." Ex. 13, BZA Decision on Application No. 14283 (Sept. 4, 1985) at 7.

130. TWH's modified application sought approval for a total of 98 parking spaces. ANC 3C recommended 85 spaces, and CAHC recommended 75 spaces. Taking into account the needs of TWH, the concerns of the surrounding neighbors, the terms of the 1985 Agreement, and "accord[ing] the ANC the 'great weight' to which it is entitled," *see* D.C. Code Sec. 1-309.10(d)(3)(A) (2001) and 11 DCMR Sec. 3307.2 (1995), the Board granted

TWH's motion to modify (to which all parties had consented) but reduced the number of on-site parking spaces from the 116 originally requested by TWH to 75. Ex. 13, BZA Decision on Application No. 14283 (Sept. 4, 1985) at 7(para. 29), 11 (para. 35) and 12-13.

131. The Board's 1985 approval of the modified request for a special exception was expressly conditioned on TWH building its parking lot and installing landscaping in accordance with the revised site plan submitted to the Board (Exhibit No. 40 in that proceeding), and on TWH ensuring that the parking areas comply with all provisions of Article 74 of the Zoning Regulations. Ex. 13, BZA Decision on Application No. 14283 (Sept. 4, 1985) at 13.

132. According to City Councilmember-At-Large Phil Mendelson, who was in 1985 ANC Commissioner for ANC 3-F, "[t]he bargain struck in the course of the BZA process was that TWH would have a smaller parking lot than authorized in the Zoning Regulations. The desire for green space was paramount. I recall specific testimony where Ms. Ruth Dixon (former ANC 3F Chair, Upton Street resident, and 1986 candidate for City Council) and others made clear that even with extensive landscaping and berms, a larger parking lot was simply unacceptable." Ex. 108, Letter from Councilmember-At-Large Phil Mendelson (filed Nov. 26, 2002).

133. In connection with its 1997 application to the Board for approval for the additional 12 beds, in its formal Statement to the Board in September 1997, TWH stated that: "The current parking arrangement was the product of extensive community input. The most immediately affected neighbors are opposed to any change in the existing parking plan. Accordingly, the Home will maintain the existing number of parking spaces on the site and there are no changes to the layout associated with the request. The small increase in beds will not generate a demand for any additional parking spaces. There will be only three additional

employees per shift and they are likely to travel to The Home via public transportation." Statement of Applicant, BZA Application No. 16263 (Sept. 3, 1997) at 6 (emphasis added).

134. Also in September 1997, the president of TWH, Ms. Sandra Long, provided a Statement to the Board in support of the application for 12 more beds that stated: "We have adequate, appropriately located and screened off-street parking to provide for our needs. The immediate neighbors have requested a retention of the current number of parking spaces in connection with this application. The facility will meet all applicable code and licensing requirements." Statement of Sandra Long at 2 (emphasis added). At the same time, TWH represented that if parking proved to be inadequate, it would look at nearby commercial parking lots. That representation was incorporated in the ANC resolution at the time. July 9 Tr. at 313 (Danzig).

135. TWH's Application seeks to expand the existing 46,096 sq. ft. of paved parking and drives by 40 percent, or an additional 18,410 sq. ft. of paved parking and drives. Ex. 4, TWH Application (Dec. 21, 2001) at 2, 5, 8. Ms. Laurie Dickeson, TWH's Project Architect, with the firm of Amos Bailey Arnold Architects in Baltimore, Md., testified that these figures only cover the increase in "actual parking surface," not the increase in the "total coverage" of the lot. June 25 Tr. at 54. The purpose of the proposed additional paved parking area is to allow for an increase in authorized on-site parking by more than 130 percent, from 75 to 173 spaces. Ex. 4, TWH Application (Dec. 21, 2001) at 2.

136. The proposed expansion would extend the existing parking lot by expanding eastward, parallel to 37th Street, along a line that approximately touches the point closest to 37th Street at the southeast corner of TWH's parking lot, and by expanding northward, parallel

to Upton Street, along a line that approximately touches the point closest to Upton Street in the northwest corner of the existing parking lot. Ex. 17 (Site Plan).

137. Ms. Dickeson testified that the paved surface will be extended toward the existing tree line along Upton Street by an increasing amount proceeding east along the tree line. Although she stated she was not sure of the exact measure, Ms. Dickeson indicated that from the short rectangular outcropping near the northeast corner of the existing lot, as indicated by the dark line labeled N-S on the Site Plan, the paved area would extend by about 30 feet closer to the trees. June 25 Tr. at 71, 77.

138. The current parking lot, set at an angle to the building and surrounding streets, follows the natural grade of the property. Its curved outline causes it to blend into the landscape. Along Upton Street, it is hidden from view by a berm. A very generous setback minimizes its impact on the corner of 37th and Upton Streets. Extensive and varied landscaping within the lot and around the edges makes this seem more like a woodland setting than a parking lot. Even though this lot is exposed to the surrounding homes and streets, rather than tucked behind the building like most lots in this area, all of these factors make it relatively unobtrusive. Ex. 96 (Testimony of ANC 3F Commissioner Cathy Wiss) at 1.

139. Because the existing lot is not parallel to either Upton or 37th Streets, the proposed expansion would result in the greatest loss of green space in the northeast corner of TWH's property, in the area surrounding the cupola in the northeast corner of TWH's property. The proposed expansion would extend the existing lot, which currently is approximately 60 feet from the cupola, by about 40 feet. According to Ms. Dickeson, "[t]he closest point when we're done, it may be 20 feet, very approximately." June 25 Tr. at 60. However, other

testimony indicates that the closest point may be as little as 11 or 12 feet. Ex. 96 (Commissioner Wiss) at 2 and Picture # 2.

140. Ms. Dickeson explained that the proposed expansion will require some cutting into the berm along the Upton Street side as it approaches the north edge. June 25 Tr. at 62. This is shown next to the legend "Profile of Existing Berm to be Removed" in the Site Drawing dated 10/26/01, on the lower portion labeled "North-South Section At Edge of Parking (Looking West)." Ex. 4, tab 7 (TWH Application).

141. Ms. Liling Tien, employed by PELA Design, Inc. in Baltimore, Md., the Landscape Architect for the Applicant's project, testified that TWH's plan is to "remove" – destroy – 51 trees, and another 31 trees have been identified for possible removal and possible transplantation. However, Ms. Tien noted that the process of digging up those trees, and then treating, feeding and sheltering them, "can cause . . . [a] tremendous amount . . . of stress on the trees and it may not be cost-effective to transplant them." June 25 Tr. (Testimony of Liling Tien) at 156-57.

142. The D.C. Office of Planning submitted a report, dated March 26, 2002, which concluded that TWH's expansion plan "is a reasonable proposal and OP believes that the community concerns will be addressed by the applicant." The Board finds that the OP Report covers all of the required regulatory issues, but in a superficial manner that fails to provide adequate support for its conclusion.

143. In contrast to the existing landscaped parking, the TWH proposal would resemble a shopping center parking lot – roughly the size and shape of a football field. The proposed lot would obliterate trees and cover over large areas of green space with impervious surface, most noticeably for the neighborhood, the lawn rolling down toward the corner of

37th and Upton Streets. Because of the descending slope of the parking lot, it does not appear that the proposed landscaping would hide the fact that it would be there, especially when viewed from houses across Upton Street, which are on a rise, and from houses along 37th Street, where the proposed parking lot would be at or near street level. At street level along Upton Street, the proposed parking lot would be visible except where hidden by the berm along Upton Street, as shown in the north elevation of the site at Tab 7 of the Application. Ex. 96 (Testimony of Commissioner Wiss) at 1.

144. Many of the parking spaces in the proposed lot would be much closer to nearby properties than to TWH itself, making this design unduly intrusive to nearby residents, and potentially inconvenient to future users of the lot. Ex. 96 (Testimony of Commissioner Wiss) at 1.

145. With regard to the reduction in greenery, the plans show that 51 trees within and around the parking lot are slated to be destroyed. Others must be transplanted. Picture # 2 attached to Commissioner Wiss' written testimony shows the groves of crape myrtles and birches that would be removed and replaced with a rise crowned with asphalt and car bumpers. As for the tall trees that now frame the cupola, at the northeast corner of the property a 20" diameter maple on the right of the cupola is endangered by the construction, as is a 40" diam. poplar further along Upton Street. Construction activity within the critical root zones of these trees, including trenching for pipes or planting new shrubs and trees, could put these and other surrounding large trees at risk. Ex. 96 (Testimony of Commissioner Wiss) at 2.

146. The Board heard testimony from James Urban, a respected expert urban arboriculturalist and landscape designer with a specialty involving the issue of urban construction working

around trees, and planting trees in urban areas. Oct. 15 Tr. at 312-13. Mr. Urban was qualified as an expert before the Board. Oct. 15 Tr. at 312-354.

147. Mr. Urban noted that the TWH "site is currently very much a landscaped park setting, especially between the two street fronts and the parking. The landscape I think is best typified as essentially as a series of filters of plants that are widely spaced but whose net effect is screening of the parking lot without appearing to be a barrier. Oct. 15 Tr. at 315.

148. The overall effect of the current landscaping is to create "more of a scrim in a theatrical sense than it is a wall. And I think that is very important to giving you penetrations through the site and into the site without feeling the sense of the parking lot." *Id.*

149. TWH's plan severely compresses the landscape to, in places, less than half the existing space, especially along 37th Street. Replacing trees in a much smaller area with different drainage and the additional heat from the parking lot will "severely limit the ability to actually recreate the landscape that is there now." Oct. 15 Tr. at 324-25 (Urban). Moreover, because TWH proposes to replace the existing pieces of the landscape with small plants, there will be a 10-15 year period in which the landscape will look dramatically different. *Id.* at 325.

150. Mr. Urban reviewed TWH's tree inventory, submitted by PELA Designs to the Board on July 12, 2002, and found it to be "very deficient in terms of the kind of tree inventory [he] would either produce or want to present to a client." Oct. 15 Tr. at 315. He further testified that TWH's tree expert's testimony, "did not at all accurately represent the current thinking on tree preservation in terms of numerical calculations of critical root zones." *Id.* at 317.

151. This misunderstanding of what a tree needs to survive has serious consequences for the conclusions drawn. For example, Mr. Urban noted that the PELA tree impact report

"appears to suggest that all of the large existing trees that are on the property could be saved after the project is completed." But Mr. Urban found approximately six of the large existing trees would be "impacted," three to the point that it would be "very questionable as to whether they would actually be remaining within a reasonable period of time after construction." Oct. 15 Tr. at 316-19. The other three would require "special mitigation" during the construction. *Id.* at 319. TWH has presented no plan for special mitigation.

152. Mr. Urban also noted that the site plans prepared by TWH make it difficult to evaluate its landscaping and tree preservation proposals because there is no indication of how the contours on the site plan connect into the existing site. Oct. 15 Tr. at 321-22, 333. These inadequate site plans make it particularly difficult to determine what the planned size is of the proposed new retaining walls at the northeast portion of the proposed parking lot. *Id.* Thus, it is difficult to determine the impact on the trees. *Id.* at 322.

153. Mr. Urban prepared and presented to the Board a drawing that illustrates the impact of the proposed parking lot expansion on the health of the existing trees. Ex. 90. He identified the three large trees that he believed stood a good chance of not surviving.

154. Mr. Urban noted that TWH had a plan to spend $100,000 for planting and lighting, but testified that that would not cover even half of the real cost to implement TWH's plans for planting alone. He testified that this sum would probably buy the plant material, but pay for none of the soils and drainage issues. Oct. 15 Tr. at 323-24.

155. Mr. Urban testified that the proposed islands in the new parking lot are too small to allow mature plants to grow. Oct. 15 Tr. at 325-26.

156. Picture # 3 to Commissioner Wiss' testimony shows the stand of white pines along 37th Street. The proposed parking lot would go along the right side of this picture, very close to

the trees on the right. This poses a serious risk that the construction work will cut their roots and endanger them. In Picture # 3, the two trees on the right would be endangered and the grove behind them removed.

157. The Application proposes a berm for the 37th Street side of the parking lot, although TWH presented no witness testimony or other evidence describing it. Were the proposed berm to be built along 37th Street, it is highly likely that critical roots of some of the surrounding trees, as well as some trees nearer the cupola, would be compacted by fill placed on top of them. This action would threaten their health. Ex. 96 (Testimony of Commissioner Wiss) at 3 and Picture # 3. On the other hand, Mr. Urban testified that although the berm along 37th Street that is proposed to be created is shown in TWH's proposed site plan, see Ex. 4, tab 6 (TWH application), it is not shown in any of the detail drawings of the site. Oct. 15 Tr. at 323. It is simply not possible from this confused record to tell whether TWH does or does not propose a new berm on 37th Street.

158. Picture # 5 to Commissioner Wiss' testimony shows a grove of trees in the right center that, according to TWH's plan, would be removed and transplanted elsewhere. Picture # 6 shows white pines and maples in the southeast corner that would be taken out and discarded. In Picture # 7, taken from the terrace of TWH, only the magnolia in the foreground would remain. All the other trees behind it and the tall ones just beyond the cars would be removed. All of these plantings in small niches of the existing parking lot make it an unusually attractive place. The proposed parking lot would have no such niches. Ex. 96 (Testimony of Commissioner Wiss) at 6 and Pictures 5, 6 and 7.

159. Seven Armstrong maples and two dogwood trees in the long island in the middle of the current parking lot are slated for destruction. Those trees provide shade, as seen in Picture

8 to Commissioner Wiss' testimony, looking north. The island extends the canopy across the parking lot to give the impression of forest and continuous green space leading from the neighborhood up to TWH, while cars and asphalt are hidden underneath, as seen in Picture # 9 to Commissioner Wiss' testimony, looking southeast from the Upton Street entrance; and in Picture # 10, looking east from TWH's terrace. The trees in the island screen the view of TWH from the street, as seen in Picture # 11 looking west from 37th Street." Ex. 96 (Testimony of Commissioner Wiss) at 4 and Pictures 8-10.

160. In place of the existing island in the parking lot, the proposed parking lot has only a handful of trees dotting the ends of long rows of parking spaces. These lone sentinel trees would be evenly spaced, out of tune with the free-flowing natural landscape along the streets. Relegated to the ends of the lot, these trees would offer no relief from the large blacktop in the center of the lot. Ex. 96 (Testimony of Commissioner Wiss) at 4.

161. The Board finds that TWH's plan is inconsistent with the District's Comprehensive Plan for Ward 3, and in particular the Plan's primary environmental goals of "protection of [the ward's] healthful verdancy and encouragement of design solutions that promote both conservation and improvement of the ward's resources." 10 DCMR § 1403.3 (1995).

162. To protect the quality of the ward's land areas, the Ward 3 plan specifies that "[a]ll discretionary construction approvals should be conditioned on an affirmative answer to the question: does the proposed project provide a net gain for the ward environmentally?" 10 DCMR § 1403.7(b) (1995). The Board finds that the testimony submitted by the TWH on behalf of its Application fails to establish such a net gain would result from the proposed parking lot expansion.

163. In a "Petition on Behalf of Neighbors Concerned About the Expansion of the Washington Home," 91 individuals who live in close proximity to TWH have expressed their opposition to the proposed expansion of the parking lot. Those petitioners assert "that the expansion of the parking lot will destroy the current park-like setting which was the product of extensive negotiations and compromise between the neighborhood and [TWH] in 1985." Ex. 110.

164. The residents living directly across the street from TWH, on Upton Street to the north, and on 37th Street (including the corner of 37th and Tilden Streets) to the East, would suffer the greatest negative impact if the special exception were granted. For those residents, the current view from their homes would be transformed from the current park-like setting to a view in which the expanded parking lot is predominant.

165. Exhibits A, B and C to the Written Testimony of Mark N. Bravin, (filed Nov. 26, 2002) are photographs taken on October 22, 2002 from the front windows of the Bravin family residence, at 4019 37th Street, adjacent to TWH at its northeast corner. Those exhibits show the park-like setting, in which the existing trees on the site predominate the view from the first and second floors of the Bravin residence. Exhibit B indicates the eastern-most border of the existing lot. Exhibit C indicates the eastern-most border of the proposed expanded lot.

166. Mr. Bravin testified that the front door of his residence opens onto a view of the TWH's grounds across 37th Street. "We look out right now over an area that is very green. And while we see cars in the distance, we would [if TWH's Application is granted] see a wall and a parking lot when we open our front door every day and when we look out our front windows every day. So if this proposal is granted, we are going to be affected in our use and enjoyment of our property every day . . . ." Oct. 15 Tr. at 390-91.

167. Exhibit D to Mr. Bravin's testimony is a computer simulation depicting the view from the Bravin residence if TWH's application were granted. The predominant view is that of the cars parked in TWH's expanded parking lot, in place of the mature trees and extensive greenery which are evident in Exhibits A through C. The change in the view from the Bravin residence, as a consequence of the additional vehicles that will be parked in the expanded parking lot, is strikingly unpleasant.

168. The Board recognizes that Exhibit D is only an approximation of the impact that the proposed parking lot expansion would have on the Bravin family's view from the front of their residence. Nevertheless, the Board finds that it is a reasonable and credible depiction of the likely change in the landscape viewed from that perspective, if TWH's application were granted. Accordingly, the Board finds that TWH's Application, if approved, would tend to adversely affect the Bravin's use of their residence, which is a neighboring property adjacent to TWH.

169. Additional evidence indicates that the proposed parking lot expansion would have a similarly negative impact on the views from, and consequent use of, the residences of Jonathan Graham and Elizabeth Ulmer, 3643 Tilden (at the northeast corner of Tilden and 37th Streets); Wayne and Dina Curtis, 3685 Upton (at the northeast corner of Upton and 37th Streets); and Jonathan Zuck, 3701 Upton (at the northwest corner of Upton and 37th Streets), and residents all along the north side of Upton from 38th Street, east along Upton, and crossing 37th Street. Accordingly, the Board finds that TWH's Application, if approved, would tend to adversely affect the residents' use of those neighboring properties, which are also adjacent to TWH.

170. Mr. Joseph Handwerger, who resides at 3743 Upton adjacent to TWH, testified as a witness in opposition to TWH's Application. Mr. Handwerger is a registered architect in the District of Columbia, holds a Masters Degree in architecture and urban design, and served for three years on the National Capital Planning Commission. Oct. 15 Tr. 355. Mr. Handwerger submitted a scale drawing he prepared, depicting the view of the proposed parking lot from the upper floors of a residence across the street from TWH, utilizing approximately the same perspective as that shown in a drawing submitted by TWH in support of the Application. Exs. 85 and 16 (Handwerger) (TWH). Mr. Handwerger's drawing shows that the view into TWH's proposed expanded parking lot from the residences across Upton Street is not blocked by the berm, which is set back from the street on TWH's property. The Board finds that drawing to be a reasonable and credible depiction of the view from the residences directly across Upton Street from TWH.

171. Mr. Handwerger submitted two photographs at the hearing, one taken from the second floor of his residence, and the other taken from the sidewalk directly in front of his house. At sidewalk level, cars parked in the existing lot are partially visible; from the second floor vantage point the existing cars are partially obscured by the berm and the landscaping. Ex. 85.

172. In a post-hearing submission, Mr. Handwerger submitted a letter to the Board stating strong opposition to the proposed expansion of TWH's parking lot, in part, "because of the profound impact of the proposed massive parking lot on the views from my house -- in fact, from all the houses on the north side of Upton Street." Ex. 109 (letter filed Nov. 26, 2002 with two photographs).

173. Mr. Handwerger submitted a photograph, taken from the third floor of his residence, showing the parking lot after the leaves have fallen from the trees on TWH's property. A second photograph depicts the planting island in the middle of the present lot. As Mr. Handwerger testified, "with its large mature trees, [the island] does an effective job of breaking the impact of the lot on [his and his wife's] view. Under the proposed plan, this island would be eliminated. This would be an affront to the agreement made between the neighbors and TWH in 1985." Ex. 109. Mr. Handwerger testified in his letter to the Board that the impact of the proposed parking lot expansion, on the view from [his] home, "would be devastating."

174. Ms. Jane MacLeish, who also resides at 3743 Upton, adjacent to TWH, owns a landscape design and building company and has worked on "many large sites where earthmoving [and] tree care is part of the [project]." She was one of the neighbors involved in negotiations with TWH concerning the 1985 Agreement. Testifying in opposition to the Application, Ms. MacLeish explained that the neighborhood was concerned about the aesthetics of the parking lot and the landscaping. The plans that were developed "produc[ed] sort of [a] bucolic landscape that we felt would serve everyone, not only the neighbors but the people in TWH." Ms. MacLeish testified that the neighborhood would not otherwise have agreed to TWH's 189-bed facility but for the fact that the 1985 Agreement contemplated that the open land would be kept open. She also testified, on cross-examination, that TWH failed to consult with the neighborhood, prior to filing the Application, as required by the 1985 Agreement. Oct. 15 Tr. 366-68, 370. The Board finds that TWH's Application, if approved, would tend to adversely affect Joe Handwerger's and Jane MacLeish's use of their property.

175. Mr. Wayne Curtis, who resides at 3685 Upton, adjacent to TWH at its northeast corner, is in the real estate business. He develops real estate nationwide for Fannie Mae. He testified on direct examination that when he looks out the windows of his home today, he sees "a nice landscape. You really don't see much of the parking unless you go all the way to the third floor, but it's tolerable under current conditions. But under what is projected, it is not." On cross-examination, he clarified that the proposed expansion of the parking lot is going to be visible from the first floor of his residence. He expressed concern that it will harm the value of his home, and that "from a visual point of view, it is going to be horrendous." Oct. 15 Tr. at 364-65.

176. Ms. Dina Curtis, who also resides at 3685 Upton, testified that her family moved into the neighborhood because of the "beauty of the street." She further testified that the proposed parking lot expansion "will have a serious impact on [her family's] way of life in [the] neighborhood currently." Oct. 15 Tr. at 384. The Board finds that TWH's Application, if approved, would tend to adversely affect Wayne and Dina Curtis' use of their property.

177. Thomas and Martha Frazier, who have resided (intermittently) since 1946 at 3721 Upton, adjacent to TWH at reference point "BB" in Exs. 54 and 85, were also involved in negotiations with TWH concerning the 1985 Agreement. Mr. Frazier testified that the neighborhood committee (CAHC) "thought at that time that we had solved a good part of this problem and that we would never have to talk to [the BZA] again . . . . At that time, we came away with the very distinct understanding that there would be a continuation of the park land, dedication of the . . . landscaping. We thought we had solved that problem forever. I was very disappointed to see . . . that they intend very much to rob a good part of the park land to make a huge parking lot . . . ." Tr. 388-89. Mrs. Frazier testified that the

parking plan approved by the Board in 1985 resulted in TWH becoming "a beautiful place across the street from us." She further testified, "I really don't want to live across from 173 spaces . . . with retaining walls and the lovely sycamore trees not there. It just is . . . pretty bad to think about." Oct. 15 Tr. 397-98. The Board finds that TWH's application, if approved, would tend to adversely affect the Frazier's use of their property.

178. The Board rejects, as unsupported by the record, the assertion by TWH in its Application, that the proposed parking lot expansion "preserv[es] one of the important natural features of the site, the park-like setting with mature trees situated on berms that screen the parking lot from the closest residential neighbors." Ex. 4, TWH Application (Dec. 21, 2001) at 14. To the contrary, the Board finds that the proposed parking lot expansion would substantially impair the existing park-like setting and that the additional parking spaces would be readily visible from the adjacent residences to the north along Upton Street (from 38th Street past 37th Street) and to the east along 37th Street (from Upton to Tilden Streets).

179. The Ward 3 Plan contains significant guidance as to appropriate urban design goals within the Ward. Accordingly, "[l]and use and future development must be carefully controlled to protect the existing scale and low density character, and to enhance the maintenance and improvement of existing natural open spaces and other qualities of the ward." 10 DCMR § 1406.2(d). The urban design goal is to "promote the protection, enhancement, and enjoyment of the natural environs and to ensure that the artificial environment provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient." 10 DCMR § 1406.3. Therefore, the District's policy is to "protect and enhance the distinguishable physical qualities of Ward 3

neighborhoods" and "[r]espect natural features, and maintain and expand open spaces and parkland." 10 DCMR § 1406.4(b) & (c).

CONCLUSIONS OF LAW AND OPINION

F. TWH's Burden and this Board's Role in Special Exception Cases.

180. TWH has the burden of proof in this proceeding. 11 DCMR § 3324.2. Even if no evidence were presented in opposition to TWH's application, it would have the burden of proof. In this case, TWH has not met its burden of proof.

181. At the hearing, counsel for TWH argued that this Board has "extremely limited" discretion in special exception cases and that "the special exception lays out objective criteria which if met entitle the applicant to relief." Oct 15 Tr. 402 (emphasis added). TWH counsel also asserted that certain cases he cited stood for that proposition. *Id.* That proposition is not correct, is not alluded to the cases cited, and would in fact turn the special exception process upside-down -- into an entitlement as opposed to a condition of being allowed to do something not normally permissible.

182. As this Board well knows, a request for a special exception gives an applicant only a right to be heard as to why it should be allowed to do something it cannot do as a matter of right. The municipal regulations make quite clear that that Board is "authorized" – not required – to grant special exceptions "where, in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property." 11 DCMR § 3104.1 (emphases added). Thus, the Board is permitted to grant special exceptions when, in the exercise of its judgment, certain requirements have been met. It is not required to grant a special exception in any circumstance. In addition to the general

requirements that must be met under section 3104.1, specific conditions, not entitlements, must be met by applicants who want to construct particular kinds of facilities. In this case, for example, the applicant has cast its petition as a request under 11 DCMR § 219 as if it was seeking to build a new health care facility as opposed to attempting to build a new parking lot. Even if that were the correct designation – see more on this below – the applicant would have to meet the general requirement of causing no adverse effects on the neighborhood set forth in section 3104.1, as well as the specific requirements for a health care facility set forth in section 219.[1] There is no element of entitlement to anything from the perspective of a landowner attempting to obtain a special exception – there are only requirements that the Board has the obligation or discretion, as the case may be, to impose on the applicant landowner.

183. In exercising our judgment under 11 DCMR § 3104 with regard to what "will be in general harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps" we refer to the Ward 3 Plan. The Comprehensive Plan, of which the Ward 3 Plan is a part, is intended to "guide executive and legislative decisions on matters affecting the District and its citizens," to "guide private and public development," to "[m]aintain and enhance the natural and architectural assets of the District," and to "[a]ssist in the conservation, stabilization, and improvement of each neighborhood and community in the District." D.C. Code § 1-301.62(b).

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[1] As the Chairman commented during the hearing, the Board approves special exceptions only if (a) the application is in harmony with the zone plan and the zone map and (b) it does not tend to affect adversely the neighboring residents. Oct. 15 Tr. 327.

G. TWH's Application Attempts to Avoid the Special Exception Requirements for a Parking Lot by Making Application for a Special Exception for a Health Care Facility Even Though that Facility Was Long Ago Approved, Built, and Subject to this Board's Findings and Orders.

184. In this case, TWH has attempted to ignore regulations relevant to constructing a parking lot and framed its entire case as if it were about obtaining a special exception to build a new health care facility. In the ordinary case, a developer of a new health care facility would have to demonstrate that it would meet the requirements of 11 DCMR § 219, including that it had provided "adequate, appropriately located, off-street parking." 11 DCMR § 219.3.

185. In this case, the health care facility was built years ago and TWH already went through the process of obtaining the special exception under section 11 DCMR § 219 necessary to build it. During the process of negotiation with the neighborhood, in which TWH wanted to demolish an existing structure and construct a new, non-conforming structure in a residential area, it agreed to certain green space and landscaping requirements. It also agreed to live by the "final and binding" decisions of this Board as to the number of parking spaces it would obtain. Ex. 87; Oct. 15 Tr. 373 (Danzig). After going through a contested proceeding before the Board, it obtained 75 parking spaces. By definition, the Board determined at that time that 75 spaces were adequate and TWH accepted that decision as "final and binding." Ex. 87.

186. Now, only 17 years later, while attaching a massive parking request to a small construction addition, TWH is attempting to claim that 11 DCMR § 219.3 gives it a right or entitlement to add 98 new spaces to the 75 the Board granted it in 1985. Section 219.3, however, is not applicable. It is not a sword a developer may wield to force a neighborhood to accept parking for an already well-established and approved building. Section 219.3 is not a means for a building owner to come to the Board and claim an entitlement to build more

parking years after a building has been approved and constructed. If it were otherwise, building owners all over this city would be asserting the entitlement to build parking lots based on a revisit of the section of the Zoning Code special exception under which their property had been developed.

187. The only possible application of Section 219.3 to this case is to ensure that no new building construction proceed without adequate parking being present for that additional four-bed construction project. In this case, TWH and its experts have conceded that minimal additional parking, not 98 new spaces will be necessary to fulfill the demand flowing from the construction of the four-bed addition. If the Board were inclined to approve the four-bed addition, it would only do so with regard to the extra spaces needed to serve those four beds.

188. Here, the request to enlarge the parking lot request is the dog shaking the tail of the four-bed addition. Because the applicant is really requesting the right to build a new parking lot (here it intends to destroy the old one to construct a new one, see site plan and testimony of construction manager John Armentrout, June 25 Tr. 186), section 219 is not applicable. Instead, 11 DCMR § 213, which concerns the requirements attendant to the construction of parking lots in R-1-B districts is the appropriate section for the Board to consider.

189. TWH's application does not meet the requirements of section 213. As might be expected, the requirements for constructing a parking lot in the midst of an R-1-B zone are protective of the residential neighborhood (presumably this is why the applicant has tried to position the application as one under section 219).

190. First and most important, to be approved the parking lot would have to be contiguous to, or separated only by an alley from, a Commercial or Industrial District or located in its

entirety within 200 feet of an existing Commercial or Industrial district. 11 DCMR §§ 213.2, 213.3. Only when a residential area is close enough to such districts is it reasonable to expect that a parking lot could be established in that area as a special exception. This residential area, however, is not located close enough to a Commercial or Industrial district to permit the construction of the new parking lot envisaged by TWH.

191. Second, TWH has not established that "no dangerous or otherwise objectionable traffic conditions shall result from the establishment of the use" of its proposed new parking lot. 11 DCMR § 213.5. As the record shows, no traffic study has been presented by TWH and it therefore cannot meet this condition. In fact, the neighborhood in question is already besieged with traffic from TWH, the Post Office, and two adjacent schools and the testimony shows that traffic in the area is already at objectionable and dangerous levels.

192. Third, TWH has not shown that enlargement of the parking lot will not adversely affect the "present character and future development of the neighborhood." 11 DCMR § 213.5. To the contrary, the record demonstrates that the neighborhood is residential in character with a park-like setting. Little could be more disruptive of the neighborhood's character than paving over 1.5 acres of grass and trees.

193. Finally, the Board would have to submit the application to the D.C. Department of Public Works for review and report before it could take final action to approve such an application. 11 DCMR § 213.5.

H. TWH Has Not Met the Requirements of Section 219 to Construct a Parking Lot.

194. Even if this Board were willing to accept the proposition that the construction of a new parking lot at a pre-existing health care facility was properly evaluated by the requirements of 11 DCMR § 219, the Board would reject the application.

195. We note that the R-1 district "is designed to protect quiet residential areas now developed with one-family detached dwellings . . . ." 11 DCMR § 200.1. Such a "health care facility" – if a significantly expanded parking lot could be called such as applicant asserts – has a tough uphill climb to meet this intention when it is planning to pave over considerable green space and trees to build a new parking lot to gain an additional 98 parking spaces.

196. The difficulty of meeting its burden is made more so by 11 DCMR § 3104 requiring that the new expanded parking lot be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." Moreover, the Ward 3 Plan is plainly protective of residential neighborhoods from institutional encroachment, and prevents this Board from approving discretionary construction unless the proposed project has been shown to provide a net gain for the ward environmentally – which the Board has found is not the case here. Furthermore, section 219 prevents this Board from approving a special exception for a health care facility that has been found, as in this case, to tend to have an adverse effect on adjoining properties.

197. TWH has not made its case that it needs 173 spaces, or in fact, that it needs any particular number of additional spaces beyond the 75 spaces it accepted under this Board's final and binding decision in 1985. TWH did not ask its expert to perform the necessary tasks to establish need. Instead, TWH asked its expert to prepare an unconstrained demand analysis that counted only how many cars would use the site if parking were free and there were no restrictions on the use of the site. This is not an appropriate analysis for constructing a large parking lot in a residential district. To the contrary, it is incumbent upon such institutions to analyze their parking requirements based on actual minimum needs. In Ward

3, such an analysis must also take into account the environmental restrictions that limit institutional parking in-state in a R-1-B residential neighborhood.

198. TWH has no transit plan although it is located in the midst of a mass transit node. Although its parking expert claimed in a January 15, 2002 report that it would devise a transit plan, it apparently has not done so. Ex. 32 at 11.

199. TWH has taken no meaningful steps to minimize the number of its employees who drive to work and obtain free parking.

200. TWH does virtually nothing to effectively manage its parking lot. It is "catch as catch can," first-come, first-served. TWH does not gate its lots, it does not stop people from parking in its lot that are not associated with TWH, it does not compel its employees to stay our of visitor spaces, it allows parking in a hodge-podge, including on the grass by 37th Street, and it never tows violators.

201. In addition to considering these significant problems with the application, this Board must also give "great weight" to the views of ANC 3F and ANC 3C. D.C. Code § 1.309.10(d)(3)(A); 11 DCMR § 3012.6. Both ANC's are unanimously opposed to the expansion of TWH's parking lot. The views of ANC 3F and ANC 3C are well taken. Accordingly, it is not appropriate to approve the construction of the parking lot at this time.

I. Nor Has TWH Met the Requirements of Section 219 to Construct a Four-Bed Addition.

202. Before granting a special exception for construction of a 4-bed addition, the Board must consider whether TWH is able to meet the associated requirement that there be "adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility." DCMR § 219.3

203. The Board credits the opinion of TWH's parking expert to the extent that he asserts that additional parking spaces will be required by the addition of four beds to the facility.

204. Because TWH itself asserts that it does not have adequate parking for its existing number of beds, and because TWH's expert asserts that more spaces will be required for four additional beds, the Board cannot find that TWH meets the requirement that it provide "adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility."

205. This Board must also consider the Ward 3 Plan and its concern with institutional encroachment upon residential areas. The addition of beds, the associated construction,and the congested traffic in the area (which is proximate to two schools), will undoubtedly encroach on the residential character of the area. Accordingly, the Board cannot at this time approve the construction of an addition.

206. Furthermore, because TWH has not obeyed the previous Order of this Board with regard to limitations on the number of parking spaces, the Board is unwilling to grant its application to build yet more parking. The Board looks dimly at any applicant who has so dramatically flaunted the terms of a pertinent Board Order.

207. Finally, the Board is very uncomfortable with the proposition that an applicant to a special exception may negotiate a binding agreement with its neighbors and proceed through the Board process that results in a decision which the applicant and its neighbors have agreed will be final and binding, but then, years later, this Board is asked to disregard the prior agreement and decide the issues all over again.

E. TWH Has Not Recognized the Importance of Its Park-Like Setting to Maintaining the Residential Character of the Neighborhood.

208. As has been recited at length above, the natural setting that was negotiated between TWH and the neighbors was an important part of the neighbors agreement to let TWH proceed with construction of a new facility on the site.

209. The plan to pave over much of the green space and destroy a significant number of trees is not consistent with 11 DCMR §§ 3104, 201, 213, and 219. Nor is it consistent with the Ward 3 Plan and the desire stated in it of the District to maintain natural settings and verdant places in R-1-B neighborhoods.

F. Conditions for the Future.

210. Even if the Board were to grant permission to construct an addition to the facility and enlarge its parking lot, it would not do so until TWH met the following conditions:

211. Parking/Transit Conditions:

a. TWH shall renegotiate the 1985 Agreement with CCHE and employ good faith efforts to reach agreement on a new number of parking spaces before applying again to this Board for a special exception.

b. TWH will be required to engage the services of a transportation consultant who can advise TWH on methods of reducing the demand for parking associated with it.

c. TWH shall devise a employee transit plan designed to reduce the number of its employees who drive to work by at least ten percent (e.g., encouraging carpooling, restricting of the lot to those working at and visiting the Home, using transit subsidies, and instituting shuttle service from the Home to Metro).

d. TWH shall devise a plan to encourage appropriate employees and visitors to utilize the available unrestricted and restricted parking that is available in the neighborhood at peak hours.

e. To the extent we permit adding spaces consistent with the existing footprint of the parking lot, TWH may restripe its existing lot only to accommodate those extra spaces.

f. TWH will be required to valet or tandem park enough cars so that the existing footprint of the lot is not enlarged;

g. TWH will be required to control access to its parking lot by gating or guarding it during weekdays from 7:00 a.m. until 3:00 p.m.

212. Landscaping Conditions:

h. TWH shall be required to maintain the existing footprint of the parking lot.

i. TWH shall be required to spend $250,000 on landscaping including tree and shrub material, and in properly handling soils and drainage issues that arise (and not including the cost of lighting which shall be a separate expense);

j. TWH shall landscape the property to be as consistent as possible with the current landscaping goals and design.

k. TWH shall retain the services of a competent urban arboriculturist to advise it on how best to engage in construction near the existing trees and shrubs, and how best to preserve, move, store, and replant the trees to be replanted.

213. Construction Conditions:

l. The construction site plans will conform to those presented to the Board in this course of this proceeding as modified by the Board's order on parking.

m. TWH will not permit construction to begin before 7:30 a.m. and construction will not continue after 5:00 p.m. Construction shall not take place on Saturdays, Sundays, or holidays.

n. TWH will ensure that the contractor will prevent access or egress by construction equipment from the site from 7:30 a.m. until 9:15 a.m. and from 2:30 p.m. until 3:30 p.m. in order to help ensure the safety of the children attending the two nearby schools.

o. TWH will require the contractor to post flagmen on Upton and 37th Street to guide traffic whenever construction trucks are entering or exiting the premises.

p. TWH will provide on-site temporary parking for construction workers and equipment.

q. At the end of each workday, the construction site will be clear of litter, construction materials, machinery and other unsightly objects. Under no condition will construction vehicles (including trailers) be parked on the street overnight.

r. The Home will appoint an individual to work with the ANC and CCHE to alleviate any concerns that may arise during the course of the construction and will act in good faith to alleviate those concerns and compel the construction contractor to act to alleviate those concerns.

214. Overall:

s. In addition to the specific conditions set forth above, TWH shall be required to meet the commitments TWH made in its application and during the course of the hearing through its fact and expert witnesses and counsel with regard to site

planning, parking lot management, construction, lighting, storm water management, and landscaping.

Accordingly, it is hereby ORDERED that TWH's application for a special exception to construct a parking lot is denied, and

It is also hereby ORDERED that TWH's application for a special exception to construct a four-bed addition to its facility is DENIED.

VOTE:

BY ORDER OF THE D.C. BOARD OF ZONING