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December 11, 2002

HAND-DELIVERED

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

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

Dear Mr. Griffis:

This letter is written in furtherance of my objection, dated December 3, 2002, that materials not requested by the Board have been submitted for the record by opponents to the above-referenced application. It came to my attention yesterday when I examined the case file that additional materials beyond those mentioned in my prior letter have been submitted to the Board. Specifically, there are two letters from Barbara Behler, both dated November 24, 2002, and identified as Exhibit Nos. 110 and 111; a letter and photograph from Joseph Handwerger, identified as Exhibit No. 109; and a letter from Wayne and Dina Curtis, identified as Exhibit No. 107. More significant to my objection is the fact that these materials were not served on the Applicant, unlike the prior submissions, but have appeared in the case file without notice to me.

As argued in my prior letter there is no basis under the Board's Rules of Practice and Procedure or the instructions contained in the October 15, 2002 transcript for the admission of these particular materials. Moreover, the very fact that these most recent materials were not properly served should be a sufficient basis for their disqualification. The prejudice to the Applicant is obvious, as there is no opportunity to cross-examine the witnesses regarding their assertions or to comment on the submissions since the Applicant's Proposed Findings of Fact and Conclusions of Law were due to the Board on December 10, 2002, the same day on which the surreptitious filings were discovered.

BZA
Case No. 16836
Exhibit No. 120

Board of Zoning Adjustment
District of Columbia
CASE NO.16836
EXHIBIT NO.120

In an effort to abbreviate the potentially redundant testimony of numerous opposing witnesses at the October 15, 2002 hearing, the Board permitted the post-hearing submission of written testimony by certain witnesses, presumably to give them an opportunity to provide a full statement of what they intended to say at the hearing.[1] From my review of these materials, it is apparent what the Board has received instead is commentary and rebuttal information directed to the closing statement of the Applicant. In particular, you should note the submission of Mark N. Bravin which is expressly dedicated to respond to closing argument by the undersigned; therefore, it clearly could not have been testimony he intended to give at the time of the hearing. It is apparent that the written submission and the attached photographs (attested as having been taken on October 26, 2002) were prepared subsequent to the hearing and go beyond the scope of the abbreviated testimony offered by Mr. Bravin. His submission should be excluded from the record.

In a different way, Ms. Behler offers additional written testimony directed not at the Applicant, but at the testimony offered by a witness in support of the application, Mr. Henry Guyot. Whereas Mr. Bravin may arguably have truncated his oral testimony at the hearing, Ms. Behler testified at length in thirty pages of transcript (Tr. 264-293) and her testimony followed that offer by Mr. Guyot. Yet, she did not respond to him or his petition at that time, but now attempts to undercut the significance of that petition by offering untested statements for the record. Ms. Behler's entire supplemental testimony should also be excluded.

As well-intentioned as the Board decision may have been, the abuse by the persons opposing this application leads me to believe that the Board erred in affording an opportunity to supplement oral testimony without a clear delineation of the procedural limits on the scope of such testimony and the persons entitled to make it.

For all of the foregoing reasons, we urge the Board to exclude Exhibits 107, 109, 110 and 111, and to re-examine all other post-

[1]Unfortunately, the Board failed to specify at the hearing which witnesses the offer extended to and this *carte blanche* has been abused.

hearing submissions by witnesses and others referred to in my December 3, 2002 letter for potential exclusion.

Respectfully submitted,

George R. Keys, Jr.

cc: Jonathan P. Graham, Esq.
Advisory Neighborhood Commission 3F