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September 30, 2003

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Geoffrey Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 Fourth Street, N.W. – Room 210 South
Washington, D.C. 20001

Re: BZA App. No. 16836 – The Washington Home

Dear Mr. Griffis:

This response is submitted on behalf of the Citizens Concerned with the Home's Expansion ("CCHE"). We respectfully request that the BZA reject the proposed revised parking lot expansion plan ("Revised Plan") submitted by The Washington Home ("TWH") on September 23, 2003.

Contrary to promises made by TWH to the BZA during hearings on this Application, and to ANC-3 at a public meeting, TWH developed the Revised Plan ***without*** consulting CCHE. Despite numerous attempts by CCHE representatives to open a dialogue with TWH, or to elicit details about TWH's intentions, during the nine months after the BZA closed the record and issued its provisional order on December 17, 2002, TWH excluded the community from any involvement whatsoever in its planning process. The Revised Plan was "unveiled" for the first time at a meeting at TWH on September 18, 2003 to which a small group of ANC and CCHE representatives were invited. TWH's attorney presented the Revised Plan at that meeting as a *fait accompli,* developed with input from the District Government and TWH's governing Board, but without community input. In response to serious concerns about the Revised Plan, expressed by the ANC and CCHE representatives, TWH's attorney indicated that there was "no time" to make changes because the deadline imposed by the BZA for submitting the Revised Plan was less than three full business days away, and no changes that involve spending more money could be accepted without approval from its own Board, which only meets from time to time.

The Members of the BZA who voted to authorize 130 parking spaces at TWH did so as a compromise, and with conditions and instructions that made it quite clear what it

BZA
Case No. 16836
Exhibit No. 130

expected of TWH. The Revised Plan is not what it expected. We ask the BZA to reject the Revised Plan for four principal reasons.

1. **Though Directed by the BZA to Develop a Plan for 130 Parking Spaces, the Revised Plan is a Transparent Effort to Permit at Least 173 Cars to Park. It Accomplishes This by Proposing the Same Amount of Paved Surface for 130 cars as it Previously Proposed for 173 Spaces.**

TWH's most recent proposal must be read against the backdrop of its fifteen year evasion of the BZA's explicit restriction on its parking. In 1985, after a contested hearing before this body, the BZA permitted TWH to undertake a complete reconstruction of its facility only on condition that it confine itself to parking 75 cars on the premises. *See* TWH's Application, Ex. 13 (Final Order in Case No. 14283, Sept. 4, 1985) at 13. In the present proceeding the CCHE demonstrated that it routinely parks more than 130 cars on its paved lot in violation of the BZA order and of the fire code. TWH conceded this. Apr. 2 Tr. 89, 111 (testimony of TWH president Lynn O'Connor); *see also* TWH's Application at 9.

First, TWH accomplished this by striping additional spaces after the lot was built. Though its submission to the BZA declared there were only 75 spaces, the CCHE demonstrated and TWH was forced to acknowledge that there were 89 marked spaces. *Compare* TWH's Application at 2 ("The proposed site plan adds 18,410 square feet to the parking area and increases on-site parking from 75 to 173 spaces.") *with* Testimony of Sharon Flank, Oct. 15, 2002 Tr. at 387:17-19 ("And I was probably the first person to say 'Wait. There aren't 75.' I counted it over and over again. There were 89 spaces there.").

Second, TWH utilized the lot without reference to striping, confining its parking only by the available amount of paved space.

Third, when it requested authorization for expansion from this board, TWH routinely misrepresented its parking patterns and requirements. In 1997, for example, TWH applied for a special exception to add 12 beds to the facility. 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.***

TWH's then President, Ms. Sandra Long, testified to the Board in support of the application for 12 more beds that:

> ***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.

September 1997 Statement of Sandra Long at 2 (emphasis added). TWH's Application was approved. Then, 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 Member Kogan).

Against the backdrop of this misconduct and misleading submissions, TWH was instructed to submit a plan that limited its parking to 130 spaces, not 173 spaces as originally proposed. Member Etherly stated the expectation of the BZA that TWH would "***reduc[e] the increase in paved or impervious surfaces.***" This did not occur. Instead, TWH's "revised" proposal disingenuously requests the same 63,916 square feet of paved surface that it requested in its original submission.

Put another way, in its original Application, 18,410 square feet of additional blacktop was represented by TWH as necessary to accommodate the addition of 98 new parking spaces. In its Revised Plan that same amount of paving is represented as necessary to accommodate the addition of 55 new parking spaces. This plan should be rejected with an explicit direction, particularly in light of TWH's frequent and acknowledged violation of previous BZA orders, that the BZA will approve an expansion of TWH's lot only to the extent required to accommodate 55 new spaces.[1]

2. The Process By Which TWH Has Developed and Presented Its Revised Plan for BZA Consideration After the Close of the Hearing is Legally Deficient.

The BZA and CCHE devoted a great deal of time and attention to the public hearings on TWH's earlier proposals, at considerable financial cost to the neighbors for expert witnesses, copying, etc. When the BZA gave its provisional approval to the Application for a special exception in this case, it did so on the condition that TWH consult with the community and develop a revised site plan that addresses each of the deficiencies

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[1] We note that the Revised Plan does not mention parking on the sides of the service road that enters TWH's property from 37th Street across from Tilden Street. The south side of the service road is currently striped for parking, and cars routinely park there. While Drawing No. C-05 submitted by TWH with its Revised Plan indicates "No Parking Any Time" for the service road, TWH's Preliminary Landscape Plan (the color drawing submitted with the Revised Plan) clearly shows 8 parking spaces on the service road. If those 8 spaces are included in the 130 authorized by the BZA – and they should be – that would reduce even further the need to expand TWH's paved parking lot.

identified by the BZA during the hearings and as noted in the Board's Order of December 17, 2002. TWH has not done this.

The BZA's acceptance of the Revised Plan under the present circumstances would result in an unlawful denial of *due process* rights to CCHE and the affected community members. In so doing, it would violate the due process requirements of D.C. Code § 2-509(a) and (b),[2] and the applicable zoning regulation, 11 DCMR § 3117.12.[3]

3. The New Proposed Parking Configuration is Inefficient and Would Result In Excessive Paving Over of Green Space Without Justification.

In its original Application, TWH stated that it was applying for special exception relief to "enlarge the existing 75-space parking lot by adding 18,410 square feet to the parking area . . . ." Application, p.2. The Revised Plan states that the "Parking Layout is little changed from the area proposed for the 173-space parking lot configuration originally proposed by the Applicant" and contains 63,916 square feet of paved surface. In other words, according to TWH's figures, its original plan would have enlarged the paved surface of 45,506 square feet by at least 18,410 square feet – a 40 percent increase – in order to accommodate an additional 98 parking spaces. The BZA, however, rejected the proposed 173-space lot and authorized only 130 spaces, an increase of only 55 new parking spaces and a reduction of 56 percent in TWH's requested expansion of its on-site parking. TWH's revised parking layout should reflect a similar 56 percent cut-back. Thus, instead of adding 18,410 square feet of paved parking, it should, as Member Etherly stated, ***"reduc[e] the increase in paved or impervious surfaces."*** Nonetheless, the parking layout of the Revised Plan remains at 63,916 square feet. This reveals an excessive expansion of the parking lot, moving even further in the direction of the residences on 37th Street, without sufficient justification.

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[2] D.C. Code § 2-509(a) provides as follows: "In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the Mayor or the agency determines that the issues cannot be fully stated in advance of the hearing, or ***if subsequent amendment of the issues is necessary***, they shall be fully stated as soon as practicable, and ***opportunity shall be afforded all parties to present evidence and argument with respect thereto.***" Further, D.C. Code § 2-509(b) provides in relevant part: "Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

[3] The BZA, pursuant to 11 DCMR § 3117.12, is authorized at the end of the hearing to close the record and then to vote at that time either to approve or deny an application. Nothing in that provision, however, authorizes the BZA to close the record, and then to instruct the Applicant to submit a revised site plan – essentially a new Application – as it has done in this case, and proceed to adjudicate the Revised Plan without the benefit of oral testimony, cross-examination of witnesses, and the submission of rebuttal witnesses.

The Revised Plan proposes a highly inefficient use of the expanded pavement. TWH's Application proposed the use of angled parking spaces, which allows for a denser and more efficient use of paved areas. We have attached as Exhibit 1 a copy of the proposed site plan submitted by TWH with Exhibit 54 to the Application, which shows that with angled parking spaces, the proposed expansion would accommodate 173 cars. Dividing the area of the proposed expanded pavement (63,916 square feet) by 173 cars yields 369 square feet of paved surface per parked vehicle. In the Revised Plan, however, TWH has substituted 90 degree parking, which results in a less dense and less efficient use of paved area – 130 cars are proposed to park in the same area previously designed for 173 cars. We have attached as Exhibit 2 a copy of the "reconfigured lot" as included in TWH's Revised Plan.[4] The reconfiguration utilizes 492 square feet – 33-1/3 percent more paved area per parked vehicle.[5]

4. The Proposed Extension of Paved Parking Even Closer to 37th Street, Without Adequate Screening, Violates the BZA's Instructions and is Contrary to Law.

The BZA's December 2002 Order provisionally allowed 130 parking spaces, rather than the 173 reflected in the plan submitted by TWH with its Application, but only if TWH redesigned its plan to provide for a commensurately smaller paved surface, with adequate screening to hide the parked cars from view by the surrounding residences, and passersby, and in various other ways "specifically addressed the concerns of this board in terms of design and design features that [the Members] have found . . . are not in the plan as currently shown." Dec. 2 Tr. at 30:25-31:5. On the final day of hearings on TWH's Application, Member Zaidain stated that the Revised Plan must "find that balance between protecting the neighbors and accommodating [TWH's] operation . . ." *Id.* at 17:16-18. Further, he explained: "If you look at the zoning for the special exception, the big issue was adequately screened parking spaces. . . And . . . screening [im]plies landscaping, making sure that it softens the visual impact and that's common in most zoning codes." *Id.* at 23:17-22. Member Etherly, who moved for provisional approval of TWH's Application subject to the BZA's review and approval of the Revised Plan, expressed his concern that "***preservation of the green space . . . is***

[4] We have color-coded the exhibit to show the difference between the paved areas in the Revised Plan as compared with the plan submitted with the Application.

[5] According to the Revised Plan, the existing island inside TWH's parking lot will be removed and replaced with a few small islands at the end of parking rows and a long thin island between two of the rows. The long thin island will house a bioretention-infiltration field as recently mandated by the D.C. Department of Environmental Services. Based on the drawings and data provided by TWH, the amount of green space to be installed inside the parking lot, as compared to the amount of green space in the current lot, does not justify the need for increasing the footprint of the paved area.

critical here and then, of course, reduction . . . ***reducing the increase in paved or impervious surfaces*** . . . ." *Id.* at 42:1-5 (emphasis added).

Referring to the BZA's eventual consideration of TWH's Revised Plan, Member Etherly urged that the impact on the landscaping and the "park like setting of the property" should be taken into consideration by the board before final approval is granted. *Id.* at 55:17. Member May elaborated that ***"once you're talking about fewer parking spaces, you're talking about greater flexibility and designing this parking lot in a way that preserves most, if not all of that park-like setting***." *Id.* at 21:7-10 (emphasis added). Chairman Griffis also supported this view, indicating that the instructions to TWH for redesigning its site plan should reflect the testimony of CCHE's expert James Urban that ***the reconfigured lot should employ "scrim screening . . . [not] a wall of trees but . . . layers of trees [of various heights and set back at various distances] that established that screening in a park-like setting***." *Id.* at 28:8-13 (emphasis added).

The Revised Plan does not incorporate these requirements on the 37th Street side of TWH's property. Not only does the Revised Plan fail in this respect to meet the requirements of the BZA's December 2002 Order, it is not in compliance with District of Columbia zoning regulations governing parking lots located in residential neighborhoods zoned R-1-B. Despite strong objections elicited in hearing testimony and in a post-hearing written submission by the neighbors residing closest to the 37th Street side of TWH's property, the Revised Plan contemplates expanding the easternmost edge of the parking lot even further, another ten feet, to within 50 feet of the curb along 37th Street.[6]

Contrary to the representations made by TWH in its application to the BZA, the Revised Plan destroys the "park-like setting" along 37th Street and it utterly fails to "create a substantial green barrier screening the parking area from street-level viewers and nearby residences" along 37th Street." *See* Application, p. 3. This is a clear violation of the zoning regulation at 11 DCMR § 2303.2 – Parking Lots, which provides as follows:

> **In addition to the requirements of § 2303.1, a parking lot located in an R-1, R-2, R-3, R-4 or R-5-A District, and a parking lot located in any other district where such parking lot is contiguous**

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[6] As attachments to the written testimony of Mark Bravin, we submitted a photograph showing the view of the existing parking lot from the Bravin residence on 37th Street, across from TWH. We also submitted a computer simulation depicting the view of the parking lot as expanded according to TWH's Application. As the latter exhibit demonstrates, that proposed expansion of the parking lot would cause the cars parked in the lot to dominate the view from the residences along 37th Street across from TWH. The Revised Plan would bring the parking lot even closer, to within 50 feet of the curb on 37th Street. The Revised Plan, if it were approved and implemented by TWH, would move the easternmost edge of the current parking lot (now hidden from view by scrim/screening trees) so close to 37th Street as to dominate the view for the affected neighbors and all passersby.

to an R-1, R-2, R-3, R-4 or R-5-A District, *shall be screened* from all contiguous residential property located in the R-1, R-2, R-3, R-4 or R-5-A District by a solid brick or stone wall at least twelve inches (12 in.) thick and forty-two inches (42 in.) high or by evergreen hedges or evergreen trees that are thickly planted and maintained and at least forty-two inches (42 in.) high when planted.[7]

At the meeting on September 18, ANC Member Cathy Wiss noted that TWH had obviously developed its Revised Plan without regard for the requirements of this provision. TWH's attorney replied that this provision only applies to parking lots in commercially zoned areas which abut residentially zoned property, and he considers TWH's lot to be residential. Clearly, his reading of § 2303.1 is incorrect. The plain purpose of the regulation is to protect residential neighborhoods from precisely the sort of visual blight that the Revised Plain would impose. The Revised Plan cannot lawfully be approved unless the BZA specifies that TWH submit a further revision that incorporates adequate plantings of evergreens of varying layers, and at varying distances to the curb, in order to provide an effective scrim/screen, blocking the parking lot and cars parked thereon.

CONCLUSION

Under the current procedure adopted by the BZA in this case, and for the above-stated reasons, we think that the BZA must reject the Revised Plan. TWH was given nine months by the BZA to try to come up with a compliant parking plan and it failed to do so. It had ample opportunity to consult with the surrounding community and it chose not to. CCHE and the BZA should not have to devote any further resources to the consideration of this matter. The Revised Plan simply should be denied, and the BZA's December 2002 Order should be amended to show that the Application is denied, with prejudice.

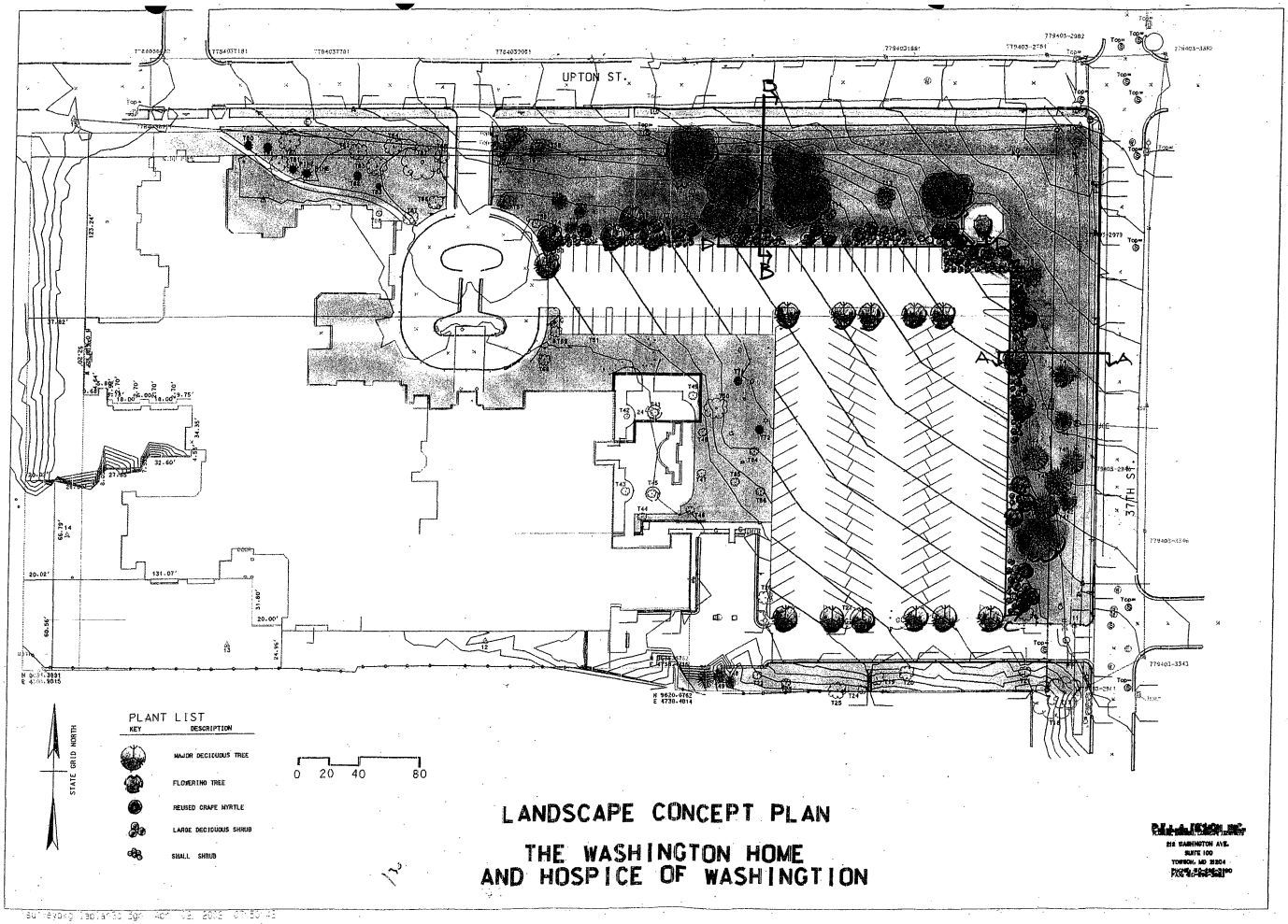
If, however, the BZA is not prepared to amend its December 2002 Order to deny the Application outright, then the BZA should invite TWH to submit a new Revised Proposal that is fully responsive to CCHE's concerns. ***If the parking layout in the Revised Plan***

[7] The Revised Plan is also inconsistent with the Ward 3 Plan found at 10 DCMR, Chapter 14. That plan 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. "Controlling redevelopment" is a major theme of the Ward 3 plan, and it is based on a mandate to preserve the strong residential character of the neighborhood and the quality of life there to make the District more attractive to potential residents. § 1400.2(b). More specifically, the Ward 3 plan "[d]iscourage[s] encroachment of nonresidential uses into residential areas," § 1402.4(g), and "[e]ncourage[s] 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).

were amended to shrink the footprint along 37th Street, reinstituting the more efficient angled parking configuration of the original Application, then the eastern-most border of the parking lot could be returned to its present location. ***If appropriate plantings were added as a scrim/screen near the eastern border of the parking lot, in compliance with 11 DCMR § 2303.2,*** it would shield the parking lot from view and spare the community from the harmful effects of the Revised Proposal. If those modifications were undertaken in consultation with the neighborhood, the CCHE could support the resulting, newly revised plan.

Respectfully submitted,

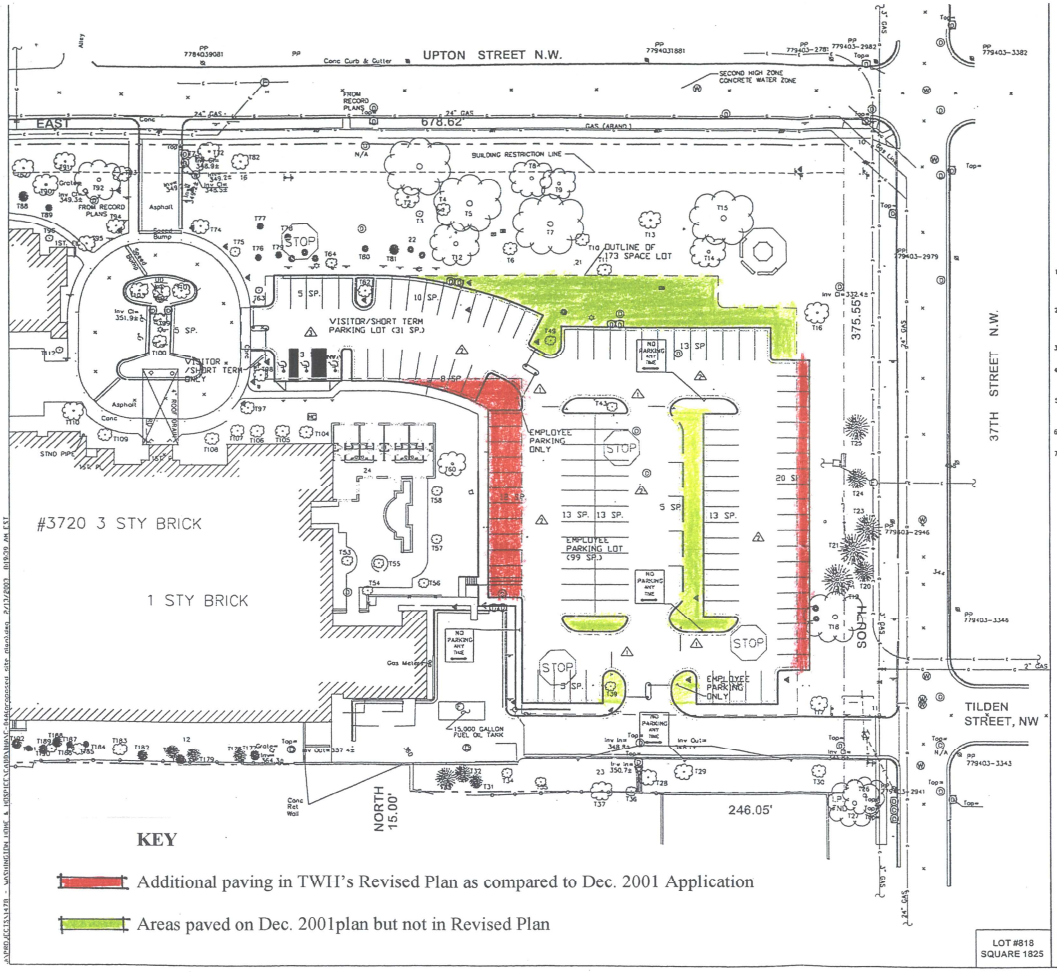
Jonathan P. Graham
On behalf of CCHE



LANDSCAPE CONCEPT PLAN

THE WASHINGTON HOME AND HOSPICE OF WASHINGTON

Exhibit 1



GRAPHIC SCALE

(IN FEET)
1 inch = 30 ft.

MARKINGS AND SIGNAGE NOTES

1. THE SIGN LOCATIONS ON THE PLANS ARE APPROXIMATE. THE CONTRACTOR SHALL ADJUST THE LOCATION OF THE PROPOSED SIGNS AS REQUIRED TO ELIMINATE CONFLICTS WITH UTILITY LINES, DRIVEWAY ENTRANCES, AND OTHER SIMILAR FEATURES.
2. ALL SIGNS AND PAVEMENT MARKINGS SHALL BE IN ACCORDANCE WITH THE CURRENT EDITION OF THE MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES AS WELL AS CURRENT DCDOT STANDARDS AND DIRECTIVES.
3. ALL SIGNS AND ASSOCIATED HARDWARE SHALL BE FURNISHED AND INSTALLED BY THE CONTRACTOR.
4. ALL WOOD SIGN SUPPORTS SHALL BE DRILLED WITH TWO 1" DIAMETER HOLES CENTERED 4" AND 18" ABOVE THE GROUND LINE AND PERPENDICULAR TO THE ROADWAY.
5. SIGNS IN CONCRETE SIDEWALK AREAS SHALL BE INSTALLED IN NEW 10" PVC PIPE SLEEVES EMBEDDED AT LEAST FOUR (4) FEET INTO THE GROUND.
6. ALL STOP BAR MARKINGS SHALL BE MADE OF 3M COMPANY 60 MIL WHITE REFLECTIVE TAPE OR EQUAL.
7. ALL PAINT MARKINGS SHALL BE REFLECTIVE LATEX BASED WITH TRAFFIC RESISTANT GLASS BEADS.

MARKINGS AND SIGNAGE LEGEND

- NEW HANDICAPPED SPACE SIGN
- NEW TRAFFIC SIGN (ON 4"x4" PRESSURE TREATED WOOD POST)
- NEW WHITE STOP BAR (18" WIDE)
- NEW 4" SOLID WHITE LINE (TYPICAL)
- NEW HANDICAPPED SPACE MARKERS

BZA #16836

DHA JOB NO. 1478

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Project Title:
HOSPICE ADDITION & PARKING EXPANSION
The Washington Home & Community Hospices
3720 Upton Street NW
Washington, DC 20016

Residence:

Certification:

Issued for:
- ☐ REVIEW
- ☐ BID
- ☐ PERMIT
- ☐ NOT FOR CONSTRUCTION
- ☐ CONSTRUCTION

Drawing Title:
PAVEMENT MARKING & SIGNING PLAN

Project No.: 0106
Scale: AS SHOWN
Date: 9-18-03
Sheet No.: C-05
Sheet ___ of ___

Exhibit 2