GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14283, of the Washington Home for the Incurables, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.414 to permit construction of a new 189 bed health care facility, existing structure to be demolished upon completion and occupancy of the new building, in an R-1-B District at premises 3720 Upton Street, N.W., (Square 1825, Lot 818).

HEARING DATE: May 8, 1985
DECISION DATE: June 5 and September 4, 1985

FINDINGS OF FACT:

1. As a preliminary matter at the public hearing of May 8, 1985, a representative of the Advisory Neighborhood Commission 3C requested the Board to postpone the public hearing on this case for two reasons. First, the position of the ANC was predicated on the execution of an agreement between the applicant and an ad hoc group of citizens composed of nearby property owners which had not been formally executed. Second, the ANC felt that the record was not complete and needed clarification of the landscape and parking plans and the basis for the data contained in the traffic study.

2. Counsel for the applicant objected to the post-ponement and stated that the applicant was prepared to go forward with its case.

3. The Chairperson ruled that there was no evidence that any violation of the Supplemental Rules of Practice and Procedure before the BZA had occurred and the motion for postponement was denied.

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

5. The subject site is rectangular in shape and contains approximately 248,447 square feet of land area.

6. The subject site is currently improved with a five-story brick 178-bed health care facility, an accessory building and a power plant.

BZA
Case No. 16836
Exhibit No. 13

Board of Zoning Adjustment
District of Columbia
CASE NO.16836
EXHIBIT NO.13

7. The surrounding area is zoned R-1-B and is developed primarily with single family detached dwellings to the north, east and southeast. The Hurst public elementary school is located to the southeast and Sidwell Friends private school is located to the south. To the west of the site is the Friendship U.S. Post Office which fronts on Wisconsin Avenue, N.W.

8. The applicant proposes to replace the existing 178-bed health care facility with a new health care facility with a capacity of 189 beds.

9. The basic building structure of the existing facility is basically sound, but all major building sub-components such as plumbing, heating, electrical and elevator systems, as well as laundry and dietary equipment needs to be entirely replaced due to deteriorated condition and current operational and energy conservation standards.

10. The applicant's representative testified that the D.C. Office of Licences and Inspections had determined that the existing building was not in compliance with numerous building codes and health regulation requirements. The facility is currently operating on waivers which are predicated on the applicant's promise to modernize without delay.

11. Paragraph 3101.414 of the Zoning Regulations provides that the Board may approve a health care facility for nine to 300 persons, not including resident supervisors and their family, in and R-1 District as a special exception provided that:

a. There shall be no other property containing a community based residential facility for five or more persons in the same square and no other property containing a community based residential facility for five or more persons within a radius of 1,000 feet from any portion of the subject property.

b. There will be adequate, appropriately located and screened off-street parking to provide for the needs of occupants, employees and visitors to the facility.

c. The proposed facility shall meet all applicable code and licensing requirements.

d. The facility will not have an adverse impact on the neighborhood because of traffic, noise, operations or the number of similar facilities in the area.

e. The Board may approve more than one community based residential facility in a square or within 1,000 feet only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.

f. The Board shall submit the application to the Assistant City Administrator for Planning and Development for coordination, review, report and impact assessment along with reports in writing of all relevant District departments and agencies, including but not limited to the Departments of Transportation, Human Services and Corrections, and if a historic district or historic landmark is involved, of the State Historic Preservation Officer.

12. There are no other properties containing a community based residential facility for five or more persons in the same square or within a radius of 1,000 feet from any portion of the subject property.

13. The existing health care facility provides approximately forty-five parking spaces on site. Thirteen of those spaces are reserved and the remainder are available to visitors and employees on a first come, first served basis.

14. The applicant originally proposed to provide 118 on-site parking spaces. As a result of discussions with neighboring property owners, the applicant submitted three alternate proposals depicting parking layouts with a reduced number of parking spaces on-site which the applicant believed would meet the peak parking demands of the site and help ameliorate the concerns of the neighbors.

15. The applicant's traffic and parking study indicates that the applicant employs approximately 260 full-time and part-time workers. Approximately eighty-one employees work and 8 a.m. to 5 p.m. shift, five days per week. Approximately 166 nursing department employees and thirteen hospice department employees work 7 a.m. to 3:30 p.m., fifty-nine employees work 3 p.m. to 11:30 p.m. shift and forty work an 11 p.m. to 7:30 a.m. shift. The morning and afternoon shifts, and the afternoon and late night shifts overlap by one-half hour beginning at 3 p.m. and 11 p.m. respectively. The facility is staffed seven days a week, 365 days a year. Not all of the employees work the same days or same hours. More employees work on weekdays than on weekend days. The general effect is to spread automobile trips, thereby reducing concentration of traffic in any short period.

16. The new building will replace the existing facility. The proposed facility will increase the bed population by eleven beds. The same number of employees will be able to efficiently operate the new, larger facility. The applicant notes that business and resident visitation and deliveries are not expected to increase measurably.

17. The alternative parking schemes proposed by the applicant are described in detail in its parking and traffic study marked as Exhibit No. 19G of the record. The alternatives are principally distinguished by the number of spaces that are provided on the subject site and the number of spaces proposed to be provided on surrounding public streets. All of the alternative parking plans provide for more on-site parking than than currently exists.

18. The proposed parking lot is located on the eastern half of the site. The parking lot is set back 57.5 feet from the property line on Upton Street and seventy-eight feet from the property line along 37th Street. The lot is proposed to be landscaped with new and existing trees and shrubs. The lot will be lighted for security purposes. There are three handicapped parking spaces located in front of the main entrance. The truck service entrance is located to the rear of the proposed building and is accessed by way of a sixteen foot wide delivery driveway off of 37th Street.

19. The alternate parking plans are a result of the applicant's efforts to address the following community concerns and goals:

a. Preserve the park - like setting by minimizing the number of visible on-site parking spaces.

b. Preserve neighborhood tranquility by minimizing non-residential traffic on local streets.

c. Minimize neighborhood curb parking encroachment and through traffic generated by employees of existing and future developments on Wisconsin Avenue, Connecticut Avenue and Van Ness Street.

d. Ensure proper use of curb parking by adequately enforcing parking regulations, especially in residential permit parking zones.

e. Promote neighborhood safety through regulation of traffic speeds and volumes.

19. At the public hearing, the applicant submitted an additional alternate parking layout which depicted 103 on-site parking spaces. The applicant requested that the Board initially approve ninety-three spaces and allow the

applicant the flexibility to provide the remaining ten spaces at a later date if the applicant finds that ninety-three parking spaces are insufficient to meet the following goals:

a. Provide an adequate number of parking spaces for employees and visitors.

b. Provide one reserved parking space for physician, one reserved space for the Board President, one reserved space for the director, and two designated handicapped visitor parking spaces.

c. Ensure that the long-term parking spaces provided for the applicant's employees will continue to be available in the future as commercial projects are developed in the area.

d. Provide safe, secure parking, especially for late night shift workers.

e. Provide convenient access to on-site parking and loading dock spaces.

f. Comply with all applicable D.C. parking and loading requirements.

21. The Board has the jurisdiction to determine the number of parking spaces which should be provided by the applicant pursuant to Sub-paragraph 3101.4142 of the Zoning Regulations.

22. The applicant has been granted a Certificate of Licensure from the D.C. Department of Consumer and Regulatory Affairs dated April 4, 1985 to maintain and operate a health care facility for skilled and intermediate care. The license authorized a total capacity of 178 beds.

23. The D.C. State Health Planning Development Agency awarded the applicant a Certificate of Need, Number 83-3-1 for the replacement of its existing facility with the proposed 189 bed facility valid until August 27, 1985. The Certificate of Need is conditioned on the following:

a. The nine beds designated for hospice care are to be used only for hospice care and no charges in the use of these beds may be made without prior State Health Planning and Development approval; and

b. That the Washington Home shall adopt a sliding scale for respite care services to ensure access to respite care for persons who cannot afford

self-payment of proposed charges but are not eligible for Medicaid coverage.

24. Although the proposed new facility provides an additional capacity for eleven beds, the applicant stated that the proposed facility is not expected to operate in a significantly different manner from the operation of the existing facility. The applicant does not anticipate a substantial increase in the number of employees or visitors to the site generated by the increase in capacity. The normal operating procedures for a facility of this type are quiet in nature, and further, any noise generated from the facility would be buffered from the nearest residentially zoned property to the east and south by the distance between the structure to the lot lines, the adjacent street rights-of-way and the existing landscaping.

25. There are no community based residential facilities within the same square or 1,000 feet of the subject site. Sub-paragraphs 3101.4145 and 3101.4146 of the Zoning Regulations therefore do not apply in this case.

26. The applicant's original submissions show that the new building as proposed, would have two penthouse structures. Paragraph 3308.12 of the Zoning Regulations requires that all penthouse and mechanical equipment be placed in one enclosure. The applicant did not request the necessary relief to permit two roof structures in the subject application. The Board, therefore, can not consider any configuration of roof structures other than that permitted by the Zoning Regulations unless an application for such relief is filed. Accordingly, any roof structure constructed on the proposed building must comply with the applicable provisions of the Zoning Regulations.

27. The Office of Planning, by memorandum dated April 1, 1985 and a representative at the public hearing, recommended that the subject application be approved. The Office of Planning was of the opinion that the proposed health care facility met the criteria for special exception relief outlined in Paragraph 3101.414 and Sub-section 8207.2 of the Zoning Regulations. The Office of Planning was further of the opinion that the site plan was sensitive to the surrounding properties by providing adequate and well-landscaped on-site parking and an attractive, low occupancy structure. The proposed new facility would improve the living and working environment for residents and staff. In addition, the proposal to increase and improve its resident housing capacity was consistent with the Comprehensive Plan Goals and Objectives of providing needed health care facilities while not adversely impacting residential areas. The Board concurs with the recommendation of the Office of Planning as hereinafter conditioned.

28. Advisory Neighborhood Commission 3C, by memorandum dated April 30, 1985 and a representative at the public hearing, supported the subject application predicated on the understanding reached between the applicant and its neighbors. The ANC took exception to the application on the issues of parking and construction-vehicle use of the alley west of the site.

29. The ANC representative noted that the residents of the community want fewer on-site parking spaces than proposed by the applicant. The ANC agrees that parking should be reduced partly because of their 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 in that it has no plans for expanding the number of employees and the applicant's rationale that the proposed on-site parking would alleviate impacts from commercial development nearby was inappropriate. The ANC recommended that the Board limit the number of on-site parking spaces to a maximum of eighty-five.

30. The ANC's second concern was with regard to the circulation of construction vehicle traffic through the use of an alley running west from the subject site to Wisconsin Avenue. The applicant expressed its willingness to use the alley to the extent permitted by the easement agreements of adjacent property owners including the Sidwell Friends School, the National Radio Institute and the U.S. Postal Service.

31. The Advisory Neighborhood Commission representative submitted a copy of an agreement between the applicant and the "Citizens Affected by the Washington Home's Construction" for inclusion in the record. The agreement sets forth the understanding reached between the applicant and the citizens with regard to the following issues:

a. The building plan dated April 23, 1985 filed with the BZA and provided to the undersigned, and the following paragraphs modifying or supplementing those plans, are the basis of the understanding between the Home and the undersigned. It is understood, however, that deviations consistent with the spirit of this agreement may be implemented by the Home with the approval of a designated representative of the Citizens.

b. The northern road shown in the plans of December 21, 1984, as exiting on 37th Street will be eliminated so as to leave only two entrances and exists from the site: one on Upton Street and one on 37th Street. The road leading to the remaining

37th Street exit may be widened to adjust for the fact that it will be the sole 37th Street exit.

c. By the completion of the construction period, 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. The Home has no present intention to otherwise dedicate the open land, and knowing the Citizens' strong interest in maintaining as much open space as possible, the Home agrees that if it should desire to otherwise dedicate the open land, it will make this fact publicly known so as to allow members of the neighborhood to participate in the decision making process prior to any formal application to the BZA concerning such change.

d. The plan will be supported by 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 made between this date and nine months after the completion of major construction activity on the site.

e. During the construction period it is agreed that:

(1) The Home will require construction vehicles, especially excavation and concrete trucks, to use the alley running between Wisconsin Avenue and the construction site to the greatest extent consistent with any limitations that may be imposed by law, the property rights of others, safety considerations or practical limits imposed by the contractor to post flagmen in the right-of-way to maximize its use consistent with the above limitations, and that the excavation dump trucks and concrete trucks will utilize Upton Street from 38th Street to Wisconsin Avenue as their a alternative routs if the alley is unavailable as a source of entry or exit.

(2) For the vehicles used by construction personnel, the Home will provide not less than 50 temporary parking spaces in the southeast corner of the site, within the construction area surrounded by the construction fence.

(3) The principal means of movement of heavy materials between different parts of the construction site will be by a crane or cranes within the site, rather than by trucks around the circumference of the site.

(4) The Home will ensure that the contractor will prevent access or egress by construction equipment from the site via 37th Street from 7:45 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 nearby schools.

(5) (i) Subject to pertinent laws and other provisions of this agreements, the Construction site plan will conform generally to the topographic survey dated December 4, 1984 as annotated by the Home's architects to show construction fencing, materials storage, construction personnel parking and placement of construction trailers;
(ii) the construction fence will be constructed of wood where it fronts 37th Street or Upton Street;
(iii) at the end of each workday, the construction site, at least outside the construction fence, 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.

(6) To facilitate the expression of neighborhood concerns during the construction period, the Home will review its construction contract provisions with the undersigned prior to finalizing contract conditions. Further, during the construction period, a representative of the undersigned will be permitted to participate in meetings and to review progress reports and construction contract compliance. It is anticipated that the Citizen's representative will convey to the Home any concerns of the community regarding the conduct of the construction and the Home will attempt to have the contractor address these concerns promptly.

f. The architectural particulars respecting the location and enclosure of mechanical equipment, the mass of the building north wing, and the patio walls at the north elevation of the proposed new building, as discussed in your letter to us a April 8, will be subject to review and further understanding to be reached between your architect

Based on the foregoing understandings the Citizens supported the application with the exception of the issue of the number of on-site parking spaces proposed. and Mr. John Blackburn.

32. A representative of the Sidwell Friends School testified at the public hearing in support of the application. The School has agreed in principle to the portion of the agreement between the applicant and the

concerned citizens regarding usage of the alley for construction vehicles during the construction stage to the greatest extent consistent with any limitations imposed by law, the property rights of others, safety consideration or practical limits imposed by the construction site operation. The School is opposed to the ANC's recommendation that the Board address this issue in its decision and include an arrangement for alley use in its final order for the following reasons:

a. The use of the alley during the construction period would involve vital questions of traffic safety for the School's students.

b. The resolution of the issue of alley use would require settlement of legal entitlements to such use.

c. The resolution of this issue is premature in that traffic and construction factors can not be effectively evaluated at this time. Further, the applicant and the School are engaged in discussions on boundary question which may effect alley usage.

33. Several members of "The Citizens Affected by the Washington Home's Construction" testified at the public hearing that the agreement noted by the ANC in Finding of Facts No. 31 was signed by their representatives and a representative of the applicant on the day of the public hearing May 8, 1985. Testimony indicated that the only outstanding issue which has not been satisfactorily resolved between the citizens and the applicant concerned the number of surface parking spaces proposed on the site.

34. The concerns expressed by the citizens regarding the proposed on-site parking spaces are as following:

a. The large expanse of asphalt-paved area required to provide the proposed number of parking spaces would be unsightly to nearby residents and would adversely affect the residential character and park like setting of the neighborhood.

b. Visitors to the site may choose to park on the street because street parking spaces are located closer to the entrance than some of the parking spaces provided on site.

c. The illumination caused by the lighting on the lot and headlights of vehicles using the lot after dark will reflect into nearby residences.

d. The safety of children attending nearby schools

will be adversely affected by the traffic generated on the lot because school dismissal and shift change at the facility occur at approximately the same time. In addition the provision of such a large, unattended parking threat to some of the children who cross the lot to walk home and will have to traverse an unattended lot where they could be exposed to undesirables who could hide in or between parked cars.

e. The landscaping, as proposed, will not effectively screen the parking lot until it reaches maturity.

35. The neighbors in opposition suggested that the number of parking spaces on site should be limited to seventy-five spaces, the proposed reduction in spaces to occur on the eastern portion of the lot closest to residences. The opposition also recommended that a double row of trees should be planted to further screen the paved area from nearby residences.

36. The record was left open after the public hearing for the applicant to submit revised plans showing the type location and size at the time of plantings for all landscaping on the site; the type, location and height of the proposed lighting for the parking area; a section of the parking area; and convenants between the Washington Home and adjoining property owners re: alley easements.

37. At its public meeting of June 5, 1985, the Board reviewed the post-hearing submissions and responses thereto. The Board was of the opinion that the applicant had met its burden of proof. However, the Board found that the proposed number of parking spaces was excessive and in order to ameliorate any adverse impacts on nearby residents, the Board granted the application and revised the proposed parking layout by limiting the number of parking spaces to seventy-five by eliminating nine parking spaces along the main driveway and an additional nine parking spaces along the service driveway.

38. On July 31, 1985, prior to the issuance of a final order, the applicant filed a motion to modify the parking layout approved by the Board at its public meeting of June 5, 1985. The modification proposed a total reduction of eighteen parking spaces in keeping with the Board's decision. However, the parking spaces proposed to be eliminated were located in the northeastern portion of the main parking area. The reasons for the requested modification were as follows:

1. Retention of the nine on-site parking spaces to the east of the main entrance would better

serve the parking requirements of visitors to the facility, many of whom are elderly.

2. Elimination of eighteen on-site parking spaces along the northeastern portion of the parking area and replacing them with additional landscaping would provide a further setback of the parking area from 37th and Upton Streets while providing for more screening and retention of existing trees.

39. The parties to the application, including the Advisory Neighborhood Commission, the citizens affected by the Home's Construction, and the Sidwell Friends School consented to the proposed modification as evidenced by attachment 1 to Exhibit No. 39 of the record.

40. At its public meeting of September 4, 1985, the Board waived its Rules to consider the request prior to the issuance of a final order and granted the request for modification of plans siubject to the condition that the lauout of parking spaces shall be in accordance with Exhibit No. 40 of the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception in order to be granted such an exception, the applicant must demonstrate that it has complied with the requirements of Paragraph 3101.414 and Sub-section 8207.2 of the Zoning Regulations. The Board concludes that the applicant has so complied. There are no other properties containing a community based residential facility for five or more persons in the same square nor within 1,000 feet of the subject property. The proposed facility will meet all applicable Code and Licensing requirements. The applicant will provide adequate, appropriately located and screened off-street parking. As hereinafter conditioned, the facility will not have an adverse impact on the neighborhood because of noise, traffic, operation or number of facilities in the area.

The Board concludes that it has accorded the ANC the "great weight" to which it is entitled as evidenced in the conditions imposed by this order. The Board further concludes that, as hereinafter conditioned, the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to adversely affect the use of neighboring property in accordance with said regulations and maps. It is therefore ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The number of on-site parking spaces shall be limited to seventy-five.

2. The layout of the parking spaces shall be in accordance with the revised site plan marked as Exhibit No. 40 of the record.

3. The parking areas shall comply with all the provisions of Article 74 of the Zoning Regulations.

VOTE: 4-0 Public Meeting of June 5, 1985: (Charles R. Norris, Carrie L. Thornhill, and William F. McIntosh to grant; John G. Parsons to grant by proxy; Douglas J. Patton not present, not voting) SUBJECT to the following CONDITIONS:

Public Meeting of September 4, 1985:

VOTE: 4-0 (William F. McIntosh, Charles R. Norris and Carrie L. Thornhill to WAIVE the Rules to consider request for MODIFICATION; John G. Parsons and Douglas J. Patton not present, not voting).

(William F. McIntosh, Charles R. Norris and Carrie L. Thornhill to grant modification; John G. Parsons to grant modification by proxy; Douglas J. Patton not present, not voting).

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

ATTESTED BY:

CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 12 MAR 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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

14283order/DON18