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April 1, 2002

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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

Dear Mr. Griffis:

This firm represents The Washington Home and Hospice, the Applicant, in connection with the above-captioned special exception application. Pending before the Board are requests from: (1) Advisory Neighborhood Commission 3F (the "ANC") to postpone the public hearing in this matter, and (2) a group identified as "Citizens Concerned About the Home's Expansion" seeking "party" status and a waiver of the Board's procedural rules regarding timely filing of such request. The Applicant opposes the requests of both the ANC and the citizens' group for the reasons set forth below.

Request by the ANC for Postponement.

The Applicant has widely disseminated information regarding its plans for the subject property, having appeared before ANC 3F in July and November 2001, having sponsored neighborhood meetings to discuss its plans and having held a series of information meetings with Councilmembers Mendelson and Patterson and with ANC Commissioners Kogan and Wiss. The Applicant sought to appear before ANC 3F at its February, 2002 regular meeting, but was informed that the ANC preferred to meet with applicants closer to the date of the public hearing and was prevailed upon to schedule its presentation to ANC 3F on March 18, 2002, only two weeks prior to the public hearing date. At this ANC 3F meeting (which was held at the Home for the convenience of neighbors), the Applicant appeared with its

BZA
Case No. 16836
Exhibit No. 40

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EXHIBIT NO.40

Chief Executive Officer, its architect, construction manager, traffic consultant, counsel and landscape architect. For reasons still not entirely clear, the Applicant was not allowed by ANC 3F to make any presentation of its proposed plans or to respond to the voiced concerns of certain neighbors.

Having obstructed the Applicant's right to appear before ANC 3F and to respond to criticisms of its application, ANC 3F now seeks to forestall the Board's consideration of the Home's special exception application by requesting postponement. Postponement only harms the Applicant. In fact, the ANC 3F has squandered the time and opportunity available to it to inform itself of the details of the Home's application and should not be now heard to complain that there is insufficient time to complete its processes. The Applicant has participated fully in the on-going discussions with the ANC 3F and neighbors regarding the Home's operations and proposed plans and will continue to do so even after the public hearing in this matter. It would be inequitable and unreasonable to hold the timing of the public hearing of the Home's special exception application hostage to the whims and evasions of ANC 3F when it has been the cause of delay.

Request for Waiver of Rule 3106.2.

Logically, the Board should first decide the question of the citizen's group request for waiver of the filing requirements, since if the filing is deemed untimely, the Board does not have to reach the second issue of whether the *ad hoc* citizen's group is entitled to be a party.

The Board should not in this instance waive its rules for timely filing of the request for "party" status. In order to comply with the rules, the citizen's group should have filed their request for "party" status on or before March 20, 2002. No specific reason is cited for their failure to do so; however, they allude to being collectively unaware of receiving notice of the Board's proceedings, even though each of the persons identified as members of the citizen's group was on the official mailing made by Office of Zoning staff. The intended implication of this assertion is that without such mailed notice, they had no way of being informed of the proceedings and were unable to comply with the Board's rules. If true, this assertion might reasonably mitigate their failure to file a timely request for "party status." However, if one examines the totality of facts, the failure to

timely file their request has no excuse, and no waiver should be granted.

Assuming, *arguendo*, that none of the ten persons (representing five households) listed received official notice; they nonetheless knew of the public hearing prior to March 20, 2002. First, each of these households was present at the regular meeting of the ANC on March 18, 2002, at which the April 2, 2002 public hearing was discussed.[1] Second, as evidenced by the attached copy of the meeting sign-in sheet of the December 12, 2001, at a neighborhood meeting at the Home at least two of those same households were present to discuss the special exception application to the Board. Finally, the record shows that the subject property was posted on March 1, 2002, with three (3) orange Board posters, each announcing the date, place, time and subject matter of the April 2, 2002 public hearing. It stands to reason that these neighbors, who would otherwise claim to be more affected by the circumstances of the subject property than the general public, must have observed these posters and should be imputed with knowledge of their content.

Request for Party Status.

The *ad hoc* citizen's group filed a request for party status on March 25, 2002. In order to obtain "party status" the newly revised Board rules, as set forth at § 3106.3 of the Zoning Regulations, permit the Board to grant such status:

> . . . only if the person clearly demonstrates that the person's interest would likely be more significantly, distinctively or uniquely affected in character or kind by the proposed zoning relief than those of others persons in the general public.

Subsections 3106.2 (a) to (e) prescribe the mandatory contents of a written request for party status. In essence, the person

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[1] The request for "party" status misidentifies the date of the ANC meeting as March 24, 2002, an error that may create the impression that the request for waiver was filed just one day after the citizen's group became aware of the Board's public hearing.

requesting party status must identify their exact ownership or occupancy interest, their proximity to the subject property of the application, the particular effects of the application and their uniqueness in relation to the concerns of the general public.

The instant "party" status request is deficient in fundamental ways and should be denied. The citizen group's ten (10) members identify themselves as owners living within 200-feet of the subject property and claim, without documentation, the support of "55 neighbors supporting their position." Unfortunately, the request fails to state "their position" in any particularity other than apparent opposition to the application. The Board's rules require a clear demonstration of the special interest of the person requesting "party status"and the citizen's group here offers only "the special exception would have significant and serious direct negative effects..." They conclude without any explanation that they are affected more than the general public only because of their proximity to the subject property.

The Zoning Commission adopted the revised rules on "party" status precisely to elicit from persons requesting such status information permitting the Board to make the status determination in advance of the public hearing. On the record before it, the Board should reject party status for the citizen's group for their plain failure to follow the instructions of § 3106.3(e) of the Zoning Regulations, which, if they are to have any meaning, should be enforced in this instance. Having failed in their written request to the Board for "party status" to distinguish themselves from the general public, then, as members of the general public, the citizen's group should have the right to submit a written statement or offer testimony on the record in this special exception application; but not the right to become a "party."

Excluding the citizen's group as a party will not prevent adequate representation of their viewpoint. As a party to this case, the ANC has in its resolution identified the principal concerns of the neighbors. In the final analysis, Phil Kogan, the designated spokesman of ANC 3F, who was an active participant in all meetings between the neighbors and the Home regarding the parking lot, should be well able to represent the views of members of the citizen's group.

For all of the foregoing reasons, the Board should deny the ANC's request for postponement, deny the request of the citizen's group for a waiver of the Board's rules, and deny the citizen's group's request for "party" status.

Respectfully submitted,

George R. Keys, Jr.
Counsel for the Applicant

Attachment

cc: Cathy Wiss, Chair, Advisory Neighborhood Commission 3F
Karen Thomas, Development Review Division, OP
Marie Sansone, Office of the Corporation Counsel
Richard Danzig, Citizens Concerned About the Home's Expansion

PAGE 02/02

Joe Hamburger
Architect

THE WASHINGTON HOME AND COMMUNITY HOSPICES

Neighborhood Meeting

December 12, 2001

NAME	ADDRESS	E-MAIL/TELEPHONE NUMBER
Michelle Cole	Wilson Bldg.	724-8062
Laurie Dickeson		
Joseph Armentrout		
Tom & Martha Fraser	3721 Upton St NW	202-362-3239
Jane Macbeth MACLEISH	3743 Upton St NW	202 966-8279
Phil Kogan	3634 Veazey St NW	202 244 5281
Cathy Wiss	3810 Albemarle St NW	966-1310 Schumannwiss@juno.com
Sara Bravin	4019 37th St NW	362 8967
Mark Pagliese	3711 Upton St NW	362-2260
Elizabeth Ulmer	3643 Tilden St, NW 20008	ebudc@aol.com 202-362-3253
Margorie Townsend	3829 Tilden	966-2330 MRTownsend@aol.com

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