Form 150
(Revised 04/29/02)

BZA Application
Case No. No. 16836

BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

MOTION

Notice: See other side of motion form for instructions.

Applicant, Appellant, Appellee, Party, Intervener	vs.	Applicant, Appellant, Appellee, Party, Intervener
The Washington Home		Citizens Concerned About the Home's Expansion ("CCHE")

Motion of: (state what you want the Board to do)

* To compel production of evidence possessed by The Washington Home ("TWH") described in the attached papers, that justifies its request for expansion of TWH and parking lot.

* In alternative, to strike evidence presented by The Washington Home,

D.C. Code § 2-509(b),(e). **Points and Authorities:**
(state the each and every reason why the Board should grant your motion, including relevant references to the Zoning Regulations or Map)

* As discussed in attached papers -- because TWH claims it needs additional parking but has not provided requested information that would confirm or rebut its claimed needs. This information is required for the Board and neighborhood to properly evaluate the request. D.C. Code § 2-509(b),(e).

CERTIFICATE OF SERVICE

I hereby certify that on this (date) 17 day of (month) June, (year) 2002, I served a copy of the forgoing Motion on each entity that has requested party status; or entities that have be granted party status – on the above referenced BZA case via

☒ First-class mail	☐ Hand delivery	☒ Other (specify) Fax/TWH

(ATTACH A LIST OF PARTIES SERVED)

Signature:	Applicant*		
Print Name:	Jonathan P. Graham	Firm/Organization	CCHE
Address:	725 12th St., N.W., Washington, D.C. 20005		

** In the event an authorized agent files a motion on the behalf of the maker of the motion, a letter signed by the maker of the motion authorizing the agent to act on his/her behalf shall accompany the notice of application.*

To be notified of hearing and decision:
(Maker of Motion or Authorized Agent)*

BZA
Case No. 16836
Exhibit No. 44

Name:	Jonathan P. Graham				
Address:	725 12th St., N.W., Washington, DC 20005				
Phone No.:	202/434-5026	Fax No.:	202/434-5618	E-Mail:	jgraham@wc.com

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

Board of Zoning Adjustment
District of Columbia
CASE NO.16836
EXHIBIT NO.44

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In Re: Application by the Washington Home for a special exception pursuant to § 219 of the Zoning Regulations to allow the construction of an addition to the Hospice of Washington accommodating four (4) additional hospice beds for an existing 201-bed health care facility in an R-1-B Zoning District and the enlargement of the existing parking lot from seventy-five (75) to one hundred seventy-three (173) parking spaces **Subject Property:** **Lot 818, Square 1825** **3720 Upton Street, N.W.**	**BZA Application No. 16836**

MOTION OF CCHE TO COMPEL PRODUCTION OF RELEVANT EVIDENCE OR, IN THE ALTERNATIVE, TO STRIKE EVIDENCE OF THE WASHINGTON HOME

On May 3, 2000, Citizens Concerned about the Home's Expansion, ("CCHE") asked The Washington Home ("TWH") to provide information about twelve items upon which its application was said to rely. See Exhibit A. Some three weeks later, after a follow-up request, THW delivered materials responsive (at least in part) to only four of the twelve requests. See Exhibit B. No information was forthcoming as to the other eight requests. Those requests all have one thing in common – they seek basic information about the justification the claims made in the application (and at the first day of the hearing on April 2, 2002) that additional

free parking was needed for employees and visitors and that there were no solutions to the claimed parking problem other than building another 98 spaces on top of the 75 approved by the Board only fifteen years.

The Home's application is based on the premise that it should be able to offer additional free parking to its employees in a residential neighborhood. See Apr. 2, 2002 Hearing Transcript at 109, ll. 16-19. (testimony of Lynn O'Connor, CEO of TWH). Because this appeared to be an unreasonable rationale for parking in a congested residential neighborhood within 5 blocks of two Metro stations and two blocks of numerous bus routes, CCHE asked to be provided with the following materials:

(a) . . . .

(b) The surveys performed by or on behalf of TWH regarding (i) employee transit preferences and experience, and/or (ii) an analysis of how many employees would benefit from transit subsidies;

(c) The visitor logs reviewed by TWH or its experts upon which the experts' conclusions about parking are in any part based (if privacy of visitors is an issue, the names of visitors may be redacted to protect privacy; in any event we commit to not disclose the names or use them in any inappropriate way);

(d) The study, survey, or data relied upon by TWH and/or its experts about the means by which employees, medical personnel, and visitors arrive at TWH, e.g., car, bus, Metro, walking;

(e) All studies or analyses performed by TWH of the costs of employing a valet service and/or a shuttle service to manage its parking needs;

(f) Any technical appendix to the parking study referred to during TWH's case in chief at the hearing;

(g) The data collected by TWH and/or its experts upon which its conclusions about how many parking spaces TWH requires are based;

(h) Documents reflecting the number of parking spaces TWH leases at 4200 Wisconsin or at any other location.

. . . .

(l) Documents describing the abandoned plan for a contemplated underground parking facility at TWH.

See Exhibit A.

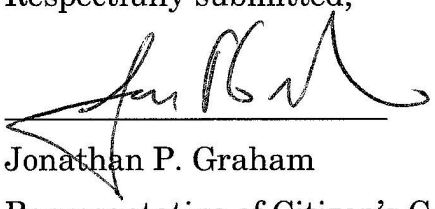
None of these materials has been provided to CCHE. Although TWH has claimed to be cooperating with the neighborhood and its representatives, in reality TWH has stonewalled the neighborhood's attempts to understand the rationale and basis for TWH's radical conclusion that it must more than double the size of its parking to 173 spaces. TWH's stonewall raises questions about whether appropriate background work has been done by TWH. More important, it makes it impossible for the Board and the neighborhood to analyze TWH's claimed rationale for additional parking and to come to the same conclusions TWH has based on the information it has supposedly collected.

Without providing such information to CCHE and the Board, TWH cannot meet its burden of proof, CCHE is disabled from cross-examining TWH's witnesses, and the Board's cannot adequately justify findings of fact being advocated by TWH. See Zoning Commission Rules of Practice 3012.7 (re applicability of D.C. APA); D.C. Code § 2509(b), (e) (discussing right of "cross-examination as may be required for a full and true disclosure of facts" and need for the Board to make findings of fact).

Accordingly, CCHE respectfully requests that the Board order production of the requested material. In the alternative, CCHE requests that the

Board strike all testimony and evidence from TWH's case to the effect that TWH needs more free parking for its staff and visitors, in particular its parking study.

Respectfully submitted,



Jonathan P. Graham
Representative of Citizen's Concerned About the Home's Expansion

Dated: June 17, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June 2002, a true and correct copy of the foregoing Motion Of CCHE To Compel Production Of Relevant Evidence Or, In The Alternative, To Strike Evidence Of the Washington Home was served by facsimile and first-class mail, postage prepaid, on:

George R. Keys, Jr. Esq.
Jordan Keys & Jessamy, LLP
1400 Sixteenth Street, N.W.
Suite 700
Washington, D.C. 20036-2217

and by first-class mail, postage prepaid, on:

Ms. Ellen McCarthy
Office of Planning
801 North Capitol Street, N.E.
Suite 4000
Washington, D.C. 20002

Mr. Alan Bergstein
Office of Corporation Counsel
441 4th St. N.W.
Sixth Floor
Washington, D.C. 20001

Jonathan P. Graham

A

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EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

May 3, 2002

VIA FACSIMILE – (202) 328-6153
George R. Keys, Jr., Esquire
Jordan Keys & Jessamy, LLP
1400 16th Street, N.W.
Suite 700
Washington, DC 20036-2217

Re: Application of the Washington Home, 16836 ANC-3F (Board of Zoning Adjustment)

Dear Mr. Keys:

On behalf of the Citizens Concerned About the Home's Expansion, the community based party in the above-referenced case, please provide me with the following information/documents which we need in order to properly prepare for the next hearing scheduled for June 25, 2002:

(a) All traffic and parking studies performed by or on behalf of The Washington Home ("TWH") and/or others in connection with TWH's 1985 and 1997 petitions to the Board of Zoning Adjustment;

(b) The surveys performed by or on behalf of TWH regarding (i) employee transit preferences and experience, and/or (ii) an analysis of how many employees would benefit from transit subsidies;

(c) The visitor logs reviewed by TWH or its experts upon which the experts' conclusions about parking are in any part based (if privacy of visitors is an issue, the names of visitors may be redacted to protect privacy; in any event we commit to not disclose the names or use them in any inappropriate way);

(d) The study, survey, or data relied upon by TWH and/or its experts about the means by which employees, medical personnel, and visitors arrive at TWH, e.g., car, bus, Metro, walking;

(e) All studies or analyses performed by TWH of the costs of employing a valet service and/or a shuttle service to manage its parking needs;

(f) Any technical appendix to the parking study referred to during TWH's case in chief at the hearing;

(g) The data collected by TWH and/or its experts upon which its conclusions about how many parking spaces TWH requires are based;

(h) Documents reflecting the number of parking spaces TWH leases at 4200 Wisconsin or at any other location;

(i) The TWH lease agreement with the Post Office;

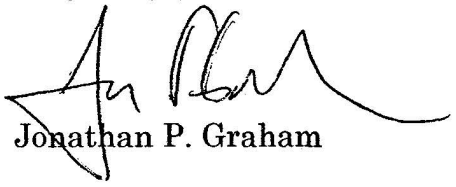
(j) Any tree survey and tree map of the TWH grounds that has been created;

(k) Any analysis that has been performed of the effect on stormwater of the new parking structure;

(l) Documents describing the abandoned plan for a contemplated underground parking facility at TWH.

Please let me know by May 10 if there are any items listed above that TWH does not intend to provide so we may take appropriate steps to secure them and inform the neighborhood of TWH's position.

Very truly yours,



Jonathan P. Graham



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+Also Admitted in Maryland

OF COUNSEL:

JOANNE DODDY FORT
HAROLD E. JORDAN
CHARLES J. OGLETREE, JR.

May 23, 2002

HAND-DELIVERED

Jonathan P. Graham, Esquire
Williams & Connolly LLP
725 12th Street, N.W.
Washington, D.C. 20005-5901

Re: The Washington Home - BZA Application No. 16836

Dear Mr. Graham:

In your capacity as party to the above-referenced special exception proceeding and in partial response to your request of May 3, 2002, we enclose the following plans and materials for your information that were presented to ANC-3F at its regular meeting on May 20, 2002:

1. Tree Impact Study and Landscape Concept Plan with 4 sections
2. Information on Proposed Lighting Fixtures
3. Storm Water Management - Existing Conditions and Drainage Study

We previously provided you with partial pages of the existing lease with the U.S. Postal Service and a copy of the parking study performed by Gorove/Slade Associates in connection with the 1985 BZA application.

Very truly yours,

George R. Keys, Jr.

Enclosures