JORDAN KEYS & JESSAMY, LLP
ATTORNEYS AT LAW
SUITE 700
1400 SIXTEENTH STREET, N.W.
WASHINGTON, D. C. 20036-2217
(202) 483-8300
FACSIMILE (202) 328-6153

gkeys@jordankeys.com

ALLISON R. H. ALVARADO
KATHLEEN A. CAREY+
RACHEL C. EVANS+
SHIREEN JAYATILAKA+
RONALD C. JESSAMY
GEORGE R. KEYS, JR.+
O'NEIL S. KING+
KAREN J. MILLER+

+Also Admitted in Maryland

OF COUNSEL:

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

June 24, 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

RECEIVED
D.C. OFFICE OF ZONING
2002 JUN 24 PM 5:01

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

Dear Mr. Griffis:

This letter is submitted on behalf of the Applicant in the above-referenced special exception before the D.C. Board of Zoning Adjustment (the "Board") and in opposition to the motion dated June 17, 2002, filed by Jonathan P. Graham, Esq., the spokesperson for Citizens Concerned About the Home's Expansion, the only party to the instant administrative proceeding (the "movant"). In his motion, Mr. Graham asks the Board to compel the Applicant to produce certain documents which he requested on May 3, 2002, or alternatively, to strike evidence already offered by the Applicant pertaining to the need for additional parking at the subject property. For the reasons set forth below, (i) the Board lacks the authority to provide the relief requested by the movant, (ii) the Applicant has no obligation to respond to movant's requests though it has voluntarily provided some of the requested information and (iii) in the current procedural posture of the application, wherein the Applicant has already presented its direct testimony on the issue of parking, it would be inequitable and unfair to do so.

First, the movant can cite no authority under the Board's Rules of Practice and Procedure (Chapter 31, 11 DCMR *Zoning* (July 1995 as amended))(the "Rules") conferring the power to compel the production of documents upon the motion of a party. In fact, the only reference in the Rules to motions is at § 3117.3(e) which grants to the presiding officer the authority to dispose of

BZA
Case No. 16836
Exhibit No. 49

Board of Zoning Adjustment
District of Columbia
CASE NO.16836
EXHIBIT NO.49

"procedural requests or similar matters". The movant's spokesperson, a litigator in his professional practice, attempts in his motion to concoct a "discovery process" for the Board similar to what exists by express rule in judicial proceedings. No such process exists under the Rules or under the applicable provisions of the D.C. Administrative Procedure Act, § 2-509(b), D.C. Code (2001 ed.)(the "DCAPA").

In his motion, the movant implies that the right to cross-examine also includes a putative "right to discovery" and bases this conclusion on limited language in the DCAPA. In fact, subsection (b) of the cited portion of DCAPA is no more expansive than the Rules in establishing the burden of proof on the proponent of an order, and in giving parties the right to offer oral and documentary evidence and submit rebuttal evidence, and to conduct cross-examination. In the instant case, the Applicant has placed in the record through the testimony and reports of its expert certain information regarding parking in order to carry its burden of proof. The movant has the right to cross-examine the witness and to submit any evidence it wishes to present in rebuttal, but it is responsible to collect and obtain such evidence.

The Applicant has presented most of its case regarding the issue of parking and concluded its evidence at the April 2, 2002 public hearing. The movant now wants the Applicant to supply it with information not in the record in this case in order to cross-examine this and other witnesses. The Applicant bears the risk that the information and evidence it has tendered to the Board will not be sufficient to discharge its burden of proof; but the Applicant is unwilling to supplement the record or to assist its opponents in a "contested case" to rebut the evidence in the record. Moreover, since the Applicant has already submitted its evidence on the issue of parking, it would be disadvantaged by being forced to enlarge the record at this stage for the convenience of the movant. The movant is entitled to develop and introduce any evidence which the Board finds admissible to support its opposition to the special exception application and to cross-examine witnesses; it simply cannot expect that the Applicant will perform this task for it.

Finally, on behalf of the Applicant, we resist movant's characterization that the Applicant has "stonewalled" the community. Quite the opposite is true, as the record of meetings and coordination regarding this project attests. With regard to parking, the Applicant's expert witness has testified to the

observations he made during the period of the area parking study. The parking study filed in the case contains the raw data assembled and his conclusions from that data. The Applicant's chief executive testified as to the Applicant's need for additional parking from an operational standpoint. On the basis of this testimony of these two witnesses and documentary evidence already submitted, the Applicant rests a major portion of its case for an enlargement of the parking lot. The movant cannot compel the Applicant to produce more.

For all of the foregoing reasons, the Applicant requests that the Board deny the instant motion.

Respectfully submitted,

George R. Keys, Jr.
Counsel for the Applicant

cc: Jonathan P. Graham, Esq.
Karen Thomas, Office of Planning
Philip Kogin, ANC-3F