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.

July 29, 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

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

Dear Mr. Griffis:

Enclosed for filing in the above-referenced special exception application, please find ten (10) copies of the Applicant's Proposed Findings of Fact and Conclusions of Law with respect to the hospice addition portion of the proceeding.

Copies of the enclosure were sent today by first class mail and facsimile transmission to Citizen Concerned About the Home's Expansion c/o Jonathan P. Graham, Esq. and to ANC 3F.

Very truly yours,

George R. Keys, Jr.
Counsel for the Applicant

Enclosure

cc: Jonathan P. Graham, Esq.
Advisory Neighborhood Commission 3F

RECEIVED
D.C. OFFICE OF ZONING
2002 JUL 29 PM 1:03

BZA
Case No. 16836
Exhibit No. 69

Board of Zoning Adjustment
District of Columbia
CASE NO.16836
EXHIBIT NO.69

APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN BOARD OF ZONING ADJUSTMENT APPLICATION NO. 16836 -
THE WASHINGTON HOME & HOSPICE

Application No. 16836 of The Washington Home & Hospice pursuant to 11 DCMR § 3104.1 for a special exception under 219 to add four (4) bed hospice addition to an existing 201-bed health care facility and to enlarge the existing parking lot from seventy-five (75) to one hundred seventy three (173) parking spaces in an R-1-B Zoning District at premises 3720 Upton Street, N.W. (Square 1825, Lot 818).

HEARING DATES: April 2, June 25 and July 9, 2002
DECISION DATE: August 6, 2002

SELF-CERTIFICATION

The Applicant filed a self-certification form for relief pursuant to § 3113.2.

PRELIMINARY MATTERS

Requests for Party Status. ANC 3F was automatically a party in this proceeding. The Board considered a request for party status from a group of neighbors calling themselves the Citizens Concerned About the Home's Expansion ("CCHE") represented by one of its members, Jonathan P. Graham. CCHE claimed that, as immediate neighbors of the Applicant's facility, they would be adversely affected if the Board were to grant the special exception. The Board conferred party status on CCHE and designated Mr. Graham as its sole spokesperson for the purposes of presenting its opposition and for cross-examination. At the continuation of the public hearing held on June 25, 2002, ANC 3C requested a waiver of the Board's rules and leave of the Board to become a party to the proceeding on the grounds that although the subject property is not within ANC 3C, it is immediately adjacent to ANC 3C boundary and constituents of ANC 3C are directly affected by the operation of the applicant's facility. The request of ANC 3C for party status was denied.

Request for Postponement of the Public Hearing. At the commencement of the public hearing on April 2, 2002, ANC 3F requested postponement of the public hearing on the grounds of inadequate notice of the special exception application and to permit the Applicant and its neighbors who oppose the special exception application an opportunity to continue discussions that may narrow the differences on the application. After due consideration, the Board denied the request for further delay in this application.

Motion to Compel. Prior to the June 25, 2002 continuation of the public hearing, CCHE filed a motion with the Board to compel the production of certain documents and information which it had requested in writing of the Applicant, or alternatively, to strike evidence submitted by the Applicant related to the requested information. The Board determined that it lacked the power to require disclosure of information at the request of a party outside of the context of the public hearing and, accordingly, denied CCHE's motion to compel and the motion to strike evidence.

Bifurcation of the Requested Relief. In the interests of administrative efficieny, the Board decided, *sua sponte*, to bifurcate the two elements of relief in this special exception application since the Applicant had completed its entire case on both issues. The Board ordered that it would hear the entire case pertaining to the hospice addition at the continuation of the public hearing on July 9, 2002, and set aside time on its September 10, 2002 calendar to hear the remainder of the case pertaining to the parking lot expansion.

Applicant's Case. The Applicant presented its case on the hospice addition through the testimony of Lynn C. O'Connor, its Chief Executive Officer; Erwin N. Andres of Gorove/Slade Associates, Inc., its parking consultant; Laurie Dickeson, RA of Amos, Bailey Arnold & Associates, Inc., its architect; and John Armentrout, its construction project manager. The Applicant is the only Medicare/Medicaid approved provider of impatient hospice care in the District of Columbia. The Applicant stated that the four-bed hospice addition was needed to meet the current and anticipated demand for end-of-life care in the District of Columbia. The addition of four beds will have minimal employment effect, since the mandated staffing ratio is one registered nurse per six hospice beds and by that measure the existing hospice is already over-staffed, so that the four-bed addition to the hospice represents an increase of less than a one full-time employee equivalency.

The Applicant introduced into evidence the Notice of Final Action and Findings of Fact, issued on September 20, 2001 (the "Certificate of Need"), by the District of Columbia State Health Planning and Development Agency ("SHPDA") which found that as a result of high occupancy levels of the existing nine-bed hospice unit and the general prevalence of diseases leading to terminal illness in the District of Columbia, the Applicant was justified in seeking to expand its hospice facility. On July 30, 2001, ANC 3F voted to support the Applicant's Certificate of Need application for the four-bed hospice addition.

The Applicant's architect described the proposed 2,077 square foot addition as a one-story edifice made of the same masonry materials with the same details as the existing facility and designed to be unobtrusive. The addition would contain four patient rooms and an access corridor connecting to the existing hospice area. The proposed addition would extend the facility only twelve feet (12') to the north in the direction of Upton Street, but the projection would still be approximately 160' from the property line along Upton Street. The addition represents a 1.6% increase in the total gross floor area of the existing facility and a 3.8% enlargement of the first floor building footprint. No trees would be affected by the construction of the hospice addition.

The Applicant's construction manager stated that construction staging, building materials and construction vehicles would be handled on-site and not on the public streets. Construction would occur only on weekdays between the hours of 7:00 a.m. and 4:00 p.m. Access of heavy construction vehicles would be routed only from Wisconsin Avenue, a route which has been coordinated with the Metropolitan Police Department. These construction-related commitments have previously been communicated by the Applicant to ANC 3F and the community.

Government Reports. By written report, dated March 26, 2002, the Office of Planning recommended approval of the special exception application under § 219 of the Zoning Regulations for the hospice addition and finds no adverse impact on the neighboring properties. By its initial written report, dated March 15, 2002, the District Division of Transportation ("DDOT") had no objection to the application, though its memorandum addressed only transportation issues. By supplemental report, dated June 25, 2002, DDOT added to its initial report based on additional information and a further site visit, but again addressed only transportation policy issues.

ANC 3F Report. On June 17, 2002, at a public meeting at which a quorum was present, ANC 3F unanimously passed a resolution opposing the special exception application. The resolution, however, contains no specific objection to the proposed hospice addition. The quite-detailed resolution focuses entirely on the community's objections and concerns regarding the impact of the proposed parking lot enlargement. At the public hearing, ANC Commissioner Philip Kogan, in whose single-member district the Applicant's facility is located, stated that to the extent that the hospice addition imposes an additional parking burden on the facility the ANC's objection to additional parking is also an objection to the hospice enlargement.

Persons in Support of the Application. Henry Guyot, a resident living in the ____-block of 38th Street, N.W. testified in support of the application and submitted a written statement on behalf of a number of residents of the neighborhood.

Persons in Opposition to the Application. Richard Danzig, appearing as representative on behalf of CCHE in the absence of Mr. Graham, stated that the Applicant was not entitled to the relief requested because of its failure to abide by prior orders of this Board governing the subject property, i.e., maintaining parking spaces in excess of the number authorized by the 1985 order. In addition, he noted that the Applicant had failed to maintain constant employment levels in spite of past promises to be do so. He noted that construction traffic would severely impact the immediate neighbors.

Peter Espensheid, an Advisory Neighborhood Commissioner from ANC 3C, read a statement embodying the resolution of ANC 3C opposing the application on the grounds that the Applicant should not be rewarded for its non-compliance with prior orders of the Board.

Barbara Behler, a resident of the 3600-block of Tilden Street, N.W., expressed her concern about any increase in traffic in the immediate area which would be attributable to an enlargement of the existing hospice.

Public Hearings. Public hearings on the hospice portion of the application were held on April 2, June 25 and July 9, 2002, at which times testimony and evidence were provided by the Applicant and its witnesses and experts, by the Office of Planning, DDOT and by ANC 3F and CCHE.

Decision. At a public meeting on August 6, 2002, the Board voted as follows: ___-___ to grant the application for a special exception pursuant to § 219 of the Zoning Regulations to construct a four-bed hospice addition to the existing health care facility in an R-1-B district.

FINDINGS OF FACT:

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

2. The subject property is rectangular in shape and contains 249,537 square feet of land area (5.73 acres).

3. The subject property is improved with a three-story, 201-bed health care facility for skilled, intermediate, sub-acute and hospice care.

4. The surrounding area is zoned R-1-B and is developed primarily with single family detached dwellings to the north and east of the subject property. To the south and west, the subject property abuts large institutional uses, including the Sidwell Friends School and the U.S. Postal Service Friendship Post Office. Diagonally across 37th Street to the southeast is Hearst Elementary School.

5. The subject property is subject to two prior orders of the Board of Zoning Adjustment: Application No. 14283, a 1985 decision which approved the erection of the current building to replace an existing health care facility on the subject property; and Application No. 16263, a 1997 decision which authorized the increase of twelve (12) beds to the health care facility.

6. The Applicant has received a Certificate of Need from SHFDA, which constitutes an official government concurrence with the public need for the requested expansion of the existing hospice.

7. The subject property is located in the R-1-B zoning district and its use as health care facility for not more than 300 persons is a conforming use in such a district subject to special exception approval by the Board. The District of Columbia Generalized Land Use Map (May 1995) prepared by the D.C. Office of Planning and accompanying the District of Columbia Comprehensive Plan identifies the subject property as "institutional use."

8. The existing improvements on the subject property are substantially under-built with less than 50% of the allowable FAR and a similar percentage of the allowable lot occupancy. The proposed addition of 2,077 square feet to a facility containing 133,661 square feet on 249,537 square feet of land area is a *de minimis* alteration of existing conditions.

9. The low-scale architectural profile of the proposed addition, when combined with its distance from the property line and from the nearest residential neighbor across Upton Street, N.W., make it unlikely that the addition to the hospice will any adverse impact on the neighborhood.

10. Other than a marginal potential increase in parking demand for visitors to the addition to the hospice, which the Applicant's parking consultant estimated to be four (4) parking

spaces (which demand can be satisfied by available on-street parking in the vicinity), the opponents of the application have asserted no objective basis to sustain a finding that the hospice addition will, in accordance with the general special exceptions standards of the Zoning Regulations set forth at § 3014.1, adversely affect the use of neighboring property. The Board finds that no adverse impact contemplated under wither § 219 or § 3014.1 is likely to occur as a result of the four-bed hospice addition.

CONCLUSIONS OF LAW AND OPINION

The Board conclude that it has accorded ANC 3F the "great weight" to which it is entitled. The record reflects that ANC 3F opposed the application but failed in its resolution or in its testimony to propound any facts or to introduce any evidence that related to a rational basis to oppose the hospice addition. The ANC's concerns were uniquely directed to the impacts of the requested parking lot enlargement and the Board will respond to those issues and concerns in the remaining portion of this bifurcated proceeding.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception to construct a four-bed hospice addition. Accordingly, it is **ORDERED** that this special exception application to add a four (4) bed addition to an existing health care facility is **GRANTED**.

VOTE: 4-1-0 (Geoffrey H. Griffis, Curtis Etherly, Jr., David Zaidain, Peter G. May, to approve; Anne M. Renshaw, to oppose)

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

Each concurring Board member approved the issuance of this order.

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TOW YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE

WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1, OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (2001). THIS ORDER IS CONDITIONAL UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.