BZA
Case No. 17055
Exhibit No. 135

# KNOLLWOOD NEIGHBORS

## BZA Application No. 17055
## September 21, 2004

Board of Zoning Adjustment
District of Columbia
CASE NO. 17055
EXHIBIT NO. 135

# Outline of Deal

- NEIGHBORS AGREED TO ALLOW BUILDING IN THEIR FRONT AND BACK YARDS IN EXCHANGE FOR
  - **SITING *ON THE PAVED AREAS* TO PROTECT BERM AND FOREST BUFFER**
  - **LANDSCAPING TO SCREEN BUILDING**
  - **LIMITED USE OF TENNYSON ST. EXIT**
  - ***SIGNIFICANT* EXTENSION OF EXISTING MORATORIUM BUT LIMITED TO FORESTED AREAS TO ALLOW KNOLLWOOD OPPORTUNITY TO EXPAND**

# Current Situation

- AT THE LAST MINUTE, KNOLLWOOD HAS RENEGED ON THE DEAL THAT HAD BEEN AGREED TO MONTHS AGO

# Neighbors Speaking Today

- LARRY FENSTER – PRESIDENT OF KNOLLWOOD NEIGHBORS
  - SPECIFIC ISSUES CONCERNING SITING, SCREENING AND TENNYSON ST. EXIT
  - INCLUDING TESTIMONY FROM KEITH PITCHFORD, ARBORIST
- BOB DIAMOND – FORMER ANC COMMISSIONER
  - THE HISTORY OF THE KNOLLWOOD BUILDING MORATORIUM
- JOHN WIMBERLY – NEIGHBOR AND PASTOR OF WESTERN PRESBYTERIAN CHURCH
  - THE FAILURE OF THE MEDIATION PROCESS -- WHAT IS AT STAKE FOR THE NEIGHBORS, KNOLLWOOD AND THE BZA

# An Apartment House Requires a Use Variance

- Title 11, Section 199.1

  Apartment House is "any building ***or part of a building*** in which there are three or more apartments . . . ."

# Apartment House (con'td)

- APARTMENTS NOT A COMMUNITY RESIDENCE FACILTY
- Pursuant to Title 22, a CRF is defined as
- ***a facility providing safe, hygienic sheltered living arrangements*** for one (1) or more individuals aged eighteen (18) years or older (except that, in the case of group homes for mentally retarded persons, no minimum age limitations shall apply), not related by blood or marriage to the residence director, who are ambulatory and able to perform the activities of daily living with minimal assistance. The definition includes facilities, including halfway houses and group homes for mentally retarded persons, which provide ***a sheltered living arrangement for persons who desire or require supervision or assistance within a protective environment because of physical, mental, familial, or social circumstances, or mental retardation.*** The definition does not include facilities providing sheltered living arrangements to persons who are in custody of the Department of Corrections of the District of Columbia.

# Apartment House (cont'd)

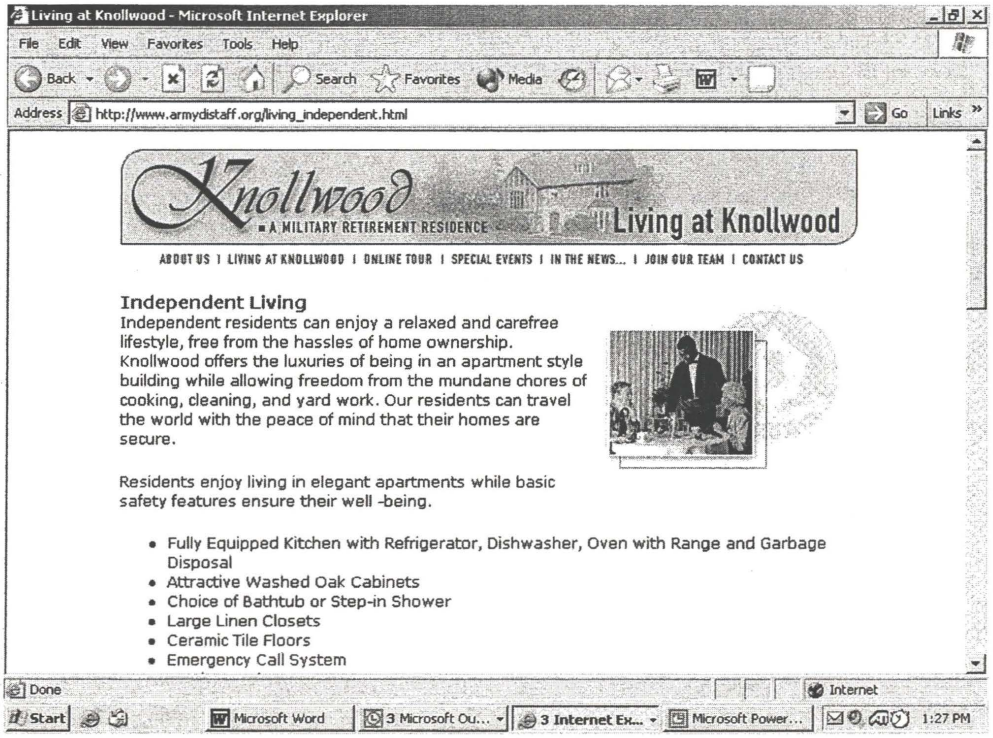
- 22 DCMR § 3099.1. Sheltered living arrangements are
- . . . living arrangement[s] in which ***a responsible adult oversees the activities of daily living of each resident*** so as to assist each resident in maintaining adequate personal hygiene; establishing social, community, and family contacts; and obtaining adequate medical, nursing, health, and social services. This type of living arrangement may include the supervision of the taking of medications prescribed for self-administration.

# How Does Knollwood Describe Their Apartments

- Exhibit No. 11

  The Knollwood Independent Living Units are Licensed in DC as an Apartment House

# How Does Knollwood Describe Their Apartments



# COMPREHENSIVE PLAN DOES NOT SUPPORT KNOLLWOOD

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- (e) Ward 3 must be particularly sensitive to the needs of its elderly population, which comprises seventeen percent (17%) of the ward and is proportionately the highest in the city. Housing for the elderly must be maintained and increased, ***especially along the major transportation and commercial corridors of Connecticut and Wisconsin Avenues.***

# Comprehensive Plan Does Not Support Knollwood (cont'd)

- 1400.2 Major themes for Ward 3:

- (a) Protecting the Ward's residential neighborhoods:

  - (1) Ward 3's most outstanding characteristic is its low density, stable residential neighborhoods . . .

  - (2) Residents seek to ensure that stability is maintained. Accordingly, no significant land use changes have been indicated in the first eleven (11) elements of the Comprehensive Plan, and ***it is a major theme of this ward plan to protect and maintain the low-density, high-quality character of the ward***;

# Comprehensive Plan Does Not Support Knollwood (cont'd)

- c) Preserving and promoting cultural and natural amenities:

  - (1) The combination of development pressure and environmental awareness has led to an increased appreciation of the ward's natural resources. These resources include Rock Creek Park, Glover Archbold Park, Battery Kimble Park, and Fort Reno Park, as well as numerous smaller parks, recreation centers, playgrounds, and open spaces. Many of the ward's larger parks and natural recreation areas function as resources for the entire city, as well as ward residents. ***The loss of open space and natural areas is an important concern.*** So, too, is the potential disposal of land owned by the federal government - much of which is undeveloped or borders parklands. ***Development on or near park borders is another threat to the ward's natural resources. Thus, it is a major theme of this ward plan that the integrity of parklands be maintained and improved wherever necessary,***

# Larry Fenster Testimony

- THE IMPORTANCE OF PROTECTING THE FOREST AND BERM
  - KNOLLWOOD'S HISTORY OF BROKEN PROMISES ON LANDSCAPING AND SCREENING
  - THE VIEW FROM STEPHENSON LANE
  - PROMISES MADE/PROMISES BROKEN DURING NEGOTIATIONS
    - SITING ONLY ON PAVED AREAS
    - PROTECTION OF BERM TO ALLOW EFFECTIVE SCREENING
- TENNYSON ST. EXIT
  - PROMISE TO USE ONLY FOR EMERGENCY VEHICLES
  - PROMISE BROKEN

# Bob Diamond Testimony

- A HISTORY OF BROKEN PROMISES ON THE BUILDING MORATORIUM

- ORDER NO. 5550 (1959)
  - ALLOWED ORIGINAL BUILDING WITH THIS CONDITION:
  - The remainder of the entire site shall be used for no other purpose than landscaping, roadways and parking and shall not be sold or otherwise improved

- ORDER NO. 15358 (1991)
  - ASSISTED LIVING WING ALLOWED WITH THIS CONDITION
  - 1. The applicant shall not make any major structural additions to the property, except for outdoor recreational facilities, for a period of twenty-five years from the final date of this Order.

- RECENT NEGOTIATIONS
  - KNOLLWOOD AGREED TO EXTEND MORATORIUM 35 YEARS
  - KNOLLWOOD NOW AGREES TO ADD 3 YEARS TO EXISTING MORATORIUM

# John Wimberly Testimony

## Mediation Process

- Working Together
- Beginning Positions
- Four Months of Work Undone in a Night
- Commitments Made, Commitments Enforced

# Conditions

- SITING AND LANDSCAPING

- a) transplanted screening trees are especially vulnerable during the initial years after transplantation and planting screening trees in locations exposed to sunlight is an essential condition for the success of transplantation, as well as their long term viability.

- b) transplanted screening trees shall be placed in locations to minimize potential damage to all mature deciduous trees in woodlands and green buffer identified as preservation candidates.

- c) screening trees at time of installation shall be of sufficient height and quantity to fully screen the view of the building and anyone standing on a rooftop terrace from each Neighbor's house if any Neighbor so desires.

- d) neighbors may employ an arborist to participate in the planning, execution, and protection of landscaping during construction, in the areas between Stephenson Lane and the new building and between 29th Street and the new building. Knollwood shall be responsible for the arborist's fees. The arborist shall be entitled to participate in all material aspects of the landscaping, including, but not limited to, the planting of screening trees between the building and Stephenson Lane and 29th Street before construction begins; establishing the height and variety of trees (and other landscaping materials); the placement of new trees and other landscaping material; supervising the planting of screening trees; and preserving existing mature deciduous trees during construction.

# Conditions (cont'd)

- e) Knollwood agrees to maintain the entire existing berm between Stephenson Lane, 29th Street and the new building. This shall include siting the new building so that (1) all of the new structures, including walls, shall be within the existing parking lot; and (2) the structures are far enough back to allow planting of screening trees on the space currently occupied by the road all the way around to the part of the current road that heads down towards Nebraska Avenue. It shall also include fencing off the berm during construction, and the use of other construction techniques, such as no "overdig" and other appropriate techniques identified by Neighbors' arborist, so as to protect the berm and newly planted trees. In addition, Knollwood shall take all measures necessary to protect existing, mature, deciduous trees during construction. Singled out for special protection shall be the large white oak tree and the weeping cherry tree on the 29th Street side of the berm. This means that the limits of disturbance shall not go beyond the existing curb line along the 29th St. and Stephenson Lane sides.

- f) Knollwood shall consult with the Neighbors' arborist on an amount to budget to fully execute an effective landscaping and screening plan. Once approved, Knollwood shall spend at least that budgeted amount on landscaping during the construction phase.

# Conditions (cont'd)

- g) After construction, Knollwood shall maintain a separate annual budget amount for the maintenance of all new plantings. The amount of such budget as well as the frequency of maintenance and maintenance procedures, especially those pertaining to transplanted trees, shall be determined in consultation with Neighbors' arborist.

- h) In the event that there is a dispute about any of the landscaping items set forth above, the arborists of Neighbors and Knollwood shall select a neutral expert arborist to resolve the dispute. This arborist shall be certified by the International Society of Arboriculture (ISA) and with demonstrated experience over 5 years in the field with both tree preservation and large tree transplantation. His or her decision will be binding on both parties. Knollwood shall be responsible for the fees of this neutral expert.

- TENNYSON ROAD EXIT:

- Knollwood agrees that if an exit to Tennyson is constructed, it shall be used only in emergencies, and shall install a physical barrier to prevent its non-emergency use.