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October 26, 2004

By Hand Delivery

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W., Second Floor
Washington, D.C. 20001

Re: **Board of Zoning Adjustment Application No. 17055 of Knollwood Military Retirement Residence (Square 2339, Lot 3)**

Dear Chairman Griffis and Members of the Board:

Enclosed please find Knollwood's proposed Findings of Fact and Conclusions of Law for BZA Application No. 17055, as requested by the BZA at its October 12, 2004 hearing.

In addition, please find the executed Development Agreement between Knollwood and the Knollwood Neighbors containing the items negotiated by the parties during the BZA special exception application process.

Respectfully,

Paul A. Tummonds, Jr.

Jeffrey C. Utz

Enclosures

cc: Knollwood Neighbors
ANC 3/4G
General Donald Hilbert

Document #: 1440050 v.1

BZA
Case No. 17055
Exhibit No. 158

Board of Zoning Adjustment
District of Columbia
CASE NO. 17055
EXHIBIT NO. 158

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APPLICANT'S PROPOSED FINDINGS OF FACT

AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

Application No. 17055 of the Army Distaff Foundation, Inc., pursuant to 11 DCMR § 3104.1, for a special exception to allow a four story addition housing 25 nursing rooms accommodating 27 residents and the addition of 27 independent living units[1] under sections 218 and 219 at the Knollwood Army Retirement Residence, an existing health care facility, in the R-1-A District at premises 6200 Oregon Avenue, N.W. (Square 2339, Lot 3).

HEARING DATES: October 14, 2003; February 3, 2004; May 25, 2004; September 21, 2004; October 12, 2004

DECISION DATE: November 2, 2004

DECISION AND ORDER

The applicant in this case is the Army Distaff Foundation, Inc., the operator of Knollwood – a Military Retirement Residence ("**Knollwood**" or the "**Applicant**"). Knollwood filed an application (the "**Application**") with the Board of Zoning Adjustment ("**BZA**" or the "**Board**"), for a special exception under 11 DCMR § 3104.1 allowing the construction of an addition to the existing continuing care retirement community facility that will include 25 new dementia/Alzheimers units accommodating 27 residents and 22 independent living units[2] under 11 DCMR §§ 218 and 219 at premises 6200 Oregon Avenue, N.W. (Square 2339, Lot 3) (the "**Property**").

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memorandum dated July 3, 2003, the Office of Zoning advised the following parties of the of the application: the

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[1] The final project approved by the Board of Zoning Adjustment was reduced in height and was reduced to 22 independent living units.

[2] See footnote 1 above.

D.C. Office of Planning, the D.C. Department of Transportation, the Councilmember for Ward 3, and Advisory Neighborhood Commission ("**ANC**") 3/4 G. The Board initially scheduled a public hearing on the application for October 14, 2003.

Requests for Party Status. On October 14, 2003, the Board determined the Parties in Opposition to this case. ANC 3/4 G is automatically a party in this proceeding. The Board granted party status to the Knollwood Neighbors, an association of neighbors residing near Knollwood. Mr. Daniel Cross, the owner of the property located at 6226 29th Street, N.W. was denied party status as the Board did not believe that Mr. Cross' interests would be more significantly, distinctively or uniquely affected in character or kind than those interests that were being represented by the Knollwood Neighbors.

Continuances. By a letter dated September 17, 2003, (Exhibit Number 26 in the Record), the Applicant requested a continuance for additional time to work with the neighboring community to address concerns regarding the application. ANC 3/4 G, by a letter dated September 26, 2003, noted its 6-0 vote in support for Knollwood's request for a continuance (Exhibit Number 28 in the Record). The Board scheduled a hearing for February 3, 2004. By a letter filed with the Board on January 20, 2004 (Exhibit Number 100 in the Record), the Applicant requested a postponement of the hearing on February 3, 2004 in order to enter a formal mediation process with the party opponents. At the February 3, 2004 hearing, the Board rescheduled the hearing for May 25, 2004. On April 15, 2004, the Board received a letter from Richard Nettler of Robins, Kaplan, Miller & Ciresi, LLP containing a motion for a brief continuance to allow representation of counsel (Exhibit Number 111 in the Record). By letter dated May 10, 2004, the Applicant requested a continuance of the May 25, 2004 hearing (Exhibit Number 113 in the Record). By a letter dated May 11, 2004, Michael Lewis, the mediator in this case, requested that the Board grant a continuance of the May 25, 2004 hearing (Exhibit Number 114 in the Record). By a letter dated May 12, 2004, Robert Gordon, as Chairman of the ANC, expressed the ANC's support for the continuance of the May 25, 2004 hearing (Exhibit Number 115 in the Record). By letter dated May 21, 2004, the Knollwood Neighbors requested a continuance of the May 25, 2004 hearing (Exhibit Number 119 in the Record). At the May 25, 2004 hearing, the Board rescheduled the hearing for September 21, 2004.

Applicant's Case. The Applicant requested special exception approval for an addition to the existing community residence facility and health care facility in the R-1-A Zone District on the Property. The Applicant presented testimony and evidence from General Donald Hilbert, Executive Director of Knollwood; Vernon Feather, of SFCS, Inc., recognized by the Board as an expert in architecture; Colonel Tom Moss, Chief Financial Officer of Knollwood; Lisa Harfoot, the Terrace Administrator at Knollwood; Barbara D'Agostino, Health Services Administrator at Knollwood; Edward Papazian of Kimley-Horn & Associates, Inc., recognized by the Board as an expert in transportation and traffic engineering; and Michael Bello of Kimley-Horn Associates, Inc., recognized by the Board as an expert in landscape architecture.

FINDINGS OF FACT:

The Subject Property and BZA History

1. The Property is located in the R-1-A Zone District. The Property abuts Oregon Avenue, N.W., and Rock Creek Park to the east. To the south, the Property abuts Stephenson Lane, N.W., and Nebraska Avenue, N.W., which include single-family homes as the predominant land use. To the west, the Property abuts single-family homes located on Stephenson Lane, N.W., and 29th St, N.W. To the north, the Property abuts Tennyson Street, N.W., which also includes single-family homes as the predominant land use. The entire Property consists of approximately 16.3 acres or 709,912 square feet. (Exhibit Number 120 in the Record, Page 2).

2. The Knollwood facility, operated by the Army Distaff Foundation, Inc., is dedicated to meeting the needs of aging career military personnel and their spouses and relatives by providing retirement living facilities with health care services. (Exhibit Number 120 in the Record, Page 2). Knollwood is a continuing care retirement community that provides three distinct levels of care for its residents: independent living units, assisted living units and skilled nursing units. The present facilities on the Property consist of: The Hall, which includes 150 efficiency, one- and two- bedroom independent living units; the Terrace, composed of 39 assisted living units with a maximum occupancy of 40 residents; and the Health Services Center, a fully-licensed, 50-bed skilled nursing facility. The Property also includes a parking lot with 203 parking spaces and the Knoll House, which is used for administrative purposes and staff residential use. (Exhibit Number 120 in the Record, Page 3-4). The existing buildings on the site occupy 11% of the lot and have an FAR of 0.45. (Exhibit Number 120 in the Record, Page 2).

3. The original facility was constructed pursuant to BZA Order No. 5550, dated May 29, 1959. Knollwood began its operations on the Property in 1962. BZA Order No. 5550 permitted Knollwood to establish a combined community residence and health care facility for 300 residents with eight nursing beds. Thereafter, in BZA Order No. 9185, dated April 12, 1967, the Board approved an increase in the number of residents from 300 to 318 and provided for the expansion of the health care component to 48 nursing beds. This nursing facility is now known as the Health Services Center ("HSC"). By BZA Order No. 14626, dated June 24, 1987, the BZA granted a special exception to construct an addition of 292 square feet in the nursing facility to act as a social activity and dining area as was required by D.C. Health Regulations. In BZA Order No. 15358 dated January 31, 1991, the Board permitted the construction of an addition to the Knollwood facilities on the Property to enlarge the existing facility with 40 assisted living units and support facilities. In BZA Order No. 15358, the Board included five conditions. In the present application Knollwood satisfies all of these conditions, but for the condition which established a 25-year moratorium on development on the Property. Since that 25-year moratorium has not expired, the Applicant is requesting the waiver of that condition of the Board's previous approval of Knollwood's use of the Property. Knollwood agrees to retain all of the other conditions in BZA Order No. 15358. (Exhibit Number 120 in the Record, Page 2).

Proposed Addition

4. The proposed addition will be located in the southwest corner of the Property adjacent to the existing HSC. The first floor of the proposed addition will contain 25 dementia units (to be known as "special care units") that will include 23 private and 2 semi-private rooms (with two beds in each semi-private room) for a total capacity of 27 beds, two dining areas, multiple activity spaces (including a country kitchen, a music area, game space, hair salon and a garden room) and a secure outside garden area. The second, third and fourth floors of the proposed addition will house 22 independent living units. (Exhibit Number 120 in the Record, Page 9-10, Testimony of Vernon Feather at September 21, 2004 public hearing).

5. The addition will have a height of approximately thirty feet as measured from the 310 foot elevation established in BZA Order No. 15358. With the construction of the proposed addition, the Knollwood facilities on the Property will occupy 13.5% of the Property and a FAR of approximately 0.5. (Exhibit Number 120 in the Record, Page 10).

6. The Applicant and the Knollwood Neighbors engaged in a formal mediation process beginning in March of 2004, overseen by a professional mediator recommended by OP in a memorandum dated January 29, 2004 (Exhibit Number 106 in the Record).

7. Early in the mediation process, the members of the Knollwood Neighbors group that lived on 29th Street and Stephenson Lane noted that their biggest concerns regarding the proposed project were the mass and height of the addition, the removal of existing trees that provided a landscape buffer and the proximity of the addition to the 29th Street neighbors. (Exhibit Number 120 in the Record, Page 8) In testimony at the hearing on September 21, 2004, the Knollwood Neighbors underscored the importance of protecting the forest and berm to allow effective screening, the need to locate the proposed addition only on paved areas of the Property and the need to use the Tennyson Street entrance/exit only for emergency vehicles (Exhibit Number 135 in the Record).

8. The proposed addition was significantly reduced and pulled back from neighboring properties since the initial application and public presentation of the plans. (Exhibit Number 120 in the Record, Page 8-9). Mr. Vernon Feather, the project architect, discussed how the location of the addition has greatly increased the distance between the footprint of the addition and the 29th Street neighbors' properties. The lowest level of the addition is located more than 120 feet from the closest 29th Street neighbor property. The pivoting of the majority of the mass of the addition towards the interior of the site also reduces the visual impact of the addition of the Stephenson Lane neighbors. The proposed addition is set back over 70 feet from Knollwood's property line along Stephenson Lane. Adding the width of Stephenson Lane to this distance, the proposed

addition is located more than 120 feet from the property owners on the south side of Stephenson Lane. (Exhibit Number 120 in the Record, Page 9).

9. Information regarding the proposed terracing of the upper floors to further reduce the visual impact on neighboring properties was submitted into the record. This modified design removed 5 independent living units from the original proposal, a 19% reduction in the amount of additional independent living units originally planned. (Exhibit Number 120 in the Record, Page 9).

10. At the October 12, 2004, public hearing, Mr. Feather provided additional testimony as to the final modifications to the proposed addition to further accommodate the concerns of the Knollwood Neighbors. The final modifications to the proposed addition located the proposed addition entirely within the footprint of the existing parking lot and roadways, as demonstrated in the final plans submitted on October 12, 2004. (Exhibit Number 155 in the Record).

11. The Applicant presented testimony from its Landscape Architecture expert, Michael Bello, regarding the enhanced landscape buffer surrounding the proposed addition that will further minimize the visual impact on neighboring properties. (Exhibit Number 120 in the Record, Page 8-10, testimony of Michael Bello at September 21, 2004 and October 12, 2004 public hearing). According to the testimony of Mr. Bello, the modifications to bring the addition inside the footprint of the paved areas on the site will result in minimal disturbance to the existing landscaping and berm and retain as many trees on the site as possible.

12. In its original application, the Applicant proposed an 86 space parking lot north of the Oregon Avenue entrance along Tennyson Street, N.W. Based on comments received from members of the community, the Applicant modified the proposed new parking area. In order to mitigate any potential adverse impacts on residents of Tennyson Street that may result from vehicle head lights, the parking area was moved to the south of the Oregon Avenue entrance drive. (Exhibit Number 120 in the Record, Page 11-12). Mr. Bello presented testimony at the September 21, 2004 hearing, regarding the significant landscaping and berms that will be created around the parking area to maintain the attractive natural setting of Knollwood's front lawn. Mr. Bello noted that the proposed parking area will have no visual impact on Rock Creek Park or on Oregon Avenue. In addition, as stated in the testimony of Mr. Feather, if economically feasible, the Applicant will add a level of below grade under the new addition, which will reduce the size of the parking area above grade.

13. The original application also proposed a vehicular exit onto Tennyson Street, N.W. In response to community concerns, the Applicant moved the vehicular entrance/exit on Tennyson Street to align with 29th Place and has agreed to use it only as

a right turn exit for Knollwood residents and an emergency entrance/exit. (Exhibit Number 120 in the Record, Page 11-12). The Applicant will also propose to the DDOT to place a stop sign on Oregon Avenue, N.W., at its intersection with Tennyson Street. (Exhibit Number 120 in the Record, Page 12). Upon the erection of the stop sign at the intersection of Tennyson Street and Oregon Avenue, the Applicant has agreed to prohibit residents of the Knollwood facility from using the right turn exit onto Tennyson Street, N.W.

14. According to the September 21, 2004 testimony of Ed Papazian and the Traffic Analysis submitted into the Record (Exhibit E to Exhibit Number 120 in the Record), the Knollwood facility currently generates little traffic activity, operates with minimal vehicular impact on the surrounding community and the Property is adequately serviced by public transportation. According to Mr. Papzian's Traffic Analysis, the additional vehicular trips generated by the addition are likely to occur at the Oregon Avenue entrance to the Property and add only one new trip every 8 minutes in the a.m. peak hour and one new trip every 4 minutes in the p.m. peak hour. Mr. Papazian concluded that the proposed addition will not create any adverse traffic impacts on neighboring streets. (Exhibit Number 120 in the Record, Page 19).

15. In addition, Mr. Papzian noted that the amount of parking spaces proposed in the application will more than accommodate the parking demand for the expanded facility as visitor demands for parking will likely occur during the evenings and weekends, when on-site employee levels are reduced. (Exhibit Number 120 in the Record, Page 17-18).

16. Evidence was also submitted into the record that noted the addition of the vehicular emergency entrance/exit and vehicular resident right-turn only exit to Tennyson Street will not create any adverse traffic impacts in the area surrounding the Property. Other than emergency personnel, Knollwood residents would be the only people allowed to use this access driveway and they would only be allowed to exit with a right turn, thereby preventing Knollwood traffic from heading westbound on Tennyson Street into the adjacent neighborhood. (Exhibit Number 120 in the Record, Page 20).

17. As noted in the Applicant's pre-hearing submission and in testimony presented at the September 21, 2004 public hearing by General Donald Hilbert, as the population has aged both at Knollwood and throughout the United States, there has been a dramatic increase in demand for specialized dementia services. (Exhibit Number 120 in the Record, Page 5). There is a pressing need for healthcare and retirement communities to respond by building specialized facilities to handle this population (Testimony of Gen. Hilbert, September 21, 2004 public hearing). These sentiments are echoed by Anthony K. Sudler, President & CEO of the Alzheimer's Association in a letter dated November 25, 2003 submitted with the Applicant's pre-hearing statement (Exhibit H to Exhibit Number 120 in the Record).

18. General Hilbert testified that the proposed expansion and upgrade of the facilities will respond to a need for a more life-cycle based offering of care, by providing larger and more updated floor plans for the independent living units, as well as dementia units. (Exhibit Number 120 in the Record, Page 6). These larger units are required as more couples are in need of independent living units. (Exhibit Number 120 in the Record, Page 6) The development of specialized dementia units will enable Knollwood to respond to such demand and provide more supervision, queuing and specialized activities geared towards residents with dementia and Alzheimers disease. (Exhibit Number 120 in the Record, Page 6).

19. The Applicant noted that it is vital to the establishment of the specialized dementia services that the 22 independent living units are included on the Property. As stated by Colonel Tom Moss during his testimony in the September 21, 2004 hearing, the income created from such independent living units will allow Knollwood to fund the dementia units and supplement their operation in the future.

20. At the September 21, 2004 public hearing, General Hilbert testified that the proposed addition will not result in the need to amend the existing resident population cap of 318 as established in BZA Case No. 9185. (Exhibit Number 120 in the Record, Page 10). If the proposed addition is approved, Knollwood's expected occupancy will only be 311 residents. (Exhibit Number 120 in the Record, Page 10). Upon approval of the proposed application, Knollwood will hire approximately 18 additional staff. (Exhibit Number 120 in the Record, Page 20).

Appropriateness of Independent Living Units on the Property

21. During the September 21, 2004 hearing, the Knollwood Neighbors argued that the proposed and existing independent living units at Knollwood were inappropriate for the R-1-A Zone District and required a use variance, since such units are more properly defined as apartment units. The Knollwood Neighbors stated that the existing and proposed independent living units were not consistent with a community residence facility, since such units did not satisfy the definition of a sheltered living arrangement under 22 DCMR §3099.1. The Board notes that it previously approved a similar facility with independent living units as a community residence facility for the Ingleside at Rock Creek facility located at 3050 Military Road, N.W. In BZA Order No. 16138, the Board stated that the proposed use of the retirement home (as described on page 3 of the Order) constitutes a community residence facility and not an apartment building.

22. The Applicant presented evidence that the Knollwood facility is similar to the Ingleside facility since it provides a safe, hygienic and sheltered living arrangement for seniors who are ambulatory and able to perform the activities of daily living with

minimal assistance. (Exhibit Number 120 in the Record, Page 13). Evidence was submitted into the record that residents of the independent living units enter into a life-care contract and pay an admission fee to gain entry to Knollwood.

23. In particular, the Board notes the testimony of Lisa Harfoot at the October 12, 2004 public hearing, in which Ms. Harfoot discussed the supportive living environment at Knollwood and the many services offered to residents of the independent living units that are not found in an apartment building. Such services include: full dining services, health services including medical wellness counseling and 24-hour emergency clinic service, activities (including trips to local grocery stores and area attractions), an annual Health Fair, rehabilitation services, emergency alarms in their rooms, transportation, laundry service, chapel services, nutritional consultations, resident clinic visits for blood pressure checks and other on-campus events. Ms. Harfoot also provided testimony as to how Knollwood monitors the activities of daily living of each resident of the independent living units, by noting if a resident misses meals, dresses in a manner inappropriate to seasons, or exhibits disruptive or inappropriate behavior.

24. The Applicant also submitted for the record a copy of the Operational Definition of a Community Residence Facility created by the District's Department of Health, Health Regulation Division, Child & Residential Care Facility Division (Exhibit Number 138 in the Record). That definition states:

> "A Community Residence Facility (CRF) provides a level of health care in a safe, hygienic, protective/sheltered living arrangement for one (1) or more individuals who are not related by blood or marriage to the Residence Director. These individuals are ambulatory with or without the assistance of mechanical device(s), able to get in and out of bed, able to move about from place to place. They are oriented to place, time and day; capable of making proper judgments in emergency situations, and able to perform the activities of daily living (eating, bathing, dressing, toileting and walking) independently or with minimal assistance. This level of health care is for individuals who desire or require supervision or assistance within a protected environment because of physical, mental, familial or social circumstances. This definition is for facilities that are for the elderly, half-way houses and group homes for mentally retarded persons"

25. The OP Report supports the Applicant's arguments that the proposed independent living units are consistent with a community residence facility. According to the OP Report (Exhibit 122 in the Record, Page 11):

> "though there has been some question about whether the independent living units should be classified as apartments, rather than as part of a CBRF or heath care facility... [t]he Board has already established that such units are to be considered as part of a community residence facility, most notably in its order for Case No. 16138,

the Ingleside at Rock Creek. The Knollwood facility is available only to the (relatively) elderly, and only if those who desire residency commit to a life-care contract that automatically moves them through differing levels of care-environments, depending on the direction of the residents' health care needs. The independent living unit residents have supporting services available including: meal services, activity directors and transportation services, special fittings and emergency notification devices in their residence units, medical clinic emergency service, and – for supplemental fees – access to the medial services provided to the assisted living residents."

26. Based on the evidence submitted into the record, the Board finds that the existing and proposed independent living units satisfy the Zoning Regulations definition of a community residence facility. Therefore, it is appropriate to locate the proposed addition on the Property if the Applicant satisfies the special exception relief standards of §§ 218 and 219 of the Zoning Regulations.

Satisfaction of Special Exception Standards

27. For the application to be granted, the Applicant must demonstrate satisfaction of the requirements of § 218 (Community Residence Facilities) for the approval of the proposed 22 independent living units, and § 219 (Health Care Facilities) for approval of the 25 dementia units, housing up to 27 residents that suffer from dementia. Based on the information submitted into the record and discussed herein, the Board finds that the Applicant has satisfied all of the applicable standards of §§ 218 and 219.

28. The Board notes that as the population of the country and the District ages, it is vital that retirement communities remain economically viable and continue to offer premium services within the District itself. (Exhibit Number 120 in the Record, Page 21) This need has been highlighted as especially important in Ward 3[3] in the District of Columbia Comprehensive Plan ("**Comprehensive Plan**") (DCMR Title 10 Chapter 14). In 10 DCMR §1402.2, the Comprehensive Plan states: "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...."

[3] At the time of the adoption of the current Comprehensive Plan, the Property was located in Ward 3. The Property is now located in Ward 4. Thus, the Comprehensive Plan's discussion of the Ward 3 Elements are applicable to the Property.

Reports of District Agencies

30. Office of Planning. The District of Columbia Office of Planning ("**OP**") reviewed the application. Steve Cochran testified for OP at the September 21, 2004 public hearing. In the OP report, dated September 14, 2004 (the "**OP Report**") (Exhibit Number 122 in the Record), OP recommended approval of the revised application subject to the following conditions:

1. The Applicant shall clarify the number of existing parking spaces within the context of the 190 spaces previously approved by the BZA;
2. Prior to the BZA's decision in this case, the Applicant shall submit to the BZA the final designs for the proposed parking area and landscaping on the east lawn;
3. Prior to the BZA's decision in this case, the Applicant shall submit final plans for the proposed vehicular access point at Tennyson Street, and its use restrictions. This access point shall be restricted to: (a) ingress/egress by emergency vehicles if access at Oregon Avenue is temporarily blocked and (b) right-turn-only egress by Knollwood residents.
4. Prior to the BZA's decision in this case, the Applicant shall submit to the BZA the final designs for the proposed landscaping and specifications for the caliper and height of evergreens to be planted on the western portion of the property facing the rear property line of houses on 29th Street, as well as the southern portion of the property facing Stephenson Lane.

The OP Report noted that the Applicant has made a number of changes to the site plan, height, massing, design, landscaping and parking as a result of the mediation process with the Knollwood Neighbors and conversations with OP, DDOT and CFA. "The applicant has worked extensively with the community to make significant modifications to the original proposal. The orientation, location, height, setbacks, materials, and distances from adjacent properties have all been improved." (Exhibit 122 in the Record, Page 1).

31. DDOT. In a memorandum dated September 20, 2004 (Exhibit Number 147 in the Record), DDOT supporting the proposed expansion based on the adequacy of the parking provided, the availability of public transportation and the few vehicular trips generated by the project. After reviewing the Applicant's statement and Parking Analysis, DDOT concluded that the expansion would add seven vehicle trips during the a.m. peak hour and fifteen vehicle trips during the p.m. peak hour. (Exhibit Number 147 in the Record). This level of traffic generation will have a negligible impact in terms of capacity and level of service of the existing area road network. (Exhibit Number 147 in the Record).

32. Fire Department. Mr. Gary L. Palmer, the Acting Fire Marshal of the District of Columbia Fire and EMS Department submitted a letter dated September 13, 2004 (Exhibit Number 139 in the Record) which stated that a second means of access to

the Property is required due to the potential for impairment according to the International Fire Code. Therefore, Mr. Palmer concluded that the proposed entrance/exit to Tennyson Street would be a suitable additional point of access for the District of Columbia Fire and EMS Department.

Federal Agencies

33. National Park Service. Adrienne Coleman, the Superintendent of the Rock Creek Park, submitted a letter dated September 21, 2004 (Exhibit Number 145 in the Record) to the Board supporting the proposed expansion of the Knollwood facility. Ms. Coleman noted (Exhibit Number 145 in the Record, page 1):

> "We believe that Knollwood's proposal has been designed so as to avoid any adverse impacts on Rock Creek Park and the surrounding properties.... We applaud the efforts of Knollwood to minimize the number of mature trees that will be lost on their property and encourage them to take all available precautions to protect the existing tree canopy.... We feel there will be no negative visual impacts on Rock Creek Park as a result of the siting of the parking area in [its] location."

Advisory Neighborhood Commission

34. The ANC met on January 12, 2004, May 10, 2004, and September 13, 2004 to consider the application. The ANC was represented at the BZA by Frank Buchholz, ANC 3/4G02. At its September 14, 2004, public meeting, ANC 3/4G voted 7-0 to "support the application by the Army Distaff Foundation for a special exception as described in the pre-hearing statement of the Foundation dated September 7, 2004 subject to the [following] conditions:

1. Knollwood shall establish an Advisory Committee composed of representatives of the community surrounding Knollwood including (a) one representative from the ANC, (b) one representative each from Stephenson Lane, 29th Street, Tennyson Street, Rittenhouse Street, Nebraska Avenue, and 28th Place or 29th Place, (c) one representative from Knollwood's residents' council, (d) one representative from Knollwood's Board of Directors, and (e) Knollwood's Chief Executive Officer.
2. The Advisory Committee shall meet on a regular basis to discuss and to make recommendations concerning construction operations and the operations of Knollwood impacting the community.
3. The new addition and parking shall be well-screened by the planting of trees and shrubbery agreeable to the neighbors most affected.
4. It shall be written into any contracts, subcontracts, and other agreements entered into in conjunction with this project that all construction will be confined to 7:30 a.m. to 5:30 p.m. Monday through Friday. No loud noises, including radios, will be permitted except during work hours.
5. There shall be no blasting.

6. Knollwood will maintain its grounds in a neat and orderly appearance through the construction period.

7. All dump trucks shall be covered. Surrounding streets will be swept and washed. Soil shall be watered to suppress dust. All vehicles belonging to contractors and their assigns shall be confined to parking on Knollwood property to the extent possible. Trucks shall not idle while parked.

8. Knollwood will compensate neighbors promptly for any damage caused to their property or person by construction.

9. Construction vehicles shall access the Knollwood property by the Oregon Avenue or Nebraska Avenue entrances. Such vehicles shall reach Knollwood solely by Oregon or Nebraska Avenue.

10. The mechanical penthouse shall include sound-absorbing material to reduce noise.

11. Knollwood and Knollwood Neighbors shall reach a mutually acceptable written and binding settlement agreement substantially in the form of the memorandum of understanding the ANC attached to the resolution that includes, among other matters, agreements of the parties with respect to the extension of the moratorium, location of all new buildings, removal of any trees, the Tennyson Street exit and landscaping.

12. The 25-year moratorium on new construction of BZA Order 15358 shall remain in effect unit such time as a legally enforceable means to restrict future development of the site for a specified period of time is devised.

13. The Knollwood Board of Directors shall provide this ANC and the BZA the date and vote of their vote on its applications.

The ANC found that the proposed use is in harmony with the Zoning Regulations and will not adversely affect the use of neighboring property. The ANC recommended a waiver of the twenty-five year moratorium on development of the Subject Property established in BZA Application No. 15358. The ANC noted that it believes the 25 year moratorium continues in force until it is replaced by a mutually satisfactory alternative.

Parties and Persons in Support of Application

35. Several people testified and submitted letters of support into the record, including Mrs. Bernard Kulhanek, President of Knollwood Residents' Association. These persons indicated that Knollwood had been working well with the community and underscored the need for the expansion and dementia/Alzheimers units on the Property. They also stated that Knollwood was a benefit to the neighborhood.

Parties and Persons in Opposition to the Application

36. The Knollwood Neighbors presented testimony from Ted Scallet, Larry Fenster, Robert Diamond, John Wimberly and Keith Pitchford, recognized by the Board as an expert in landscape architecture, at the September 21, 2004 public hearing. The Knollwood Neighbors expressed concern about the size and location of the proposed addition and the sufficiency of the proposed landscape screening. The Knollwood Neighbors also testified that the proposed independent living units require a use variance, arguing that such use is consistent with an apartment use in an R-1-A Zone District. The Knollwood Neighbors' testimony also noted that the previous BZA Order included a 25 year moratorium on development on the Knollwood property and that period does not expire until 2016. The Knollwood Neighbors also expressed concern regarding the proposed emergency entrance/exit and right turn only exit for residents of Knollwood onto Tennyson Street.

37. At the October 12, 2004 public hearing, the Knollwood Neighbors noted that subsequent to the September 21, 2004 public hearing they continued to negotiate with representatives of the Applicant regarding the proposed addition and the landscape screening buffer. As a result of these negotiations, the Knollwood Neighbors were able to withdraw their opposition to the application and fully support the application.

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat.797, as amended; D.C. Code § 5-424(g)(2)), to grant special exceptions as provided in the Zoning Regulations. Knollwood applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR §§ 218 and 219 to construct an addition to an existing community residence facility and health care facility. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

The Board's discretion in reviewing an application for a special exception for a community residence facility and health care facility is limited to a determination of whether an applicant has complied with the requirements of 11 DCMR §§ 218, 219 and 3104.1. If the applicant meets its burden, the Board must ordinarily grant the application. See The Washington Ethical Society v. District of Columbia Board of Zoning Adjustment, 421 A.2d 14, 18 (D.C. 1980). As stated in French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023 (D.C. 1995), "The Board's limited function [in a special exception case] is to assure that the regulations adopted by the Zoning Commission are followed...." Id. at 1034, quoting Tenley & Cleveland Park Emergency Committee v. District of Columbia Board of Zoning Adjustment, 550 A.2d 331, 341 (D.C. 1988), cert. denied, 489 U.S. 1082 (1989).

Further, the Board is required under D.C. Code § 6-623.04 to give "great weight" to OP recommendations. The Board is also required under § 3 of the Advisory Neighborhood Commission Reform Amendment Act of 2000, effective June 27, 2000

(D.C. Law 13-135, 47 DCR 5519 (2000) (codified at D.C. Official Code § 1-309.10(d)(3)(A)(2001)) to give "great weight" to the resolution of the ANC for the area within which the subject property is located. 11 DCMR § 3115.2. As evidenced in the OP Report (Exhibit Number 122 in the Record), OP supported the project. ANC 3/4 G also supported the project, approving a resolution (Exhibit Number 121 in the Record) supporting the application and requested that their conditions be included in any BZA order.

The Board has carefully considered the recommendations and reports of the ANC and OP and has given "great weight" to the positions of ANC 3/4 G and OP. The Board incorporates many of the ANC's and OP's recommendations into the conditions of approval of this Application.

The Board finds that existing and proposed Knollwood continuing care retirement community is a community residence facility and health care facility as those terms are used in the Zoning Regulations. The Board concludes that the proposed and existing independent living units constitute a community residence facility. The Board credits the testimony of Lisa Harfoot and the information submitted into the record that the services offered by the Applicant to the existing and future residents of the independent living units do in fact constitute a sheltered living arrangement enumerated in the definition of a community residence facility under 11 DCMR §199.1 (which refers to the Health Care Facilities and Community Residence Facilities Regulations, 22 DCMR §3099.1 (1986) (superseded)). Therefore, a use variance is not required to add independent living units to the existing continuing care retirement community at Knollwood.

The Board finds that the proposed addition addresses the needs of the Applicant and the concerns of the neighboring property owners. The proposed addition is now located in the footprint of the existing parking lot and roadways on the Property, the height of the addition has been reduced by an entire floor, and the need to remove trees near the proposed addition has been significantly reduced. The Board notes that the modifications to the proposed addition have resulted in saving 30 trees that are greater than eight inches in diameter. The Board further finds that the proposed location and modified design of the addition provides the optimal balancing of the needs and goals of Knollwood and the neighboring property owners, while preserving the open and wooded environment on the Property. The location, design, massing and landscape screening of the proposed addition mitigates any adverse impacts on neighboring properties.

The Board credits the opinion of Knollwood's traffic expert, DDOT and OP that the existing and proposed Knollwood facility will have adequate parking. In addition, based on the testimony of Knollwood's landscape expert, the Board concludes that the proposed parking area will be appropriately screened from neighboring properties, including Rock Creek Park.

The Board credits the opinion of Knollwood's traffic expert and DDOT to conclude that the Knollwood facility can be expanded in a manner that will not create objectionable traffic conditions. The Board, agreeing with DDOT and OP, believes that the proposed project will have an insignificant impact on the existing traffic and parking conditions at the Property and surrounding area. Similarly, the Board concludes that the proposed project will not have an adverse impact on the neighborhood due to noise or operations.

The Board credits the testimony of General Hilbert and Ms. Harfoot and the information submitted into the record to establish the great demand for the proposed uses on the Property. The Board relies on the testimony of Colonel Moss to establish the financial necessities involved in constructing the independent living units to support the dementia/Alzheimers units.

The R-1-A Zone District is a low-density residential district that allows for limited institutional and semi-public buildings that would be compatible with adjoining residential uses if permitted as a special exception. The Board concludes that the use of the Property for the expansion of a community residence facility and health care facility, as conditioned by the Board, is in harmony with the Zoning Regulations and Map and the use is not inconsistent with the Comprehensive Plan of the District of Columbia.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof. It is hereby ORDERED that the application is GRANTED, subject to the following CONDITIONS:

1. The project will include an addition to the existing continuing care retirement community on the property consisting of 25 new dementia/Alzheimer's units accommodating 27 residents, 22 new independent living units, the creation of a new vehicular emergency entrance/exit and vehicular right turn only exit for residents of Knollwood onto Tennyson Street, and revised parking facilities, which shall be constructed in accordance with the plans and materials submitted into the record as Exhibit Numbers 130 and 155.
2. The new building addition, parking area, and vehicular emergency entrance/exit and vehicular right turn only exit for Knollwood residents onto Tennyson Street shall be screened from neighboring properties by the planting of trees and landscaping, consistent with the plans and materials submitted into the record as Exhibit Numbers 130 and 155.
3. The Tennyson Street vehicular access point shall be restricted to: (a) ingress/egress by emergency vehicles if access at Oregon Avenue is temporarily blocked and (b) right-turn-only egress by Knollwood residents. Appropriate methods shall be used to restrict the capability of non-emergency vehicles to turn left onto Tennyson Street or to use this entrance while proceeding from west to east along Tennyson Street. The Applicant agrees to remove the right-turn-only capability of the exit at such time as a stop sign is erected by the District Department of Transportation at the intersection of Oregon Avenue and Tennyson Street.
4. The Applicant shall establish an Advisory Committee composed of representatives of the community surrounding Knollwood including, but not limited to, (a) one representative from the ANC, (b) one representative each from Stephenson Lane, 29th Street, Tennyson Street, Rittenhouse Street, Nebraska Avenue and 28th Place or 29th Place, (c) and Knollwood's Executive Director or a representative of the Executive Director. The Advisory Committee shall meet on a regular basis to discuss and to make recommendations concerning construction operations and the operations of Knollwood impacting the community.
5. No blasting shall be permitted on the property.

6. The Applicant shall include noise abatement measures in the general design of the building, including providing sound absorbing material in the wall section of the mechanical penthouse.
7. The number of residents shall not exceed 318 persons.
8. The Knoll House shall continue to be used for administrative purposes and staff residential use.

VOTE:

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____

JERRILY R. KRESS, FAIA

Director, Office of Zoning

FINAL DATE OF ORDER: _____

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO 11 DCMR § 3125.6 OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE AND UPON ITS FILING IN THE RECORD AND SERVICE ON THE PARTIES.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

PURSUANT TO D.C. CODE § 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANTS ARE REQUIRED TO COMPLY

FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. TITLE 1, CHAPTER 25 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF THE APPLICANTS TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

Document #: 1439116 v.1

RECEIVED
25 Oct 04

DEVELOPMENT AGREEMENT

This Agreement is entered into by Knollwood Neighbors (an organization consisting of owners of property on Stephenson Lane, 29th Street, Tennyson Street, 29th Place, Oregon Avenue, Nebraska Avenue, and Rittenhouse Street in close proximity to the Army Distaff Foundation/Knollwood property located at 6200 Oregon Avenue, NW, which is described in Exhibit A), Individual Neighbors who are signatories to this agreement, and the Army Distaff Foundation/Knollwood ("Knollwood"), regarding Knollwood's intention to construct a specialized care unit for Alzheimer's patients (consisting of 25 rooms and 27 beds) and up to 22 independent living units. The parties have negotiated for a number of months, and have arrived at the following set of agreements in consideration of Knollwood Neighbors agreeing to give up its right to oppose and instead support the application of Knollwood (before, including but not limited to, the Board of Zoning Adjustment ("BZA"), the Commission of Fine Arts, and the District of Columbia Government and any Federal entity relating to any and all necessary permits for the development of the specialized care unit and the independent living units, as more fully discussed herein) and Knollwood agreeing to make changes in the design of the building and other commitments as set forth below.

1. <u>Alzheimer's Unit and Independent Living Units:</u>

The new building will be sited and constructed as

illustrated in the final exhibits submitted to the BZA on October 12, 2004.

2. <u>Preservation of Green Buffer Zone</u>:

a. Knollwood agrees to establish a Green Buffer Zone as depicted on Exhibit B. For a period of 25 years from the date of this Agreement Knollwood covenants and agrees not to construct, or seek from the District of Columbia a permit to construct, any buildings or structures, with the exception of possible additional parking spaces in the area along Tennyson Street in the Green Buffer Zone, identified in Exhibit B, during the 25-year period. The number of parking spaces shall be limited to the net number of spaces required as the result of any new construction (other than the construction referred to in paragraph 1), as identified by a certified traffic study consultant and, if constructed, will be screened from the views of neighbors on Tennyson Street. Knollwood further agrees not to construct, or seek from the District of Columbia a permit to construct, within the existing Knollwood Property that is not part of the Green Buffer Zone, any building or structure that exceeds the height of an adjacent structure, or any addition to an existing structure that exceeds the current height of that structure.

b. The Knollwood Neighbors shall designate (in writing) nine property owners from the surrounding streets to serve as their duly authorized representatives. Additions and subtractions from the list may be made as necessary but the total number of

representatives shall not exceed nine (9). Knollwood Neighbors will give Knollwood notice in a timely manner when there is a change in the property owner representation. After the expiration of this 25-year period, Knollwood agrees to inform (by mail) these duly authorized representatives of the Knollwood Neighbors (listed in Exhibit C or their designated replacements) , of Knollwood's intention to file an application with the District of Columbia Board of Zoning Adjustment for special exception approval for the construction of any buildings or structures in the Green Buffer Zone, one year prior to the filing of any such application. Knollwood agrees to consult with the Knollwood Neighbors and Individual Neighbors regarding issues related to the proposed project during this one year period.

c. This agreement shall not be construed to prohibit Knollwood Neighbors or any Individual Neighbor from opposing, through the normal zoning process, any future Knollwood construction plans or proposed uses of the Knollwood property, even if such plans would not be strictly prohibited under the terms of this agreement.

d. Knollwood agrees not to sell any of the land in the Green Buffer Zone for a period of 8 years, except in the case of financial exigency. At the end of this 8 year period, Knollwood agrees it will not sell or convey unencumbered fee simple legal title of any portion of the land in the Green Buffer Zone for a period of 17 years to a purchaser, unless said purchaser intends to use such transferred or conveyed property for a use that is

permitted as a matter-of-right in the R-1-A Zone District in accordance with the relevant provisions of the District of Columbia Zoning Regulations enumerated in 11 DCMR. The purchaser of such property in the Green Buffer Zone will not be subject to the restrictions noted in Paragraph 2.a. above, or Paragraphs 4, 5, and 6 herein, to the extent that the purchaser of property in the Green Buffer Zone uses the property for a matter-of-right use. Knollwood shall provide for the restriction set forth in this sub-paragraph d. in any contract it may negotiate with a prospective purchaser.

3. <u>Screening and Landscaping for the Project</u>:

Screening, preservation of existing mature deciduous trees, and landscaping are important ingredients in this agreement. In this regard, the parties have agreed that:

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. Knollwood shall use its best efforts so that screening trees at time of installation shall be of sufficient height and quantity to fully screen the view of the building.

d. Knollwood agrees to consult, in a timely manner, with the Neighbors' designated arborist 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, and Tennyson; 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; preserving existing mature deciduous trees during construction, and maintenance and replacement of landscaping after construction. Knollwood will consult with the arborist in determining a reasonable landscaping budget and maintenance frequency and procedures to maintain the new landscaping and replace new landscaping that has died. This will be designated as a separate line item in the Knollwood budget. Knollwood Neighbor's arborist is permitted to observe the implementation of the landscaping on site.

e. Knollwood agrees to maintain the existing berm to the extent possible between Stephenson Lane, 29th Street and the new building. To this end the building shall be constructed according to the plans submitted to the BZA on October 12, 2004. Construction and landscaping plans shall also include appropriate construction and tree protection techniques, identified by Knollwood's landscape architect (in consultation with Knollwood Neighbor's arborist), so as to protect the berm and newly planted trees. In addition, Knollwood shall take appropriate 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. Knollwood's landscape design architect will work with the Knollwood Neighbor's arborist to ensure no major, mature trees are unintentionally lost as a direct result of construction.

f) After construction, the frequency of maintenance and maintenance procedures, especially those pertaining to transplanted trees, shall be determined in consultation with Knollwood Neighbors' designated arborist.

g) In the event that there is a dispute about any of the landscaping items set forth above, the arborist of Knollwood 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. The fees of this neutral expert shall be equally shared between Knollwood and Knollwood Neighbors.

4. <u>Construction Considerations</u>:

Knollwood agrees to include the following provisions in all construction contracts with Knollwood's General Contractor and any sub-contractors (collectively "Contractor(s)"), and to require the Contractor(s) to honor these obligations to which Knollwood

has agreed with Knollwood Neighbors:

a. There will be no blasting associated with construction of the new building;

b. Work generating noise that will carry into the adjacent neighborhood shall be limited to the hours between 7:30 am and 5:30 pm., Monday through Friday. Any exceptions shall be coordinated with Knollwood Neighbors a least one week in advance. This does not include work that will take place within the fully enclosed (including all windows and doors) structure. Further, Contractor(s) agree(s) to use good faith efforts to refrain from using heavy machinery before 8:00 a.m.

c. Construction vehicles shall be prohibited from idling on Stephenson Lane, 29th Street or Tennyson Street.

d. Vehicle parking for construction workers shall be contained within the Knollwood property to the greatest extent possible. There may be periods of time when street parking for construction personnel may be necessary. Street parking for construction personnel shall be limited to the sides of streets directly abutting Knollwood's property. Parking shall not impede normal two way traffic. Contractor(s) shall vigorously enforce these parking restrictions on a daily basis.

e. Contractor(s) shall police the areas outside Knollwood property on a daily basis to ensure that debris and waste materials do not accumulate in the neighborhood.

f. Contractor(s) agree(s) to control dust by periodically watering soil as needed.

g. In the event that Knollwood Neighbors believes that there has been a violation of this paragraph, it will provide notice to Knollwood of the alleged violation. If Knollwood does not cure the alleged violation within thirty days, Knollwood Neighbors may bring an action pursuant to Paragraph 12 below.

5. Liaison Committee.

The parties agree to create an on-going Liaison Committee to handle construction-related complaints and concerns of Knollwood Neighbors. Knollwood and/or Contractor(s) agree(s) to provide timely copies of all building permits to members of the Liaison Committee.

6. Damage to Property

Knollwood and/or Contractor(s) agree(s) to photograph interior and exterior conditions of Knollwood Neighbors' houses where access is granted by the owner. In instances in which damage occurs to neighborhood buildings or other property caused by the excavation and construction, Knollwood and/or Contractor(s) agree(s) to repair any such damage in a timely manner,.

7. Sediment, Erosion Control and Stormwater Management:

a. Contractor(s) shall retain on site at all times during construction a construction manager's representative, who shall be responsible for all appropriate sediment and soil erosion

control measures.

b. Contractor(s) shall invite Knollwood Neighbors and Individual Neighbors who are signatories to a pre-construction meeting for the purpose of explaining the measures to be employed, and the program to be followed in the maintenance of these control measures. Knollwood and its Contractor(s) shall permit designated representatives from Knollwood Neighbors to view the site and the measures in place in order, in a manner so as to secure the safety of such individuals, to ensure that these requirements are being followed.

c. All required temporary and permanent stormwater management measures shall be rigorously maintained as required by the DC DOH and as required by the measures adopted at the site. The existing SWM pond shall be carefully protected during the construction period. Any damage resulting from the new construction shall be immediately corrected.

d. Contractor(s) shall carefully control the tracking of mud and dirt into adjacent streets and shall keep the streets reasonably clean.

8. <u>Noise Abatement</u>:

In addition to the noise abatement requirements applicable during construction, Knollwood shall include noise abatement measures in the general design of the building. Specifically, the mechanical penthouse shall include sound absorbing material in

its wall section to reduce ambient noise generated by the chiller, condensing unit, and emergency generator.

9. Tennyson Street Exit:

Knollwood agrees that if an exit to Tennyson is constructed, it shall be used only (a) in emergencies, and (b) as a right-turn-only exit by the residents of Knollwood. Knollwood agrees to remove the right-turn-only capability of the exit at such time as a stop sign is erected by the DC Department of Transportation on Oregon Avenue at the intersection of Oregon Avenue and Tennyson Street. Appropriate methods will be used to restrict the capability of non-emergency vehicles to turn left onto Tennyson or to use this entrance while proceeding from west to east along Tennyson. Knollwood also agrees to provide landscaping in consultation with Neighbor's arborist around the exit to reduce, to the extent possible, the visibility of the exit by the residents of Tennyson Street.

10. Utilities:

a. The parties agree to consider making a joint appeal to the utility companies and to the City to upgrade and bury the utilities on Stephenson Lane and then resurface the block.

b. Knollwood shall use its best efforts so that no utilities shall be routed through the woodland or any new plantings.

c. Knollwood shall ensure that all exterior lighting shall be either of low intensity and/or shielded to prevent glare and intensity when lighting fixtures are viewed from Individual Neighbors' locations.

11. Effect Of This Agreement On Upcoming Hearings:

The parties agree that Knollwood Neighbors shall support Knollwood's current application before the BZA, the DC Department of Transportation, the Commission on Fine Arts, and, if relevant, the ANC. In addition, Knollwood Neighbors will support any and all building permit or other permit applications that may be required by the District of Columbia or any Federal entity, as a result of the proposed new building and parking area.

12. Force of this Agreement:

This Agreement shall be interpreted under the laws of the District of Columbia, and enforceable in a court of law by Knollwood and by certain duly authorized representatives of the Knollwood Neighbors as described in the attached Exhibit C. Any enforcement action by the Knollwood Neighbors shall require the consent of at least three duly authorized representatives of the Knollwood Neighbors. This Agreement shall be binding on Knollwood and its successors and assigns, Knollwood Neighbors and its successors and assigns, and the Individual Neighbors who are signatories to this Agreement and those that may replace them. Any person or organization

purchasing any portion of the Knollwood property shall only be responsible for the satisfaction of the terms of this Agreement that directly apply to the land in which they hold fee simple legal title.

13) <u>Amendments to the Agreement</u>

This Agreement may be amended at any time by consent of both parties. For purposes of this provision, two-thirds (2/3) of the authorized representatives of the Knollwood Neighbors must agree to the amendment in order for it to be effective.

IN WITNESS WHEREOF, the parties hereto have signed and delivered these presents as their own free act and deed as of the date and year first herein above written.

ARMY DISTAFF FOUNDATION, INC.

By: Donald C. Hilbert

Major General Donald C. Hilbert
Its: Executive Director

THE KNOLLWOOD NEIGHBORS

By: Laurea Fike

Its: President

EXHIBITS

Exhibit A – Legal Description of Knollwood Property

Exhibit B – Delineation of Green Buffer Zone

Exhibit C – Authorized Representatives of Knollwood Neighbors

EXHIBIT A

LEGAL DESRIPTION OF KNOLLWOOD PROPERTY

EXHIBIT A

PARTS OF THE TRACT OF LAND KNOWN AS "POOR TOM'S LAST SHIFT", DESCRIBED AS FOLLOWS:

BEGINNING FOR THE SAME AT THE INTERSECTION OF THE WESTERLY LINE OF OREGON AVENUE FORMERLY DANIELS ROAD AND THE SOUTHERLY LINE OF TENNYSON STREET BOTH AS DEDICATED AND SHOWN ON PLAT RECORDED IN LIBER 103, FOLIO 157 THE RECORDS OF THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA RUNNING THENCE SOUTHWESTERLY ALONG SAID WESTERLY LINE OF OREGON AVENUE SHOWN ON SAID PLAT AND AS SHOWN ON PLAT RECORDED IN LIBER 86, FOLIO 34 SAID SURVEYOR'S OFFICE RECORDS TO A POINT OF CURVE; THENCE SOUTHWESTERLY STILL ALONG THE SAID WESTERLY LINE OF OREGON AVENUE AND THE NORTHWESTERLY LINE OF NEBRASKA AVENUE BOTH AS SHOWN ON SAID PLAT RECORDED IN LIBER 88, FOLIO 34 OF SAID SURVEYOR'S OFFICE RECORDS, ON THE ARC OF A CIRCLE DEFLECTING TO THE RIGHT, THE RADIUS OF WHICH IS 440 FEET, AN ARC DISTANCE OF 370.23 FEET TO A POINT OF TANGENT; THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF NEBRASKA AVENUE TO THE NORTHERLY LINE OF STEPHENSON LANE, AS DEDICATED AND SHOWN ON PLAT RECORDED IN LIBER 116, FOLIO 175 OF SAID SURVEYOR'S OFFICE RECORDS; THENCE ALONG SAID NORTHERLY LINE OF STEPHENSON LANE, NORTH 65 DEGREES 55 MINUTES 50 SECONDS WEST 176.66 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ON THE ARC OF A CIRCLE DEFLECTING TO THE LEFT, THE RADIUS OF WHICH IS 460 FEET AN ARC DISTANCE OF 144.87 FEET TO A POINT OF TANGENT; THENCE NORTH 83 DEGREES 58 MINUTES 30 SECONDS WEST 159.38 FEET TO A POINT OF CURVE; THENCE WESTERLY ON THE ARC OF A CIRCLE DEFLECTING TO THE RIGHT, AN ARC DISTANCE OF 237.18 FEET TO THE MOST SOUTHERLY CORNER OF THE LAND CONVEYED TO GEORGE L. QUINN AND WIFE BY DEED DATED MAY 28, 1941 AND RECORDED JUNE 3, 1941 IN LIBER 7622, FOLIO 349 AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA; THENCE NORTHEASTERLY AND PARALLEL WITH 29TH STREET 400 FEET TO THE MOST EASTERLY CORNER OF THE LAND CONVEYANCE TO EDWIN S. HOFFMAN AND WIFE BY DEED DATED JUNE 9, 1937 AND RECORDED JULY 22, 1937 IN LIBER 7133, FOLIO 233 AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA; THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF SAID CONVEYANCE TO HOFFMAN, 125 FEET TO THE SOUTHEASTERLY LINE OF 29TH STREET AS DEDICATED AND SHOWN PLAT RECORDED IN LIBER 102, FOLIO 59 OF SAID SURVEYOR'S OFFICE RECORDS; THENCE ALONG THE SAID LINE OF 29TH STREET, NORTH 44 DEGREES 58 MINUTES 30 SECONDS EAST 373.83 FEET TO THE SAID SOUTHERLY LINE OF TENNYSON STREET AND THENCE EAST ALONG SAID SOUTHERLY LINE OF TENNYSON STREET 726.83 FEET TO THE PLACE OF BEGINNING.

SUBJECT TO BUILDING RESTRICTION LINES ESTABLISHED AND SHOWN ON PLATS RECORDED IN LIBER 88, FOLIO 34 AND LIBER 103, FOLIO 157 AND LIBER 115 FOLIO 175 OF SAID SURVEYOR'S OFFICE RECORDS.

FURTHER SUBJECT TO THE AGREEMENT ON SAID PLATS RECORDED IN LIBER 103, FOLIO 157 AND LIBER 115, FOLIO 175 OF SAID SURVEYOR'S OFFICE RECORDS, THAT THE AREA BETWEEN THE BUILDING RESTRICTION LINE AND THE LINE OF THE STREET SHALL BE SUBJECT TO ALL THE PROVISIONS AND CONDITIONS AS EXPRESSED IN THE ACT OF CONGRESS OF MAY 31, 1900 (31 STATUTES AT LARGE, PAGES 248 AND 249).

NOTES: AT THE DATE HEREOF THE ABOVE DESCRIBED PROPERTY IS DESIGNATED ON THE RECORDS OF THE ASSESSOR OF THE DISTRICT OF COLUMBIA FOR TAXATION PURPOSES AS PARCELS 62/41, 62/64, 62/98 AND 62/99.

THE IMPROVEMENTS THEREON BEING KNOWN AS NO. 6200 OREGON AVENUE, NW.

EXHIBIT B

Delineation of Green Buffer Zone

The Green Buffer Zone is the areas circled in black in the following attachment.

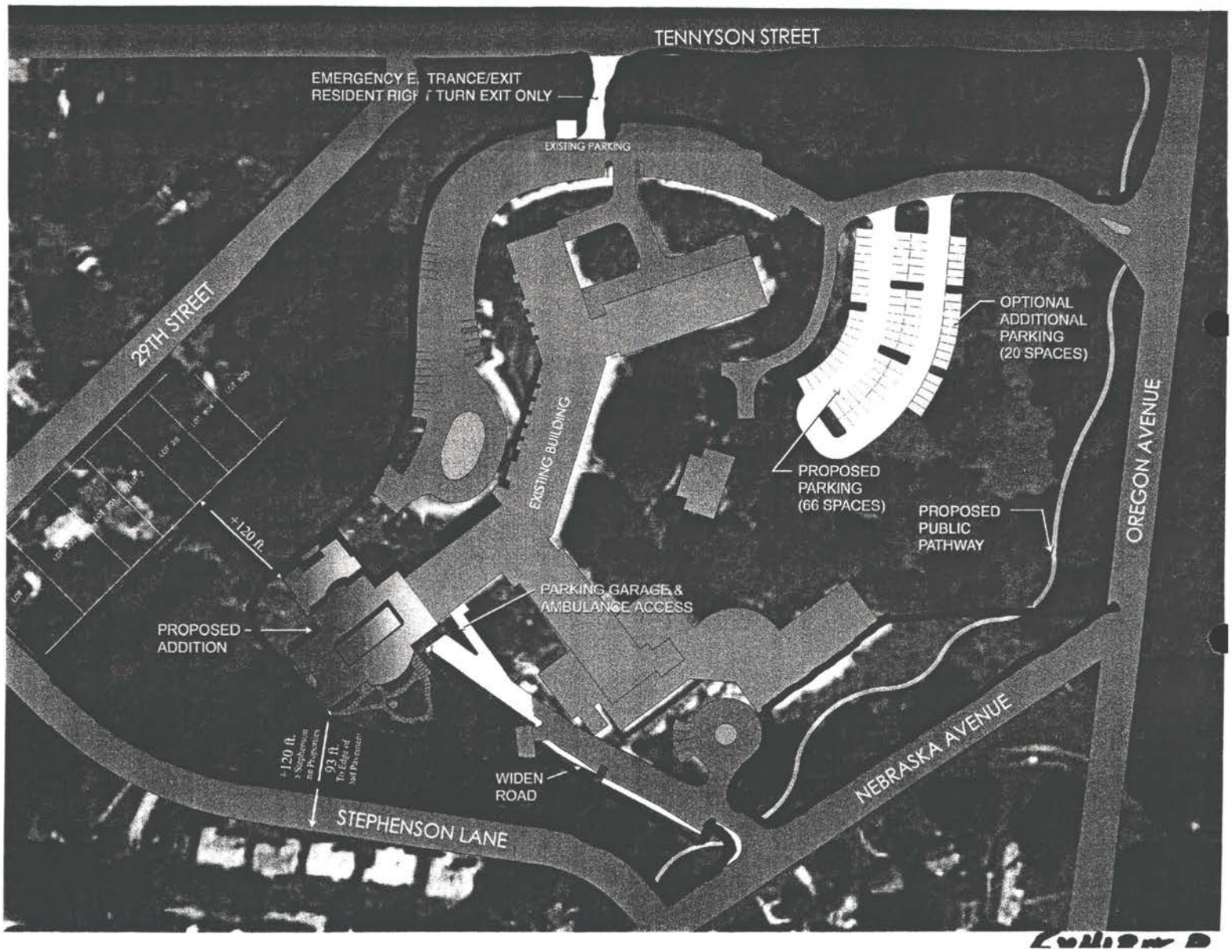

TENNYSON STREET
EMERGENCY E. TRANCE/EXIT
RESIDENT RIGH T TURN EXIT ONLY
EXISTING PARKING
29TH STREET
OPTIONAL
ADDITIONAL
PARKING
(20 SPACES)
EXISTING BUILDING
PROPOSED
PARKING
(66 SPACES)
PROPOSED
PUBLIC
PATHWAY
OREGON AVENUE
+120 ft.
PARKING GARAGE &
AMBULANCE ACCESS
PROPOSED
ADDITION
+120 ft.
93 ft.
WIDEN
ROAD
NEBRASKA AVENUE
STEPHENSON LANE

EXHIBIT C
Authorized Representatives of Knollwood Neighbors
As of October 25, 2004

Judith Bailey
6255 29th St. NW
Washington, D.C. 20015

Robert Diamond
6251 29th St. NW
Washington, D. C. 20015

Lawrence Fenster
2730 Stephenson Lane NW
Washington, D. C. 20015

Antje Freygang
2748 Stephenson Lane, NW
Washington, D.C. 20015

John Lawrence
6104 Nebraska Ave., NW
Washington, D.C. 20015

Edward Scallet
2756 Stephenson Lane NW
Washington, D. C. 20015

James Williams
2825 Tennyson St. NW
Washington, D. C. 20015

John Wimberly
6243 29th St. NW
Washington, D. C. 20015

Jim Heltman
2717 Rittenhouse St NW
Washington, DC 20015