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 an addition housing 25 nursing rooms accommodating 27 residents under § 219 and 22 new independent living units under § 218 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).[1]

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

DECISION DATE: November 2, 2004

DECISION AND ORDER

On June 2, 2003, the applicant, the Army Distaff Foundation, Inc. ("Applicant"), filed an application with the Board of Zoning Adjustment ("Board" or "BZA") requesting a special exception under §§ 218, 219, and 3104 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations ("DCMR")), to expand its existing health care facility and military retirement residence known as "Knollwood" ("subject property" or "Knollwood"). Neighbors opposed to the expansion were granted party status under the collective title of "Knollwood Neighbors" ("Knollwood Neighbors" or "Opposition").

Board Order No. 5550, dated June 29, 1959, first permitted the Applicant to establish a philanthropic institution and construct a facility on the subject property. There was no term limit established for the special exception use, but the maximum number of residents was capped at 300, and the maximum height of the building at 3 stories, measured from a certain point to be selected by the Applicant. In 1967, Board Order No. 9185 modified the original special exception to permit a maximum of 318 residents. In 1987, Board Order No. 14626 permitted a small addition to be made to the subject property, but did not change the maximum number of stories or residents, nor did it add a term limit. In 1991, Board Order No. 15358 permitted a second, more substantial, addition to be made to the property. It made no change to the maximum number of stories or residents, and did not add a term limit, but did add a 25-year moratorium on "any major structural additions to the property except for outdoor recreational facilities."[2]

Scheduled hearings on the current application were postponed several times to allow the Applicant and the Knollwood Neighbors to mediate their differences in order to reach a mutually-amicable agreement with respect to the proposed expansion. The Board finally began

[1]The Board amended the Application at its November 2, 2004 decision meeting to reflect the actual relief requested.
[2]Order No. 15358 is dated January 31, 1991. Two subsequent Board Orders, both also numbered 15358, permitted modification of the plans approved by the January 31, 1991 Order, but made no other changes to that Order. These two subsequent Orders are dated June 21, 1991, and June 29, 1993.

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the public hearing on the application on September 21, 2004, and completed it on October 12, 2004. Just before the commencement of the October 12, 2004 hearing continuation, the Knollwood Neighbors withdrew its opposition because it had reached agreement with the Applicant on all but two or three disputed issues. Between the completion of the hearing and the Board's scheduled decision date of November 2, 2004, the Applicant and the Knollwood Neighbors reached a final mediated agreement of their differences, which permitted the proposed expansion with some changes. This Memorandum of Understanding ("MOU"), which Applicant placed in the record, constitutes a private agreement between the parties that is enforceable in a court of law and that addresses in part areas beyond the jurisdiction of this Board At its decision meeting on November 2, 2004, the Board voted, 4-0-1, to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 3, 2003, the Office of Zoning ("OZ") gave notice of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 3G, the ANC in which the subject property is located, the ANC member for Single Member District 3G02, and the Councilmember for Ward 3. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *District of Columbia Register* and on July 31, 2003, mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the October 14, 2003 hearing date.

At Applicant's request, the October 14, 2003 hearing date was continued until February 3, 2004. The new date was announced during the Board's public session on October 14, 2003. The Applicant's affidavit of posting indicates that on January 16, 2004, it placed at least 2 zoning placards announcing the February 3rd hearing date on the various street frontages of the subject property, in plain view of the public. Prior to the February 3, 2004 hearing, however, the Applicant and the Knollwood Neighbors hired a professional mediator in order to try to resolve their differences. Consequently, the Applicant requested that the Board again continue the hearing to allow them time to work with the mediator. On February 3, 2004, the Board agreed to a second continuance, and publicly announced the new hearing date of May 25, 2004. The Applicant's second Affidavit of Posting, dated May 12, 2004, shows that the Applicant posted 7 zoning placards on the various street frontages of the subject property, in plain view of the public, alerting it to the May, 2004 hearing date.

In April, 2004, the Knollwood Neighbors hired legal counsel who was unavailable on the May 25th date and who therefore requested a further continuance of the hearing. The mediator, on May 11, 2004, filed a letter with the Board also requesting, on behalf of both parties, a further continuance to permit more time for the parties to reach agreement on several issues. Recognizing the importance of the mediation efforts, the Board granted a continuance of the hearing until September 28, 2004. This last continuance was publicly announced on May 11, 2004, and memorialized by a letter from OZ to the parties dated May 12, 2004. The September 28, 2004 date was subsequently changed to September 21, 2004, to accommodate the schedule of counsel for the Knollwood Neighbors. The Applicant's third Affidavit of Posting, dated September 15, 2004, shows that, on September 3rd, the Applicant posted 7 zoning placards on the various street frontages of the subject property, in plain view of the public, alerting it to the

September 21, 2004 hearing date. The September 21, 2004 hearing was continued to, and completed on, October 12, 2004.

Requests for Party Status. ANC 3G was automatically a party to this proceeding. The Board granted opposition party status to the Knollwood Neighbors, which included, and represented the interests of, many individuals in the community surrounding the subject property.

Applicant's Case. Applicant seeks to add 25 units specifically designed to meet the needs of dementia patients and 22 independent living units. Several witnesses testified for the Applicant. Knollwood's Executive Director, General Donald Hilbert, testified as to the operation of the Knollwood facility and the need for the new units. Vernon Feather, the project architect, testified as an expert, and discussed the construction of the addition and the significant changes it had undergone during the process of negotiation and mediation with the neighbors. Michael Bello, landscape architect, and Edward Papazian, traffic consultant, both testified as experts in their respective fields. Colonel Tom Moss, Chief Financial Officer of Knollwood, testified concerning the extensive mediation process carried out by Knollwood and the neighbors. Lisa Harfoot, administrator of the "Terrace" section of Knollwood, which contains the assisted living units, and Barbara Diagostino, administrator of the "Health Services Center," Knollwood's skilled nursing facility, testified as to the services provided to residents and as to the general operation of the facility, such as the hiring of employees.

Government Reports. The Office of Planning submitted a report to the Board dated September 14, 2004, recommending approval of the special exception, subject to several conditions. In its report, OP noted that since the initial application was filed, the Applicant had made substantial changes to the building's site plan, height, massing, architectural design, landscaping, orientation, setbacks, materials and parking arrangements primarily as a result of the mediation process between the Applicant and the Knollwood neighbors. OP analyzed in detail how the application meets the criteria of §§ 218, 219, and 3104 of the Zoning Regulations. OP concluded that as revised and with the following conditions the proposed structure would not adversely affect neighboring properties.

OP's requested conditions were: (1) clarification of the existing number of parking spaces within the context of the 190 spaces previously approved by the Board, (2) submission of final design plans for the parking area and landscaping on the east lawn, (3) submission of final plans for vehicular access at Tennyson Street, and that such access shall be subject to the following restrictions: (a) ingress/egress only for emergency vehicles, and (b) right-turn-only egress for persons leaving the subject property, and (4) submission of final landscaping plans for the portions of the subject property facing 29th Street and Stephenson Lane, including the caliper and height of evergreens to be planted.

The District Department of Transportation submitted a report to the Board dated September 20, 2004. DDOT supported the Applicant's proposed expansion and opined that the parking proposed was "more than adequate" and that the traffic generated by the expansion would have a "negligible impact ... [on] the existing area road network."

The District of Columbia Acting Fire Marshall sent a letter to the Applicant, dated September 13, 2004, stating that a second means of access to the subject property would be necessary due to the construction of the addition and that the proposed entrance/exit at Tennyson Street would be suitable.

The National Park Service, U.S. Department of the Interior, submitted a letter to the Board signed by Adrienne Colman, Superintendent of Rock Creek Park. Ms. Colman's letter supports the application and states that "Knollwood's proposal will have no adverse environmental impact on Rock Creek Park."

Two D.C. Council Members, Adrian Fenty and David Catania, sent letters of qualified disapproval of the application, both of which were dated September 20, 2004. Council Member Mendelson sent a similar letter dated September 21, 2004. All three letters recommended denial of the application, but appear to have been predicated on the fact that no mutually amicable agreement with the neighbors had been reached. As pointed out above, such an agreement was eventually reached, but subsequent to the date of these letters.

ANC Report. The ANC submitted a report dated September 14, 2004 stating that at a properly-noticed public meeting held on that same date, it had voted unanimously to support the application. The ANC recommended a waiver of the 25-year construction moratorium for this proposed project only, with the moratorium continuing in force until its termination in 2016 or until some other means for restricting future development on the subject property is devised. The ANC approval was conditioned with this continuation of the moratorium and 12 other conditions, *to wit:* (1) establishment of an Advisory Committee composed of representatives of the surrounding community, (2) regular meeting of this Committee to make recommendations concerning the construction and the operation of Knollwood, (3) screening of the new building and parking areas agreeable to the neighbors most affected, (4) limiting construction to between 7:30 a.m. and 5:30 p.m., Mondays through Fridays, (5) no blasting, (6) maintenance of grounds in a neat and orderly appearance during construction, (7) certain controls on truck parking and idling and on the problems of dust and dirt, (8) compensation to neighbors for damage due to the construction, (9) construction vehicle access to the subject property only from Oregon or Nebraska Avenues, (10) sound absorbent material on the mechanical penthouse, (11) a binding settlement agreement between the Applicant and the Knollwood Neighbors pertaining to the new construction and extending the 25-year moratorium, and (12) the Applicant shall provide the ANC and the Board with the date and vote "of their vote on its applications."[3]

FINDINGS OF FACT

The existing use

[3]The intent and meaning of Condition number 12 is unclear on its face, but was discussed during the hearing on the application and the ANC representative agreed that it meant that "any other official action by ADF [Army Distaff Foundation] in regards to this application would be provided to the ANC and the BZA." September 21, 2004 transcript, generally, at 220 -221.

1. Knollwood is a community-based residential facility ("CBRF") with two components – a community residence facility and a health care facility. *See,* 11 DCMR § 199.1, definition of CBRF.

2. Knollwood meets all code and licensing requirements, as will its proposed addition.

3. The age of residents at Knollwood ranges from 45 to almost 100, with the average age currently 85. There are two residents at Knollwood who are in their 40s or 50s, both of whom suffer from long-term degenerative diseases and therefore require extra life assistance.

4. Knollwood provides three levels of care to aging career military personnel, their spouses, and close female relatives. The existing buildings are therefore divided into three sections: the Hall, with 150 efficiency, one-, and two- bedroom independent living units or "ILUs", the Terrace, with 39 assisted living units, and the Health Services Center, a 50-bed skilled nursing facility.

5. Potential residents of all three sections sign a life care contract with Knollwood and submit to a full medical history, chest x-ray, lab work and an extensive interview with a registered nurse or licensed clinical social worker to determine in which section they will be placed.

6. The Health Services Center provides 24-hour nursing care and the Terrace provides an intermediate level of care in its assisted living units.

7. The Hall's independent living units also provide a formalized system of services, including one meal per day, transportation to Walter Reed Medical Center, an activity director, and an emergency call button in each unit.

8. ILU residents are also provided a wide range of medical services. Each ILU resident is specifically observed at approximately six-month intervals in order to monitor his/her physical and mental condition. If necessary, a medical re-evaluation is made at this time.

9. If an ILU resident falls more than three times in a month, a nurse performs a re-evaluation. If an ILU resident appears to be confused, or if his/her apartment is noted by housekeeping to be in serious disorder, additional services will be offered to the resident. These services can include additional housekeeping, laundry, medication management, case management, and/or hands-on physical care by certified nursing assistants, such as help with bathing and dressing.

10. Knollwood currently has a waiting list of 150 singles and couples for its independent living units.

11. Approximately 72% of the population of the Health Services Center suffer from severe dementia and would benefit immediately from the services of the dementia

units. The demand for the 25 new dementia units will be satisfied by current Knollwood residents.

The subject property and the surrounding area

12. The subject property is located in lot 3 of Square 2339, and is zoned R-1-A. To the east the property abuts Oregon Avenue, N.W. and Rock Creek Park. The property abuts Nebraska Avenue, N.W. to the southeast and Stephenson Lane, N.W. to the south. Along its western edge, the property abuts 29th Street, N.W. and the rear yards of several homes fronting on 29th Street. The property abuts Tennyson Street, N.W. to the north.

13. The area surrounding the property is developed almost exclusively with single-family detached houses, with the nearest commercial zone district approximately one mile to the west.

14. There are no other properties containing a CBRF for seven or more persons within the same square or within 1,000 feet.

15. The Generalized Land Use Map of the Comprehensive Plan designates the area surrounding the subject property as low-density residential, but the subject property itself is separately designated as "institutional."

16. The subject property comprises 16.3 acres or approximately 709,637 square feet, and over 90% of Square 2339. The rest of the Square is developed with 7 single-family residences that front on 29th Street, N.W., the rear yards of which abut the western boundary of the property.

17. Development on the subject property currently includes the original stone house, known as Knollhouse, constructed in the 1930's, and a more modern, more institutional building with four wings, built and expanded between 1959 and 1992, pursuant to earlier Board Orders.[4]

18. The buildings on the subject property occupy only 11% of the site and are set within a wooded, park-like setting. These existing buildings have a floor area ratio ("FAR") of 0.45.

19. Maximum lot occupancy in an R-1-A zone district is 40% and there is no FAR limitation. 11 DCMR §§ 403 and 402, respectively.

20. The Knollwood facility is a campus-like setting, with landscaped pathways and internal roadways connecting with Oregon and Nebraska Avenues. The campus has

[4]Board Order No. 5550, dated June 29, 1959; Order No. 9185, dated April 12, 1967; Order No. 14626, dated September 8, 1987; Order No. 15358, dated January 31, 1991, and two Orders also numbered 15358, but dated June 21, 1991 and June 29, 1993.

no perimeter fence or wall and is open to the public. Neighbors use the site for sledding, jogging, dog-walking and similar activities.

21. Knollwood currently employs approximately 129 full-time and 46 part-time staff. During the day, the maximum number of staff on site at any one time is 87.

22. On average, 75 visitors come to the subject property on a weekend day and 35 on a weekday. The subject property also averages 8 to 10 deliveries per day.

23. Knollwood currently provides 203 parking spaces, which are available to residents, employees, and visitors. There is also a Metro bus stop on the subject property which connects to the Friendship Heights Metro station and Knollwood provides two shuttle buses for the transportation of its residents.

The proposed addition

24. The Applicant proposes to add 68,100 square feet to the existing facility to include 22 new and updated independent living units and 25 units (with 27 beds) solely for dementia-impaired residents. Income from the new ILUs is necessary to help fund the new dementia units, which will provide specialized care for dementia patients not possible in the existing skilled-nursing facility.

25. The first level of the south side of the addition will be developed with a walled wandering garden for residents with dementia.

26. With the proposed addition, the facility's lot occupancy will be 13.5 % and its FAR 0.5.

27. The shortest distance between the facility, including the proposed addition, and the nearest property line is 70 feet. The shortest distance from the proposed addition to the rear yard of the nearest neighbor on 29th Street is approximately 120 feet, and the shortest distance to the front yard of the nearest neighbor across Stephenson Lane is also approximately 120 feet.

28. The proposed addition would not intrude on the area designated as "open" by BZA Order No. 15358, as amended.

29. The lowest floor of the proposed addition is embedded in the southern slope of the property, mitigating any visual impact of the building. No portion of the addition will be more than 30 feet above the measuring point established by BZA Order no. 15358, as amended.

30. The upper floors of the addition will be set back on both the 29th Street and Stephenson Lane sides, presenting a more tapered profile to the properties on these streets, and further mitigating any visual impact on neighboring properties.

31. The proposed addition will be constructed completely within the parameters of an existing parking lot and service road, with no need to cut into the berm surrounding this area, thereby preventing the loss of mature trees and minimizing the loss of green area.

32. The Applicant is implementing a detailed landscaping plan to help retain the green and wooded nature of the subject property. The addition will be screened from 29th Street and Stephenson Lane with shade-tolerant understory plants, as well as with mature evergreen trees, of between 17 and 20 feet in height, the latter of which will be planted prior to construction.

33. The addition will result in no, or a minimal, increase in noise. Noise baffles will be placed on mechanical equipment and the addition will result in only a minimal increase in the number of emergency vehicles coming to the site, most of which, by pre-arrangement, arrive without their sirens on.

34. Lighting on the addition will be soft and will be directed away from neighboring properties.

35. The location and design of the proposed addition and the proposed additional parking underwent significant changes during the months-long negotiation and mediation process engaged in by Knollwood and surrounding neighbors, particularly, the opposition party, the Knollwood Neighbors.

Parking and Traffic Issues

36. Knollwood currently has 203 parking spaces – 190 in above ground parking lots, and 13 along Nebraska Avenue. Eighty-one of these spaces are reserved for the current 150 independent living units, four are handicapped spaces, seven are reserved for visitors, and another seven are bus spaces. The rest of the spaces – 104 – are unmarked and are used by staff and visitors.

37. Parking demand is heaviest during mid-day weekday hours, particularly during the mid-afternoon change of shift. Even at this time, however, there are between 15 and 30 parking spaces unoccupied on any given day.

38. None of the residents of the Terrace or the Health Services Center have automobiles and many of the residents of the ILUs do not use privately-owned vehicles.

39. Using a 1:1 ratio, 22 new parking spaces will be provided for the 22 new ILUs.

40. As a result of the proposed addition 18 new employees will be hired, 11 of whom will work during the daytime. Applicant's parking expert determined that 12 new parking spaces will be needed to accommodate these new employees as well as visitor parking.

41. In light of the current excess of at least 15 parking spaces on the site, Applicant will expand the number of parking spaces by 19. (22 spaces for ILUs plus 12 for new employee and visitor parking as a result of the new addition, totalling 34, minus 15 excess spaces currently provided - equals 19 new spaces.) The number of parking spaces on the Knollwood property will increase from 203 to 222 spaces.

42. A portion of the parking lot will be relocated to accommodate the proposed addition.

43. Depending on the result of boring tests, approximately 20 parking spaces may be located below-grade, under the addition., and 66 spaces will be relocated to a new surface lot located near the northeast corner of the subject property. If it is not possible to provide below-grade parking, all 86 new or re-located spaces will be in the new surface lot.

44. This new lot will be significantly removed from any neighboring properties and will be screened by the existing trees and topography of the site, as well as by further landscaping. Lighting at this new lot will be soft and will be directed away from any neighboring properties.

45. The addition will generate approximately seven vehicle trips during the morning peak hour, equating to one additional trip every eight minutes, and approximately 15 during the evening peak hour, equating to one trip every four minutes. The Board agrees with the Applicant's traffic expert that this level of trip generation will have no discernible traffic impact on the surrounding area.

46. The addition will eliminate a loop road that currently circles the existing buildings on the subject property. The D.C. Fire and Emergency Medical Services ("E.M.S.") Department has therefore requested a new access point into the property from Tennyson St., to the north of the property.

47. A short access road will be constructed to connect Tennyson St. to the existing parking lot at the north end of the subject property. Emergency vehicles will be permitted ingress and egress onto the property using this access road.

48. Persons leaving the subject property will be permitted to make right turns from the new access road onto Tennyson Street. No non-emergency left turns will be permitted from the new access road in order to avoid increasing traffic on Tennyson Street west of the subject property. If the District of Columbia installs a stop sign at the intersection of Tennyson and Oregon, then even right turns from the access road onto Tennyson will no longer be permitted.

49. The entrance to the subject property at the new access road will be equipped with an exit-activated breakaway gate and a mountable diverter island, which will permit two-

way access by emergency vehicles, but will prevent others from entering and will guide non-emergency drivers exiting to make a right turn out.

CONCLUSIONS OF LAW

The Motion to Dismiss the Application for Failure to Request the Proper Relief

The Knollwood Neighbors initially filed a motion to dismiss the application, alleging that the Applicant had not requested the proper relief. The motion alleged that the new ILUs do not constitute a community residence facility, but an apartment house, a use requiring a use variance in this R-1-A zone district The Board denied the motion based on the facts presented as to the operation of the ILUs. The types of services provided for the ILU residents are consistent with those provided in a community residence facility, a type of community based residential facility (CBRF). *See,* Findings of Fact Nos. 5, 7 – 10. In addition, the independent living units may be considered part of a larger CBRF which has graduated levels of care for the residents as they "age in place" The definition of community based residential facility in § 199.1 of the Zoning Regulations provides that if "an establishment is a community-based residential facility as defined in this section, it shall not be deemed to constitute any other use permitted under the authority of these regulations". Having found that the ILUs are community residence facilities and may also be considered part of a larger CBRF, the Board is precluded from considering whether any other zoning use category applies.

Applicant's request to "remove" the 25-year moratorium condition

Before the Board can determine whether the Applicant has successfully met the burden of proof for the special exception requested, it must determine whether the Applicant may even make such a request. This is because the special exception entails making a "major structural addition to the [subject] property," precisely what was to be prohibited by the 25-year construction moratorium set forth in Board Order No. 15358.

Condition No. 1 in Order No. 15358 states:

> [t]he 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.

The final date of Order No. 15358 is January 31, 1991. Therefore, if the Board gives effect to this condition, the Applicant would be prohibited from constructing "any major structural addition" to the property until January 31, 2016. The Applicant asks the Board to "remove" this condition to permit it to make the addition that is the subject of this application. The Board concludes that the condition invalidly restricts the statutory authority granted this Board and is therefore of no force or effect.

The 1938 Zoning Act, 52 Stat. 797, 799-800 (1938), D.C. Official Code § 6-641.07 (2001) grants the Board jurisdiction to "hear and decide, *in accordance with the provisions of the regulations* ... requests for special exceptions ... or for decisions upon other special questions upon which

such Board *is required or authorized by the regulations to pass*." (Emphasis added.) *Id.* at 800. As stated by the Court of Appeals, the "Board's limited function is to assure that the regulations adopted by the Zoning Commission are followed." *French v. D.C. Board of Zoning Adjustment,* 658 A.2d 1023, 1034 (D.C. 1995). Thus, the Board has only that authority granted it by the 1938 Act and the Zoning Regulations themselves.

In all of Title 11, there are only three provisions of the Zoning Regulations that limit the Board's ability to hear an application. Subsections 3113.10 and 3113.11 prevent an applicant, who has withdrawn an application or had his application dismissed for failure to comply with procedural requirements, from filing a new application for at least 90 days unless the Board grants leave to do so. Subsection 3126.11 precludes the re-filing of a denied application or appeal for a year. Except for these three regulations, promulgated by the Zoning Commission after public hearing and comment, the Board has no authority to refuse to hear a special exception application. The 1991 Board had no greater and could not preclude a future Board from hearing a special exception. The Board, in 1991, through Condition No. 1 in Order No. 15358, sought to do what only the Congress, the Council, or the Zoning Commission could do. The condition was void from the beginning and will not be honored now.

The special exception

The Board is authorized to grant special exceptions, where, in its judgment, the relief will "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1, D.C. Official Code § 6-641.07(g)(2)(2001). Each special exception permitted, however, must also meet all the conditions enumerated in the particular section pertaining to it. In this case, the Applicant had to meet the requirements of § 3104 as well as those of both § 218, pertaining to community residence facilities, and § 219, pertaining to health care facilities.[5]

Knollwood has been located on the subject property since 1959. The property comprises over 16 acres of wooded and landscaped area, providing the neighborhood with a welcome respite from urban living. To be sure, since 1959 the Knollwood facility has grown, but even with the proposed addition, it will occupy only 13.5% of this green area. After extensive discussions with the neighbors, the Applicant has designed the addition so that its entire footprint is kept within the current footprint of a roadway and parking lot. This means that little or no green space will be covered by the addition. Further, the first floor of the addition will be embedded in the sloped ground, reducing its height and perceived bulk, and the whole addition will be screened from all adjacent properties with new plantings and landscaping. The neighbors are welcome to use the subject property for sledding, jogging, and other appropriate outdoor activities and this will not change after the construction of the addition.

In 1959, the maximum permitted number of residents was limited to 300 and in 1967, that maximum was increased to 318. Even with the construction of the proposed addition, the Applicant has not requested any increase in this maximum. There was no evidence that these

[5]With one exception not relevant here, the eight subsections of § 218 and the eight subsections of § 219 track each other verbatim. Therefore, the following discussion applies to the entire Knollwood facility, including both the community residence facility component and the health care facility component.

residents, or indeed, the facility in general, caused any objectionable noise or other disruptive conditions. Ambulances with sirens occasionally come to the subject property, but this is kept to a minimum due to Knollwood's use of a private ambulance service that does not use its sirens when on the property.

The facility provides adequate, appropriately located and screened off-street parking to meet all its needs. None of the residents of two out of three of the facility's components – the Terrace and the Hall – have vehicles, and many residents of the ILU's do not use privately-owned vehicles. Instead, they presumably use the Knollwood-provided shuttle bus or the Metrobus which stops on the subject property. Some ILU residents use privately-owned vehicles, but even so, on any given day, there are between 15 and 30 open parking spaces on the subject property. The new ILUs will each be provided with its own parking space in a 1:1 ratio, so residents of these new units will not need to use these open spaces. The parking spaces lost to the addition will also be replaced and increased by 20 new spaces.

The largest number of employees on the subject property at any one time is currently 87. Eighteen new employees will be needed as a result of the addition and, with 11 of these new employees working during the day, the largest number of employees on site at any one time will increase to 98. The new parking to be provided by the Applicant is sufficient to accommodate these new employees. The new employees will also result in a small increase in vehicle trips to and from the subject property during the morning and evening peak hours, with no discernible negative effect on local traffic patterns.

There was much discussion before the Board concerning the new ingress/egress access point at Tennyson Street. A small connector road is to be constructed between the northernmost portion of the facility's current parking lot and Tennyson Street to its north to allow access for emergency vehicles and right turns from the subject property. The D.C. Fire and E.M.S. Department specifically requested the access as the construction of the addition is eliminating a currently existing loop road on the property. The Applicant requested that people leaving the subject property also be permitted to make right turns onto Tennyson Street because, due to the speeds at which vehicles travel on Oregon Avenue, exiting the property onto Oregon Avenue, south of Tennyson Street, can be dangerous, particularly for the elderly residents of Knollwood. The Applicant will take steps to ensure that only right turns are made onto Tennyson Street and did not request permission for left turns because of sensitivity to the traffic concerns of the neighbors. The Board agrees with the Applicant that right turns from the new connector road are reasonable and will have minimal, if any, impact on the local traffic flow, while improving traffic safety for those exiting the subject property, and by extension, all other drivers in the area.

Pursuant to §§ 218.7 and 219.7 the Board must determine whether the program goals and objectives of the District of Columbia can be met by a smaller facility or another reasonable alternative. Knollwood has been operating for years on the subject property with the same number of residents it will have after the construction of the addition. There is a great need for appropriate housing for the elderly and Knollwood has a long waiting list for its ILUs. There is also an increasing need for housing and services for individuals with Alzheimer's disease. Knollwood helps to meet both these needs. The co-location of the three components of the Knollwood facility, which will be enhanced by the proposed addition, achieves two goals. First,

the ILU's help to defray the cost of the new dementia units, and second, individuals are permitted to "age-in-place," *i.e.,* to move, within one facility, from one level of care to another, as greater assistance or more services are needed with age. For all these reasons, the Board concludes that subsections 218.7 and 219.7 have been satisfied.

The special exception use has been in place for many years and the Board concludes that the addition will not adversely affect the use of neighboring properties and is in harmony with the general purpose and intent of the Zoning Regulations and Maps. The Board further concludes that a reasonable accommodation has been made between the two parties which does not interfere with the legitimate interests of either. *See, Glenbrook Road v. D.C. Board of Zoning Adjustment,* 605 A.2d 22, 32 (D.C. 1992). *See also, Georgetown College v. D.C. Board of Zoning Adjustment,* 837 A.2d 58, 69 (D.C. 2003).

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Both the ANC and OP recommended approval of the special exception, but each made its approval subject to certain conditions. The Board agrees with the recommendations of approval and has included below some of the suggested conditions, while some of the others may be included in the private agreement between the parties. Other suggested conditions, such as those dealing with construction management, are not zoning issues and so are not within the Board's authority.

Based on the record before the Board and 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 allow an addition to the Knollwood facility pursuant to §§ 218 and 219 for a community residence facility, and a health care facility, respectively, in an R-1-A zone district. It is therefore **ORDERED** that the application is **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The project shall be constructed in accordance with the plans and materials submitted into the record as Exhibits Nos. 130 and 155.

2. The new building addition, parking area, and vehicular emergency entrance/exit and vehicular right-turn-only exit for individuals exiting the subject property 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 Exhibits Nos. 130 and 155.

3. The Tennyson Street vehicular access point shall be restricted to: (a) ingress/egress by emergency vehicles and (b) right-turn-only egress by individuals leaving the subject property. Appropriate methods shall be used to restrict the capability of non-emergency vehicles to turn left onto Tennyson Street or to use this access point as an entrance to the subject property while proceeding from west to east along Tennyson Street.

4. The Applicant shall establish an Advisory Committee composed of representatives of the Applicant and the community surrounding the subject property which shall meet on a regular basis to discuss the operations of Knollwood and any impact on the community.

5. The Applicant shall include sound absorbing material in the wall section of the mechanical penthouse associated with the addition.

6. The number of residents shall not exceed 318 persons.

VOTE: **4-0-1** (Geoffrey H. Griffis, John A. Mann, II, Curtis L. Etherly, Jr., and Ruthanne G. Miller, to approve. The Zoning Commission member not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this Order granting the application.

ATTESTED BY: Jerrily R. Kress
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 18 2005

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 TWO 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.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPEAL NO. 17055
APR 18 2005

As Director of the Office of Zoning, I hereby certify and attest that on APR 18 2005 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

rsn