GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18898 of Ingleside Presbyterian Retirement Community, pursuant to 11 DCMR § 3104.1, for special exceptions from the community residence facility requirements under § 218, and the health care facility requirements under § 219, to allow an addition and increase in residents at an existing retirement community in the R-1-A District at premises 3050 Military Road, N.W. and 5314 29th Street, N.W. (Square 2287, Lots 802, 804, 809, 813, and Square 2290, Lot 30).[1]

HEARING DATE: January 13, 2015
DECISION DATE: March 10, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 11.)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3G and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3/4G, which is automatically a party to this application. The ANC submitted two reports and testified to its conditioned support of the application. The ANC report dated December 20, 2014, contained a resolution of support for the application, conditioned on the agreement it had reached with the Applicant. The resolution, attached to which was an executed agreement the ANC reached with the Applicant, indicated that at a duly noticed ANC meeting on December 8, 2014, at which a quorum was present, the ANC voted unanimously (7:0) in support of the application provided the Board impose the provisions contained in the agreement as conditions to the Order. (Exhibit 25.) The Applicant also

[1] The Applicant amended the application by removing its request for a variance from the lot width requirements of § 401.3. The Applicant's initial application had requested relief for a variance from the minimum width requirements under § 401.3 for the creation of an independent record lot along 29th Street, N.W.; however, the Applicant later explained that this relief is not necessary since the lot would be subdivided in a manner which satisfies § 401.3. (Exhibit 27.) The caption has been amended accordingly.

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submitted the agreement it reached with the ANC as proposed conditions of approval to the record at Exhibit 27D.

The agreement entered into between the ANC and Applicant contains 39 provisions on which the ANC conditioned its support of the application. Many of these provisions pertain only to the construction phase of the project. At the hearing, the Board acknowledged the agreement that was reached between the ANC and the Applicant, but found that some provisions did not pertain to zoning relief but rather to construction management issues that were not under the Board's jurisdiction. The Board's Chair noted that even were the construction provisions not made part of the Board's order, they still would be enforceable by the parties to the agreement in court to the extent that the agreement was enforceable. At the hearing, the Board indicated that it would only incorporate a handful of the conditions, limited to those related to zoning issues, including 1(c), 2(e), 2(f), 4(a), 4(f), and 4(g).

ANC 3/4G submitted a second report reiterating its request that the entirety of its agreement with the Applicant be incorporated into any Board order. As an alternative to incorporating the entire agreement, the ANC also listed other provisions that it believed were not strictly construction-related and asked for these to be incorporated in addition to those the Board already had noted it would include in the Order at the hearing, including 1(e), 2(a), 2(c), 2(d), 3(e), 4(b), and 4(h). (Exhibit 40.)

The Board, during its deliberations, indicated that it would be incorporating the following provisions into the order as conditions: 1(c), 1(e), 2(a), 2(c), 2(d), 2(e), 2(f), 3(e)(viii), 4(a), 4(b), 4(f), 4(g), and 4(h).[2]

The Office of Planning ("OP") submitted a timely report recommending approval of the application and stated that it supported the conditions included in the ANC's resolution of December 8, 204, which the ANC negotiated with the Applicant. (Exhibit 28.) OP testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report of no objection. (Exhibit 29.)

A letter in opposition to the application was submitted to the record by Deborah Kavruck, 5712 26th Street, N.W. (Exhibit 32).[3]

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[2] The ANC in its report also discussed the agreement that was reached between the Applicant and its abutting neighbor to the west, the Carnegie Institution of Washington ("Carnegie") and requested that the Board incorporate that full agreement into the Order as well. (Exhibit 40.) Again, the Board acknowledged the agreement herein but declined to put the Carnegie agreement's provisions into the Order as conditions. This is discussed more fully later in this Order.

[3] Other letters in opposition were submitted to the record after the Board closed the record. The Board closed the record at the end of the January 13 hearing for all but the additional materials it specifically requested. As a preliminary matter at its meeting on March 10, 2015, the Board denied requests to reopen the record from Thomas Whitehead and Charles Blankstein.

At the January 13 hearing, two residents at Ingleside and a representative from Temple Sinai testified in support of the application. The testimony from Temple Sinai stated that they were in support of the application provided the concerns they raised were addressed through conditions in the order. (Exhibit 35.)

As a preliminary matter, the Board denied the request for party status in opposition submitted by the Carnegie Institution of Washington ("Carnegie") (Exhibit 24), for the reason that the issues raised by Carnegie did not affect the zoning requirements, but only pertained to construction and vibrations of the ground. The Board found that the denial of the party status request would not stop Carnegie and the Applicant from making an agreement to resolve these issues themselves. Both Carnegie and Anne Mohnkern Renshaw (Exhibit 36), an abutting neighbor of the Applicant, testified in opposition to the application at the hearing. In its testimony and submissions, Carnegie spoke of its concerns over the adverse impacts that vibration from construction would cause Carnegie's highly sensitive scientific instrumentation, leading it to contract for that testing outside of its institution at great cost; Carnegie testified that it believed that this adverse impact would only occur during construction. Both Carnegie and the Applicant requested that the Board postpone the hearing to provide sufficient time for Carnegie and the Applicant to meet and come to an agreement to resolve Carnegie's issues.

The Board completed testimony at the January 13 hearing and closed the record to all but any agreements that were reached by the Applicant. The Board then postponed its decision on the case to give the Applicant sufficient time to meet with both Carnegie and Ms. Renshaw to reach agreement on the concerns they raised. The Board gave leave for the Applicant to submit any agreement the Applicant reached with them. An executed agreement with Carnegie and the Applicant was submitted to the record at Exhibit 42. The Applicant also submitted a letter detailing the steps it had taken to meet with both Ms. Renshaw and Carnegie to reach agreements with them. As to Ms. Renshaw, the Applicant indicated that it had met with her and would continue to keep an open dialogue with her as construction moves forward through the Task Force that was established through the agreement the Applicant has entered into with the ANC. (Exhibit 41.)

Carnegie submitted a letter that among other things, withdrew its objection to the application, citing the agreement that had been reached with the Applicant. (Exhibit 46.) Both Carnegie and the Applicant requested that the agreement between them be incorporated into any order granting approval of the project. (Exhibits 41 and 46.) The Board in its deliberations specified that the Order would reference the agreements that the Applicant had entered into with both the ANC and Carnegie, and stated that, in the Board's view, both agreements would be enforceable by the parties to those agreements in court.[4] The Board only included certain specified conditions that pertained to zoning matters in the Order from the ANC agreement.

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[4] The Board found that the agreement between Carnegie and the Applicant was a construction management agreement and as there was nothing related to zoning, it would not be appropriate to include the agreement as conditions to this Order.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for special exceptions from the community residence facility requirements under § 218, and the health care facility requirements under § 219, to allow an addition and increase in residents at an existing retirement community in the R-1-A District. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 218, and 219, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED THAT THIS APPLICATION IS HEREBY GRANTED SUBJECT TO THE APPROVED PLANS IN THE RECORD AT EXHIBITS 27B1-27B4 AND WITH THE FOLLOWING CONDITIONS**:

1. **1(c).**[5] Ingleside and the General Contractor shall designate the Ingleside Project Manager (or, in the Project Manager's absence, an alternate) as the single point of contact who will be responsible for receiving, addressing, and resolving any questions, concerns, Complaints (as defined in paragraph 6.a. of the Agreement between the ANC and the Applicant), or suggestions from the ANC, the Task Force, or from the community (including residents or institutions in the surrounding neighborhood and Ingleside residents). The Ingleside Project Manager shall keep a log of outstanding questions or issues that have been raised by the ANC, the Task Force, or the community to identify their status, estimated dates for resolution, and resolution. This log shall be available for review by the ANC and the Task Force. This log also shall be published on a bi-weekly basis on the Expansion Project Webpage for informational purposes only and shall be updated as the outstanding questions or issues are resolved.

2. **1(e)** Current contact information for the Ingleside Project Manager shall be published on the Expansion Project Webpage.

[5] The numbers in bold in front of each of the conditions in this Order refer to the number given that condition in the agreement between the ANC and the Applicant. (Exhibits 25 and 27D.)

3. **2(a)** The exterior design of the proposed expansion buildings shall be substantially in accordance with the drawings and materials submitted to the BZA on October 6, 2014, as may be modified by the BZA or in response to ANC or Task Force comments.

4. **2(c)** Ingleside shall prepare and provide to the Task Force for comment its plans for trees, shrubs, and other vegetation that it will plant and maintain on the "berm" between the area of the Expansion Project and Military Road, N.W. The objective of these plantings will be to preserve the existing screening of the buildings from view from Military Road and to plant additional screening that will reasonably minimize the view of the buildings from Military Road following completion of the Expansion Project. Ingleside shall maintain the plantings on the "berm" during construction and after the Expansion Project is completed. These plans for the "berm" also shall be published on the Expansion Project Webpage.

5. **2(d)** Under no circumstances will Ingleside modify the design of its expansion plans to include a service drive or any other driveway or entrance to its property from Military Road, N.W. or 29th Street, N.W., and it further stipulates and warrants that it will not build, construct, or erect a service drive or any other driveway or entrance to its property from Military Road or 29th Street NW for a period of at least 20 years following the effective date of the final BZA Order approving Application No. 18898. Furthermore, for a period of a minimum of 20 years from the effective date of the BZA Order approving Application No. 18898, Ingleside will not extend, expand, or alter any existing driveway associated with any house Ingleside owns on Military Road for the purpose of providing access to any portion of Square 2287, Lot 809. Nothing in this paragraph affects Ingleside's continued use of the currently existing entrance at Military Road, N.W. and 31st Street, N.W.

6. **2(e)** Ingleside represents that it has no plans to design, build, construct, or erect any permanent facilities or structures on its property east of the existing buildings known as "Classic Residences" (the "Ravine Area"), and it further stipulates and warrants that it will not build, construct, or erect any facilities or structures on this portion of its property for a period of at least 20 years following the effective date of the final BZA Order approving Application No. 18898. The Ravine Area does not include the area south of the Manor House, which Ingleside may consider for a future expansion.

7. **2(f)** Ingleside shall review its design to evaluate the impact of the additional new structures on stormwater runoff and shall identify and implement design additions or modifications that will mitigate stormwater runoff, which may include the following: (i) installation of rain gardens; (2) installation of turfblock or pervious pavements and sidewalks; (3) use of cisterns or rainbarrels to catch and store rainwater for future use; (4) installation of roof gardens or ecoroofs; (5) additional vegetation to reduce erosion and to increase absorption; and (6) installation of drywells or soakage trenches. Ingleside shall coordinate its stormwater management plan with the District Department of the

Environment ("DDOE") and the RiverSmart program. The Expansion Project will be required to comply with DDOE's recently implemented stormwater management amendments specified in Chapter 5 of Title 21 of the District of Columbia Municipal Regulations and must satisfy the requirements of the District's Municipal Separate Storm Sewer System ("MS4") permit issued by the U.S. Environmental Protection Agency under the Clean Water Act.

8. **3(e) (viii)** At least four months before the planned start of construction, Ingleside and the General Contractor will prepare and provide to the Task Force a plan to accommodate parking and transportation during construction for the expected number of construction workers as well as for Ingleside employees (the "Parking and Transportation Plan"). At a minimum, the plan will include, (i)-(vii) (omitted), and (viii) formal adoption of the following commitments for long-term parking management, including the period after construction is complete: (a) all residents and staff of Ingleside shall be required to register their vehicles with Ingleside; (b) staff shall not be charged for parking; (c) all residents and staff shall be required to park on-site in the parking garage or on Military Road, directly in front of Ingleside property, except that during the construction phase when employees who cannot be accommodated on site or on Military Road will park in the off-site location; (d) any permanent resident or staff member found not parking on the premises shall be reminded of the requirement to park on-site, and additional actions shall be taken for any permanent resident or staff member that is found not abiding by the parking policy; (e) visitor spaces shall be designated on-site and monitored by management to ensure their use and availability for Ingleside guests to minimize potential spillover onto adjacent streets; (f) any visitor to Ingleside that will be parked for more than one day, or for an overnight visit, shall be required to register their vehicles with management and receive a guest pass; (g) all visitors to Ingleside shall be notified of the requirement to park on premises in designated spaces; (h) any unregistered vehicles occupying a parking space shall be towed after reasonable attempts have been made to contact the owner; (i) any vehicles illegally parked in a fire lane or blocking access shall be towed immediately; and (j) parking in Ingleside facilities by neighboring institutions shall only be permitted at times when it can be demonstrated that all Ingleside residents, staff and visitor needs are met, and a surplus of available parking remains. The plan also shall provide detailed contact information for the Ingleside Project Manager for residents or institutions in the surrounding neighborhood to contact should they observe a violation of the plan (e.g., construction workers parking on neighborhood streets). The Parking and Transportation Plan shall be published to the Expansion Project Website and updated as necessary by the General Contractor and Ingleside.

9. **4(a).** In order to reduce the construction schedule for the Expansion Project to approximately 30 months, Ingleside may, consistent with all required approvals and permits, use the existing house that it owns at 5314 29th Street, N.W. ("Temporary Facility") to temporarily house no more than ten current assisted-living residents until construction of the new assisted-living facility is completed. In the event Ingleside

determines not to convert the house for use as the Temporary Facility, then the conditions in subparagraphs 4(b)-(g) of the Agreement between the ANC and the Applicant in the record at Exhibits 25 and 27D shall not be applicable.

10. **4(b)** Ingleside shall make all necessary changes or modifications to the Temporary Facility so that it will safely and lawfully accommodate no more than ten assisted-living residents and upon the termination of the temporary use and prior to sale, Ingleside shall remove not less than three bedrooms and three bathrooms in the Temporary Facility. Ingleside shall, however, make no material changes or modifications to the exterior of the house which alters its residential character consistent with the other homes on 29th Street, N.W. None of the changes or modifications will affect or infringe upon the Ravine Area between the Temporary Facility and the Classic Residences on Ingleside's property, and all access to the Temporary Facility will be from 29th Street, N.W.

11. **4(f).** Within 30 days after the issuance of a certificate of occupancy and necessary licenses for the building containing the permanent assisted living units, Ingleside shall terminate the use of the Temporary Facility and shall record a covenant on the 5314 29th Street lot limiting the use of the house, after it is vacated by the assisted living residents, and the lot, to uses permitted as a matter of right under the Zoning Regulations for the R-1-A zone district. Any use of the house by Ingleside after use as a Temporary Facility is terminated and prior to the sale of the house, shall be limited to single-family residential use.

12. **4(g).** During the period when Ingleside uses the Temporary Facility to house no more than ten assisted-living residents, the staff at the Temporary Facility will normally consist of two persons during the day and evening shifts and up to two persons during the night shift. No Ingleside employee staffing the Temporary Facility shall be permitted to park on 29th Street, N.W., Kanawha Street, N.W., Legation Street, N.W., Jenifer Street, N.W., 28th Street, N.W., or 27th Street, N.W. except that parking directly in front of 5314 29th Street or in front of the adjacent vacant lot owned by Ingleside is permitted. Other construction-related activities (e.g., materials delivery, dumpster/waste disposal, etc.) shall also be limited to the space directly in front of 5314 29th Street or in front of the adjacent vacant lot owned by Ingleside. Ingleside shall provide a point of contact who neighbors on 29th Street, N.W., Jenifer Street, N.W., 28th Street, N.W., or 27th Street may contact if they observe an Ingleside employee parking on these streets while working at the Temporary Facility. Deliveries to the Temporary Facility will be limited to smaller vans. Ingleside shall also provide security services for the house similar to those provided for the other Ingleside facilities and shall be responsible for snow removal on 29th Street, N.W. to assure emergency and other access to the house.

13. **4(h)** Within 90 days of the effective date of this BZA Order, Ingleside shall: (i) submit a subdivision application to create a record lot for the adjacent vacant property, and (ii) list and actively market the adjacent vacant lot for sale. Within 30 days of the effective date

of the recordation of a subdivision plat creating a buildable lot out of the adjacent vacant property, Ingleside shall record a covenant limiting its use to uses permitted as a matter of right in the R-1-A Zone District. Nothing in these conditions shall restrict the right to construct a driveway on 29th Street to access a residential house on the currently vacant lot.

VOTE: **3-0-2** (Lloyd J. Jordan, Marnique Y. Heath, and Anthony J. Hood (by absentee vote) to APPROVE; Jeffrey L. Hinkle, not present or participating; one seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 20, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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.

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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.