GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15301 of the W.C. and A.N. Miller Company, as amended, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 2516 to allow a theoretical lot subdivision, and a variance from the provision that the area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required [Paragraph 2516.6(a)] for a theoretical lot subdivision and construction of 114 singly-family detached dwellings in an R-1-A District at premises 5100 and 5102 Yuma Place; 4900 and 5153 Yuma Street; 4246, 4248, and 4330 - 50th Street; 5101 and 5103 Yuma Court; 5000-02, 5004-06 - 50th Place; 4900, 4902, 4904, 4906, 4908, 4910, 5000-04, 5006, 5008, 5010, 5012, 5014, 5016, 5018-24, 5026, 5028 Warren Street; 5100-27, 5129, 5131, 5133 Warren Place; 5102-12, 5114-27, 5129, 5131, 5133, 5135, 5137, 5139 - 52nd Street; 4250 Fordham Road; 5102-12 - 52nd Court, N.W., (Square 1467, Lots 868-69, 876-879, 887-894 and 896-995).

HEARING DATE: May 9, 1990
DECISION DATE: May 9, 1990 (Bench Decision)

FINDINGS OF FACT:

1. On February 20, 1990, applicant filed an application for a special exception and related variances from the provisions of 11 DCMR 2516.6(a) to allow the construction of 114 single-family detached houses and two commercial buildings on a single subdivided lot. By letter dated April 4, 1990, the applicant withdrew that portion of its application related to the two commercial buildings that involve part of lot 882, and all of lot 884.

2. The subject properties are generally bounded by Massachusetts Avenue on the north, 49th Street to the east, Van Ness Street to the south and Dalecarlia Parkway to the west, and are known as the above-referenced premises. The site is in the R-1-A District.

3. The 114 subject lots are the final residential phase of a comprehensive residential and commercial development project presently under construction on forty-three acres in the Spring Valley section of Ward 3. Construction of the residential phase of the project began in 1984. The 114 proposed single-family houses will be constructed over at least the next ten years.

4. The area surrounding the subject properties, with the exception of the Commercial Section of the project located in a C-2-A District at the corner of Massachusetts Avenue and 49th Street, is developed exclusively with single-family detached dwellings. The surrounding residential neighborhood is predominently zoned R-1-B to the north, east and southeast of the site. A small area of R-4 zoning lies east of the site near the intersection of Massachusetts Avenue and Van Ness Street, N.W. An area of R-1-A zoning extends to the south of the site between Dalecarlia Parkway and Fordham Road, N.W. The Dalecarlia Parkway and Reservior are west of the site. Farther to the west and north is the District and Montgomery County, Maryland line.

5. The R-1-A District permits as a matter-of-right the construction of single-family detached dwellings, subject to the following requirements: a) maximum height - 40 feet and 3 stories; b) maximum lot occupancy - 40 percent; c) minimum lot area - 7,500 square feet; d) minimum lot width - 75 feet; e) minimum rear yard - 25 feet; and f) minimum side yard - 8 feet.

6. As applicable to this project, under 11 DCMR Section 2516 as amended by Zoning Commission Order No. 627 dated August 11, 1989, additional requirements are established for theoretical lot developments regarding open space in front of the principal entrance to the structure, exclusion of the covenanted means of ingress or egress from the area of any theoretical lot or any yard required, dimensions of the vehicular means of ingress or egress, number of entrances or exits, and any adverse impact on the present character or future development of the neighborhood.

7. The applicant is requesting a variance from the provisions of Section 2516.6(a) requiring the exclusion of the covenanted means of ingress or egress from the area of any theoretical lot or any yard required. Granting this variance will enable the applicant to construct the 114 houses as originally designed and approved prior to the amendment of Section 2516.6(a).

8. The applicant has completed all the infrastructure and site improvement work for the entire project at a cost of more than $9.1 million, including the private road system, curbs and curb cuts for each lot and the sanitary sewer, water and storm water management systems. For a substantial number of the unconstructed houses, utility lines for water, sewer, electric, gas and telephone have been installed. Such work has been accomplished pursuant to agreements and covenants with the Spring Valley-Wesley Heights Citizens' Association (SV-WHCA), Advisory Neighborhood Commission (ANC) 3D and 3E and approvals from various District of Columbia agencies, including approved

and recorded multiple building covenants under the theoretical site regulations in effect prior to April 17, 1989.

9. After lengthy negotiations between the applicant and SV-WHCA, the parties entered into a Supplemental Agreement dated February 12, 1990 marked as Exhibit No. 57 of the record providing for the completion of the project as originally established under the various agreements, covenants and District approvals. Under the terms of the Supplemental Agreement, applicant agreed to implement the Master Landscaping Plan, including the planting of at least 1500 trees, individual Rear Yard Buffer Plans for the Van Ness/50th Street Perimeter, site maintenance, Comprehensive Traffic and Parking Plan and establishment of an on-going Liaison Committee.

10. With the exception of Lots 868 and 869, the subject lots are located in that area of the project designated the South Section as shown on the General Plan of Development, dated February, 1985, and marked as Exhibit No. 58 of the record in this case. Lots 868 and 869 are the only two unconstructed houses in the North Section. The private road system, which is twenty-nine feet in paved width, thirty feet as measured from exterior curb-to-curb, has access to the surrounding public road system at four points: 50th Street, Yuma Street, 52nd Street and Dalecarlia Parkway. Each of the cul-de-sacs constructed as part of the private road system are wider than the sixty foot minimum diamter established by Section 2516.6(c).

11. The applicant's site engineer testified that before the Theoretical Lot regulations were amended, all 114 lots complied fully with all the applicable standards for theoretical lot development in the R-1-A district, including lot area and yard requirements. The applicant's construction of the thirty foot wide streets which are at least five feet wider than presently required, resulted in a number of lots which do not meet the lot area or yard standards as calculated under the current regulations. In addition to the wider streets that have been fully constructed, the project's design was directly influenced by a series of difficult land planning constraints originating with the site's natural topography, size, shape and the desires of the community. The project as originally designed and presently under construction reconciled the following factors: a) 37.5 percent of the site had slopes of 15 percent or greater; b) Community's desire for preservation of the Mill Creek/Stream Valley area and maximizing the lot area of the properties along the exterior of the site; c) circuitous road pattern and limited access to surrounding community; and d) minimum house size.

12. The applicant's site engineer testified that the 114 lots could be reconfigured in such a manner as to bring each of the lots into compliance with the current Theoretical Lot regulations, to accomplish this reconfiguration, the entire roadway system would have to be removed and replaced by a narrower street system, perhaps no more than 20 feet wide, with a less circuitous pattern and additional access points to the surrounding neighborhood. Also, a substantial portion of the existing infrastructure, including the water, sewer and storm water management systems would also have to be removed and replaced.

13. The applicant's landscape architect stated that the Master Landscaping Plan established under the Supplemental Agreement, included the following categories of planting: a) Mill Creek/Stream Valley enhancement; b) Mill Creek Outfall area; c) Street Trees in the South Section; d) Rear Yard Mass Plantings; e) Foundation Plantings; f) Van Ness/50th Street Perimeter Rear Yard Buffer; g) Dalecarlia Parkway and Yuma Street Entrance areas; and h) Commercial Section.

14. The applicant's traffic engineer testified that he had conducted traffic studies for the street system surrounding the project in both 1982 and in November, 1989. The traffic consultant concluded the 114 single-family houses would create no adverse traffic impact. The traffic engineer also gave a full presentation of the elements of the Comprehensive Traffic and Parking Plan established under the Supplemental Agreement, including installation of four-way stop signs and a traffic light at Massachusetts Avenue and 50th Street, parking restrictions and restricted site access at 52nd Street.

15. The applicant requested certain flexibility in constructing, modifying or customizing the proposed houses without further Board approval to meet the needs of potential owners of the subject dwellings. The applicant testified that it is critical to maintain the flexibility to respond to market place demand and personal preference of design particularly in light of the ten year period necessary to finish construction of this project. The six month limitation on modifications under Section 3335.4 of the Zoning Regulations would inhibit normal development flexibility and is not necessary given the limited range of the proposed modifications. Any such modifications shall be subject to the conditions and restrictions imposed by the Board.

16. The applicant has voluntarily agreed to a self-imposed limitation on the net density of each lot which is below the level permitted under the Zoning Regulations. The total lot occupancy of any lot of more than 7,100 square feet excluding the street shall not exceed thirty percent.

The total lot occupancy of any lot of less than 7,100 square feet excluding the street shall not exceed thirty-three percent.

17. The Office of Planning (OP), by memorandum dated May 1, 1990, and by testimony presented at the public hearing, recommended approval for the construction of 114 single-family detached houses on the subject lots. The OP report and testimony concluded that the proposed project would not have an adverse impact on the present character and future development of the neighborhood. OP also noted that the net density of the project is comparable to the existing residences in the surrounding neighborhood and the previously constructed houses within the project. The Board concurs with the recommendation of the OP.

18. The Department of Public Works (DPW), by memorandum to the Director of the Office of Planning dated May 9, 1990, offered no objection to the requested special exception and related variance. DPW concluded that from a transportation perspective, the proposed construction of 114 single-family dwellings will not have an adverse impact on the local transportation system. DPW also recommended that the applicant install a traffic signal on Massachusetts Avenue at either Yuma Street or 50th Street. The Board notes that under the Supplemental Agreement, the applicant has agreed to install and pay for the traffic light requested by DPW.

19. Advisory Neighborhood Commission (ANC) 3D, by letter dated April 24, 1990, supported the application through its recommendation that Board approval be expressly conditioned on the Supplemental Agreement. ANC 3D also suggested that the Board address the issue of open recreational space. The Board finds that based on the existing open space already incorporated within the project and the existence of various recreational facilities within close proximity of the site, that adequate open space exists.

20. The Spring Valley-Wesley Heights Citizens' Association, by testimony at the public hearing, supported the application and requested the incorporation of the Supplemental Agreement in the Board's final order.

21. Two residents of 5137 Yuma and 3945 - 52nd Street, N.W. who were active participants in the negotiation of the Supplemental Agreement presented written and oral testimony in support of the application. Both residents agreed that expedited approval of the application was in the best interest of the community.

22. The owner of 5105 Yuma Street, N.W. in the North Section, who was aware of the lengthy negotiations that

culminated in the Supplemental Agreement, but chose not to participate, expressed interest in retaining Lots 868 and 869 as vacant lots in the North Section.

23. The owner of 3520 Overlook Lane, N.W., located approximately six blocks from the project, testified that additional recreational space was needed in the Spring Valley area. Although not fully aware of existing recreational facilities in the area, she felt that the project site was an appropriate location for recreational facilities to serve the entire community, not just the residents of the project.

24. The owner of 4931 Massachusetts Avenue, N.W., by written submission and testimony at the public hearing, expressed concern about the location of the traffic light proposed for the intersection of Massachusetts Avenue and 50th Street pursuant to the Supplemental Agreement. He acknowledged the need for the light, but preferred its location at the intersection of Massachusetts Avenue and Yuma Street.

25. The Board's response to the issue of open space raised by some residents is the same response to the ANC in Finding No. 19. The proposed traffic signals at either the intersection of Massachusetts Avenue and 50th Street, or Massachusetts Avenue and Yuma Street, the Board finds to be a necessary means of traffic control due to the increased traffic generated by the proposed development.

26. The Board finds that the proposed development is compatible with the surrounding neighborhood and not likely to have an adverse impact on the present character and future development of the neighborhood.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking a special exception and related variance relief. In order to be granted special exception relief, the applicant must demonstrate compliance with Section 2516 and 3108 of the Zoning Regulations. Similarly, in order to be granted variance relief, the applicant must demonstrate compliance with Section 3107 of the Zoning Regulations. The Board concludes that the applicant has complied with the requirements.

The site, as a result of its location size, shape and topography and existing site improvements and infrastructure, is unique. This uniqueness coupled with the applicant's obligation under the Supplemental Agreement to complete the project as originally designed and approved by

the Community and the District and desire not to create any adverse impact on the present character or future development of the neighborhood has produced several practical difficulties in complying with the Zoning Regulations. The Board takes note of the Supplemental Agreement between the applicant and SV-WHCA. Based on the practical difficulties in achieving the above-referenced objectives and the unique features of the site, the Board finds that a strict application of the Zoning Regulations would create an undue hardship on the applicant and the community. The Board concludes that the variance relief requested is minor in nature and will not have an adverse impact on the neighborhood.

The Board further concludes that the approval of the special exception and related variance relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Maps and that the use will not tend to adversely affect the use of neighboring property. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is therefore ORDERED that the application is GRANTED subject to the following CONDITIONS:

1. The terms and conditions set forth in the agreement between the applicant and the Spring Valley/Wesley Heights Citizens' Association, dated February 12, 1990, and marked as Exhibit No. 57 of the record shall be incorporated herein and shall be enforceable in the same manner as any other condition imposed by the Board on the granting of an application.

2. The construction of the 114 single-family dwellings may be phased over a period of ten years from the date of the Board's Order provided that an application for a building permit for at least one of the proposed dwellings is filed with the Department of Consumer and Regulatory Affairs within six months after the effective date of the Board's Order.

3. Construction of the single-family dwellings shall be inaccordance with the plans marked as Exhibit No. 22, 23 and 24 of the record. Modifications may be made to the plans without further Board approval subject to the following restrictions:

    a. "Modifications" shall include, but not be limited to, room additions, construction of decks and porches, changes in facade, design treatment, roof design and pitch, fence design and treatment, and materials generally

consistent with the plans submitted in the record of this case.

b. All construction, including modifications, shall be in compliance with the applicable Zoning Regulations.

c. No such modification shall involve and/or result in the reconfiguration of any of the 114 theoretical lots or reduction in lot area and width.

d. A minimum of two off-street parking spaces for each house shall be maintained at all times.

4. The construction of the approved single-family dwellings, with or without modifications are outlined in Condition No. 3, shall not exceed the following parameters:

a. No rear yard shall be less than 25 feet including the street; no front yard shall be less than 25 feet including the street; no side yard shall be less than 8 feet including the street; and total lot occupancy shall not exceed 30 percent for those lots of more than 7,100 square feet excluding the streets, and not exceed 33 percent for those lots of less than 7,100 square feet excluding the streets.

b. The maximum height of any structure shall be 40 feet.

c. While the specific landscape plan may be modified or customized by the purchaser, each lot shall have implemented the landscaping substantially consistent with the plans attached to the February 12, 1990 Agreement, and marked as Exhibit No. 60 of the record.

d. The location and design of all interior components of the single-family detached houses may be modified without Board approval, subject only to compliance with all applicable building codes.

VOTE: 5-0 (Paula L. Jewell, Charles R. Norris, William F. McIntosh, Lloyd Smith, and Carrie L. Thornhill to grant).

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

ATTESTED BY: Edward L. Curry
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: AUG 17 1990

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS 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.

15301order/BHS25

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION NO. 15301

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order in this case, dated AUG 17 1990 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Whayne S. Quin, Esquire
Wilkes, Artis, Hedrick and Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Edward J. Miller, Jr.
W.C. & A.N. Miller Development Co.
4315 - 50th Street, N.W.
Washington, D.C. 20016

Spring Valley-Wesley Heights Citizens' Assn.
c/o Dr. Jeffrey Kraskin
4601 Tilden Street, N.W.
Washington, D.C. 20016

Michele T. Kearney
5137 Yuma Street, N.W.
Washington, D.C. 20016

Edward Irons
3945 - 52nd Street, N.W.
Washington, D.C. 20016

Jill J. Witten
5105 Yuma Street, N.W.
Washington, D.C. 20016

Thomas Whitehead
4931 Massachusetts Avenue, N.W.
Washington, D.C. 20016

Marion Scheuer Sofaer
3520 Overlook Lane, N.W.
Washington, D.C. 20016

Joseph D. Murphy, Chairperson
Advisory Neighborhood Commission 3-D
P.O. Box 40846, Palisades Station
Washington, D. C. 20016

Steven Raiche, Chairperson
Advisory Neighborhood Commission 3-E
P.O. Box 9953, Friendship Station
Washington, D. C. 20016

Edward L. Curry

EDWARD L. CURRY
Executive Director

DATE: AUG 17 1990