

**ANC 3/4G RESOLUTION APPLYING CONDITIONS  
FOR APPROVAL OF INGLESIDE ROCK CREEK'S  
BZA APPLICATION NO. 18898**

**WHEREAS**, Ingleside has applied to the District of Columbia Board of Zoning Adjustments (“BZA”) for approval of plans to expand its facilities (the “Expansion Project”) located at 3050 Military Rd NW, Washington, DC (Application No. 18898); and

**WHEREAS**, Ingleside, under the ANC’s sponsorship, held public meetings in May, June, July, September, and October 2014, where Ingleside presented the plans for its Expansion Project and where Ingleside residents and neighbors in the community asked questions, made comments, and offered suggestions; and

**WHEREAS**, Ingleside has contracted with Whiting-Turner Contracting Company (“Whiting-Turner”) to be the construction planning contractors for the Expansion Project; and

**WHEREAS**, Ingleside proposes to complete construction of the Expansion Project on an accelerated basis, but this proposed schedule will require it to use the house it owns at 5314 29th Street, N.W. (Square 2290, Lot 30) (the “Temporary Facility”) to accommodate approximately ten assisted-living residents on a temporary basis while the new assisted-living building is being constructed; and

**WHEREAS**, actual construction on the Expansion Project is not expected to begin until late-2016, and Whiting-Turner will be developing much of the pre-construction planning over the next year or more; and

**WHEREAS**, the ANC and the community have raised a number of legitimate concerns relating to how the Expansion Project will be planned and executed, and the ANC and nearby residents have suggested mechanisms and approaches that could ameliorate the impact of construction on the community; and

**WHEREAS**, Ingleside has made a number of accommodations to the concerns raised by the ANC and the community, including elimination of an initially proposed new delivery drive entrance on Military Road, reduction in the height of some buildings, and shortening the projected duration of construction; and

**WHEREAS**, the ANC held duly scheduled meetings on November \_\_, 2014, and \_\_\_\_\_, 2014, attended by \_\_ commissioners (a quorum being four) to hear both Ingleside’s presentation on its BZA Application No. 18898 and comments from members of the community’s about the application and proposed Expansion Project;

**WHEREAS**, the ANC posted on its website and on the Chevy Chase Listserv a proposed set of conditions that it would consider requiring before it would support Ingleside’s BZA application,

and the ANC solicited input and comment from the community and from Ingleside on that proposed set of conditions; and

**WHEREAS**, the ANC and the nearby residents consider these Conditions to be essential if the Expansion Project is to proceed consistent with the program goals and objectives of the District of Columbia, to comply with the District of Columbia's zoning regulations, and to avoid an adverse impact on the neighborhood because of traffic, noise, or operations;

**NOW THEREFORE**, the ANC hereby conditions its approval of Application No. 18898 on Ingleside's agreement to and/or the BZA's imposition of the following provisions (the "Conditions"):

**1. Communications**

- a. The ANC shall establish an Ingleside Expansion Task Force (the "Task Force") of at least five and no more than seven residents and neighbors to advise Ingleside throughout the pre-construction and construction of the Expansion Project. The chair of this Task Force shall be the Commissioner representing the Single Member District containing Ingleside, and the remaining members of the Task Force shall reside at Ingleside or in the neighborhood surrounding Ingleside. Ingleside shall meet with the Task Force monthly, or as frequently as the Task Force deems necessary, to address any issues that may arise related to the design and construction planning or execution of the Expansion Project.
- b. Ingleside has established a page on its website devoted to communications related to the Expansion Project (<http://ircdc.org/planning/index.html>), and it will keep this web page current with at least the following information that will be organized in a way that it will be easily identified and accessible: (i) a calendar that identifies all scheduled meetings or events and for key construction or pre-construction activities related to the Expansion Project, including meetings of the Task Force; (ii) a 24-hour hotline for anyone to notify Ingleside and Whiting-Turner of a serious, unsafe, or dangerous condition that requires urgent attention; (iii) a form to submit written questions, Complaints (as defined in paragraph 6.a. below), or comments that will be forwarded to Ingleside and Whiting-Turner for action and to the ANC for information; (iv) archives of key documents (e.g., design drawings, presentations, schedules, minutes or notes of meetings, etc.); (v) a milestone schedule for the Expansion Project showing key start and completion dates; and (vi) an alert announcement to notify Ingleside residents and neighbors of any potentially disruptive activities. Ingleside will also send alert emails or text messages to any persons wishing to receive notice of potentially disruptive activities related to the Expansion Project (as identified in paragraph 3.e. below).
- c. Ingleside and Whiting-Turner will each designate a single point of contact who will be responsible for receiving, addressing, and resolving any questions, concerns, Complaints (as defined in paragraph 6.a. below), or suggestions from the ANC, the Task Force, or from the community (including from Ingleside

residents). Whiting-Turner will 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 will be available for review by the ANC and the Task Force.

- d. Whiting-Turner will have a designated project manager on the site whenever any construction activities are ongoing.

**2. Design**

- a. The design of the proposed expansion buildings shall be in accordance with the drawings and materials submitted to the BZA on October 6, 2014, and by any other amendments or modifications that may be initiated by the BZA.
- b. Any other material modifications to the design that Ingleside may propose before Application No. 18898 is finally approved must be presented in writing to the ANC at least ten business days before they are submitted to the BZA, and the ANC must have an opportunity to review and make comments on those changes to the BZA.
- c. Ingleside will prepare and provide to the Task Force for comment its plans for trees, shrubs, and other vegetation that it will plant on the “berm” between the area of the Expansion Project and Military Road. 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.
- 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 or 29<sup>th</sup> Street, N.W.
- e. Ingleside agrees 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,” and it must further stipulate and warrant 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 date of a final BZA order in Application No. 18898.

**3. Pre-Construction**

- a. At least six months before the planned start of construction, Ingleside and Whiting-Turner will distribute fliers to or otherwise communicate with all homes or institutions within three blocks of the Expansion Project site and will offer to conduct a survey of homes, other buildings, or existing infrastructure before construction begins in order to provide a baseline for any damage that might be caused by construction-related activities. Any other owner more than three blocks away may request a survey of a home, other building, or existing infrastructure if the owner shows that there is a reasonable possibility that those facilities may be

affected by a specific activity during construction of the Expansion Project. Whiting-Turner will arrange to conduct surveys, as requested, and will maintain records of any surveys undertaken.

- b. At least six months before the planned start of construction, Ingleside and Whiting-Turner will systematically survey the possible impact of construction on (i) truck, bus, pedestrian, bicycle, and passenger car traffic on Military Road, Broad Branch Road, and other neighborhood streets; (ii) the existing public infrastructure (e.g., roads, storm and sanitary sewers, water pipes, and electrical service); and (iii) the environment (e.g., water and air quality, noise, vibration) and will provide the results of the survey to the Task Force.
- c. At least six months before the planned start of construction, Ingleside and Whiting-Turner will identify all permits that will be required for the Expansion Project and will prepare and provide to the Task Force a schedule for obtaining all necessary permits (the “Permitting Schedule”). Work on the Expansion Project will be conducted in compliance with all required permits.
- d. At least four months before the planned start of construction, Ingleside and Whiting-Turner will prepare and provide to the Task Force a plan for managing the construction traffic into and out of the site (the “Construction Traffic Plan”), including at least the following: (i) an analysis of the feasibility of using Broad Branch Road as a possible truck access point for the construction site; (ii) identification of truck routes that are authorized and express identification of routes that are prohibited (including particularly all of the surrounding residential streets and all streets north of Military Road); (iii) identification of authorized off-site truck staging areas and those areas that are expressly prohibited for truck staging (e.g., no staging on Military Road or in the surrounding neighborhood streets); (iv) actions that Whiting-Turner will take to prohibit construction traffic (including hauling or replacing dumpsters) into or out of the site Monday through Saturday before 8:00 am or after 5:00 pm or at any time on Sundays; (v) actions that will be taken to require covers on any trucks hauling materials that might be blown out of the truck; (vi) procedures for promptly cleaning any spills on roadways; and (vii) procedures to ensure that all truck drivers are licensed, qualified, and not fatigued.
- e. At least four months before the planned start of construction, Ingleside and Whiting-Turner 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 and residents (the “Construction and Transportation Plan”). At a minimum, the plan will include (i) identification of off-site parking that must be used during construction for construction workers, employees, and, if necessary, for residents; (ii) a plan for providing timely transportation for persons required to use off-site parking; (iii) a plan for communicating the off-site parking requirements to construction workers, employees, and, if necessary, to residents; and (iv) a plan for enforcing

the off-site parking requirements on construction workers, employees, and, if necessary, on residents to prevent their parking on the neighborhood streets.

- f. At least four months before the planned start of construction, Ingleside and Whiting-Turner will prepare and provide to the Task Force a plan to minimize construction noise, vibrations, odors, fumes, effluents, floodlights, and other disruptions expected from the Expansion Project (the “Disruption Abatement Plan”). This plan will include, at a minimum, actions that will be taken (i) to minimize the extent of blasting that will be required, to schedule any necessary blasting during times that will be least disruptive for Ingleside residents and neighbors, and to provide timely notice to any affected persons of any scheduled blasting; (ii) to prohibit any disruptive work before 7:00 am or after 5:00 pm or on weekends; (iii) to schedule noisy construction activities when they will be least disruptive; (iv) to limit smoking or break areas on the site to designated areas that will not be disruptive for Ingleside residents or nearby neighbors; (v) to require workers to consume food only on the site and not in the surrounding neighborhood and to remove food trash; (vi) to prohibit construction workers from using alcohol or drugs on the site; (vii) to monitor the quality of the air and water runoff from the construction site; and (viii) to limit night-time lighting intrusion on Ingleside residents or nearby homes, consistent with security and safety requirements.
- g. At least three months before the planned start of construction, Ingleside and Whiting-Turner will prepare and provide to the Task Force a subcontracting plan (the “Subcontracting Plan”) that will include provisions in all subcontracts for specific penalties and remedies that will be imposed for violations of the Construction Traffic Plan, the Parking and Transportation Plan, or the Disruption Abatement Plan. Each major subcontract will include requirements that the subcontractor adhere to the provisions of the Construction Traffic Plan, the Parking and Transportation Plan, and the Disruption Abatement Plan. Nevertheless, Ingleside and Whiting-Turner will remain responsible for ensuring that work on the Expansion Project is undertaken in accordance with all of the requirements of these Conditions.
- h. Within 30 calendar days of delivery of the the Construction Traffic Plan, the Parking and Transportation Plan, the Disruption Abatement Plan, or the Subcontracting Plan (collectively, the “Construction Plans”) to the Task Force, the Task Force will provide its written comments, suggestions, concerns, and objections, if any, to Ingleside and Whiting-Turner. If the Task Force does not provide any written comments, suggestions, concerns, or objections related to a particular Construction Plan within 30 days, that Construction Plan shall be deemed acceptable. The Task Force, Ingleside, and Whiting-Turner will make reasonable efforts to resolve any differences with regard to a particular Construction Plan. If they have been unable to resolve any differences within 15 calendar days, the Task Force and Ingleside/Whiting-Turner will each submit a

concise statement of its position on each discrete disputed portion of the Construction Plan to the Referee designated pursuant to paragraph 6.b. below for resolution. The Referee may request additional information from the Task Force and/or Ingleside/Whiting-Turner, but within an additional ten business days, the Referee will decide whether to accept either the Task Force's or Ingleside's/Whiting-Turner's position on each discrete disputed portion of the Construction Plan – i.e., the Referee must choose between either the Task Force position or the Ingleside/Whiting position on each discrete disputed portion of the Construction Plan and may not recommend any changes from the position advocated by a party (as in “Baseball Arbitration”). The Referee's determination about which position to adopt will be binding and may not be contested further by any of the parties or by anyone seeking to enforce these conditions.

**4. Temporary Facility on 29<sup>th</sup> Street, N.W.**

- a. In order to reduce the construction schedule for the Expansion Project to approximately 30 months, Ingleside may use the existing house that it owns at 5314 29th Street, N.W. to temporarily house no more than ten current assisted-living residents until construction of the new assisted-living facility is completed, but, in any case, no longer than 24 months.
- b. Ingleside will 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. Ingleside will, however, make no material changes or modifications to the exterior of the house so that it retains its residential character, consistent with the other homes on 29<sup>th</sup> Street. 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 29<sup>th</sup> Street.
- c. Ingleside will notify the residents on the 5300 block of 29<sup>th</sup> Street, Jenifer Street, and the 5300 block of 28<sup>th</sup> Street by letter or email at least four weeks before it plans to begin construction to change or modify the Temporary Facility. During that construction, Ingleside will use no more than two street parking spaces for construction-related activities (e.g., materials delivery, dumpster/waste disposal, etc.). Construction workers will not be permitted to park on 29<sup>th</sup> Street, Jenifer Street, or 28<sup>th</sup> Street. Ingleside will make every reasonable effort to minimize the length of construction for the Temporary Facility.
- d. Ingleside will obtain all necessary permits and certifications to use this house temporarily for no more than ten assisted-living residents.
- e. After construction of any modifications or changes to the Temporary Facility is complete, Ingleside will accommodate visitors' and staff's parking in the

driveway or otherwise off the street at the Temporary Facility or on 29<sup>th</sup> Street immediately in front of the Temporary Facility.

- f. When the assisted-living facilities are completed as part of the Expansion Project, Ingleside will make all reasonably necessary changes and modifications to the Temporary Facility so that it can be returned to use as a single-family, residential home, and Ingleside will sell the house and the adjoining vacant lot on 29<sup>th</sup> Street, N.W. to an independent buyer or buyers for residential use.
- g. During the period when Ingleside uses the Temporary Facility to house a limited number of assisted-living residents, the staff at that Facility will normally consist of two persons during the day shifts and one person during the night shift, none of whom will park on 29<sup>th</sup> Street, Jenifer Street, or 28<sup>th</sup> Street. Deliveries to the Temporary Facility will be limited to smaller vans and, except in emergencies, will be made only between 9:00 am and 5:00 pm. Ingleside will also provide security services for the house similar to those provided for the other Ingleside facilities and will be responsible for snow removal on 29<sup>th</sup> Street to assure emergency and other access to the house.

**5. Construction**

- a. Ingleside and Whiting-Turner will erect and maintain a construction fence along the perimeter of the construction during the Expansion Project.
- b. Construction offices will be located in trailers on the construction site or in existing buildings on the site. Construction trailers and latrines will not be positioned on the property bordering Military Road or east of the Classic Residences.
- c. Ingleside and Whiting-Turner will remove rubbish and construction debris continuously during the normal construction work day and will inspect the site daily for compliance.
- d. Normal construction hours shall be between 7:00 am and 5:00 pm, Monday through Saturday. In the event that an emergency threatens the life and safety of workers, Ingleside residents, or others in the community, construction may occur during other hours or on other days so long as the Task Force is given reasonable notice.
- e. To the extent that any blasting or drilling is required for the Expansion Project, it will be conducted only between 8:30 am and 3:00 pm, Monday through Friday.
- f. Ingleside and Whiting-Turner will erect reasonable signage throughout the Expansion Project site to advise subcontractors and construction workers of the requirements of these Conditions and the penalties for violations of these Conditions.

**6. Enforcement**

- a. The Task Force will designate one or more of its members to receive reports of any perceived violation of these Conditions (a “Complaint”) from an ANC Commissioner, Task Force member, or neighborhood resident (including any Ingleside resident). If the Complaint identifies a potential violation of these Conditions, the designated Task Force member(s) will notify the single point of contact (designated pursuant to paragraph 1.c. of these Conditions). Whiting-Turner will investigate the Complaint and report the results of its investigation to the ANC, to the Task Force, and to the complaining party within three business days. The parties will make a good faith effort to resolve the Complaint within an additional five business days based on the fines specified in paragraph 6.c. below. The resolution may also include appropriate provisions to prevent a recurring violation of these Conditions.
  
- b. At least five months before the start of construction, Ingleside and the Task Force will jointly designate an attorney who is experienced in real estate and construction matters in the District of Columbia (the “Referee”) to resolve any Complaints that have not been resolved by the parties within eight business days. The Referee will be compensated by Ingleside at an agreed-upon fixed rate for each Complaint resolved. If Ingleside and the Task Force are unable to reach agreement on who will be the Referee, the Task Force and Ingleside will each compile a list of three qualified candidates, and each candidate will propose a fixed rate for resolution of each Complaint. The Referee will be chosen from among the candidates on the two lists based on which candidate proposes a fixed rate nearest to the mean of all the proposed rates.
  
- c. For any Complaint that the parties have not resolved within eight business days, within an additional three business days, they will submit to the Referee a written summary of their respective positions no longer than 2000 words. Within an additional three business days, the Referee will determine whether the Complaint is meritorious and, if so, will decide the amount of any fines based on a determination of the seriousness of the infraction and in accordance with the following schedule:
  - i. The first “minor” violation of the requirements in the Construction Traffic Plan, the Parking and Transportation Plan, or the Disruption Abatement Plan (where a violation is deemed “minor” if the impact on the neighborhood is short-lived and non-recurring): \$200 per violation;
  
  - ii. The second through fifth “minor” violation of the requirements in the Construction Traffic Plan, the Parking and Transportation Plan, or the Disruption Abatement Plan: \$500 per violation;
  
  - iii. The sixth or greater “minor” violation of the requirements in the Construction Traffic Plan, the Parking and Transportation Plan, or the Disruption Abatement Plan: \$1500 per violation;

- iv. The first “major” violation of any requirement of these Conditions (where a violation is deemed “major” if (a) there is long-lasting damage to public or private property or the environment, (b) the violation was a result of reckless or intentional misconduct, or (c) the violation is part of a pattern of disregard for the requirements of these Conditions): \$2000 per violation;
- v. The second or subsequent “major” violation of any requirement of these Conditions: \$5000 per violation; and
- vi. Fines will be capped at \$100,000.
- d. The Referee’s determination about whether there was a violation of these Conditions will be binding and may not be contested further by any of the parties or by anyone seeking to enforce these conditions.
- e. Nevertheless, any fines assessed by the Referee for a violation of these Conditions may not provide a full and fair remedy. Accordingly, nothing in these Conditions shall preclude any person suffering an injury as a result of conduct that the Referee determines is a violation of these Conditions from commencing legal proceedings seeking any remedy at law or at equity.
- f. Ingleside will be responsible for paying any fines that the Referee assesses within 20 days, but Ingleside may seek reimbursement from any contractor or subcontractor that may be responsible for the violation. Fines will be paid to one or more non-profit organizations in the District of Columbia, to be designated by the Task Force.

Adopted at a duly noticed public meeting of ANC 3/4G on \_\_\_\_\_, 2014 by a vote of \_\_\_ to \_\_\_ (a quorum being 4).

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Jim McCarthy  
Chair, ANC 3/4G

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David Engel  
Secretary, ANC 3/4G