Capitol Hill Coalition for Sensible Development

June 27, 2001

DELIVERED BY HAND

Ms. Sheila Cross Reid
Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210-S
Washington, D.C. 20001

BZA
Case No. 16407
Exhibit No. 109

Subject: 5-2-01 Capitol Hill Group Request for Modification to **BZA Order 16407**, re Medlink (Hospital and) Nursing Center at Capitol Hill, 700 Constitution Avenues, NE, Squares 865, 895

Dear Ms. Reid:

On behalf of the Capitol Hill Coalition for Sensible Development (hereafter CHCSD), I am writing concerning the above referenced matter currently proposed for the July 3 public meeting agenda. CHCSD is an ad hoc group of Capitol Hill Historic District citizens who are working to ensure that residential development in the neighborhood is sensible. The group does not have strict boundaries, but almost everyone in our coalition lives in the area near the Medlink medical complex. We are particularly concerned about the Medlink site, its future, and its impact on our community that surrounds it. Having recently reviewed a few letters in the BZA order16407 file including St. James Church's May 10, 15, and June 13 letters, and ANC6A's May 17 letter, we concur with the majority of their sentiments and will try to avoid repetition as much as possible.[1]

I. CHCSD respectfully requests the Board of Zoning Adjustment deny the applicant's requested waiver that would allow a modification to Order 16407, more than 18 months after its final date. I understand that a modification is only intended for minor changes to a plan recently approved (per 11 DCMR 3129.3, "…not later than six months after the final date of the order approving the application.") We disagree with the applicant that "there would be no prejudice to any other party…" Such a wavier would prejudice the rights of the surrounding neighborhood and the applicant has not provided good cause argument why this would not. The applicant's requested modification to reduce offstreet parking will affect ~98% of CHCSD's residences that lie within a two square-block radius (25 square blocks) of the perimeter of the Capitol Hill Group's property, inside ANC6A. The majority of these neighbors live within a one-block radius of the site and multiple properties are only 200 feet away or less. Many of our houses have no offstreet parking. Unlike some District neighborhoods, the majority of our houses and lots are small and streets are tight. This characteristic provides little margin for error

[1] Let it be noted that the June 14 St. James Church letter is in error regarding the zoning (Square 865 is zoned R-4, not R-5D. Square 895 is R-5D

Board of Zoning Adjustment
District of Columbia
CASE NO.16407
EXHIBIT NO.109

in calculating needed offstreet parking spaces. Medlink's insufficient offstreet parking is causing negative environment, economic, and social impact on CHCSD persons and property. Furthermore, this is not a minor modification. It attempts to reduce an almost fully operational medical facility's offstreet parking requirements from 276 to 171 spaces. It seeks to eliminate Capitol Hill Group's Square 865 (former) property across the street from inclusion in the property needing zoning relief. Granted, Lot 76 with the physical buildings is on Square 895, not 865. However, the Square 865 property has a long history of being inextricably linked with Square 895 in providing parking for the facility and its long-term development plans dating from at least one Memorandum of Understanding with the neighborhood groups. This is not a minor modification as it will have a significant impact on the community, including not only multiple surrounding blocks but adjacent St. James Church whose longstanding parking rights with the hospital are being ignored. If the BZA begins making major modifications 18 months later on an issue that is a focus of controversy as this is, the body undermines the community's rights in the process and the entire BZA special exception process. If allowed, an applicant could make a promise, then renege and modify without the community's voice being heard.

II. We respectfully request the BZA to address and decide on issues pertaining to Capitol Hill Group's Medlink BZA requirements at a public hearing(s) rather than public meetings. Several but not all reasons are listed below. It is apparent that further information and verification by the BZA is warranted for examining the many outstanding issues.

A) The applicant has not complied with at least two conditions in 16407 (including not furnishing 276 offstreet spaces and not meeting 4x year with ANC6A and neighborhood as required). Going back one step, order 15542 granted the 130 nursing bed special exception with conditions. However, applicant's general counsel John Lunsford testified at the January 6, 1999 hearing for 16407 that the applicant had not complied with the Board's 1991 order directing it to provide 176 parking spaces, but had provided "ample parking." More specific non-compliance issues include but are not limited to:

- The applicant has not made fully accessible its ~147 space underground parking garage (either completely closed/flunked inspections as in previous months, or of late it has become accessible only by key card to employees). A copy of the latest DCRA April 2001 garage inspection has not been made available. However, the January 2001 inspection shows the underground garage has a total of ~147 spaces with 24 surface above, not 176 underground and 24 top surface spaces as the applicant states on page three. Related to the garage, on another neighborhood matter involving Medlink, CHCSD gathered about 1200 signatures within the Capitol Hill Historic District, petitioning Medlink to fulfill its BZA requirement to fully open its existing underground garage for Medlink staff and visitors.

- In a blatant violation of BZA order 16407, the applicant's sale on May 3, 2001, of its Square 865 surface lots for a townhouse development eliminated ~103 parking spaces.

- While not directly under the BZA's jurisdiction, during Fall of 1999 Medlink had DPW reverse both sides of the 200 block of 7th Street from Zone-6 to 3-hour-only parking, equal to about 28 parking spaces. One side has reverted since to Zone-6 parking due to community

pressure, but this indicated that Medlink needed more parking capacity six months prior to its previous 16407 parking modification request in 2001 (vacated February, 2001).

B) As a result of its noncompliance, the Medlink facility has exacerbated an existing parking and traffic situation on neighboring streets. See attached emails after the May 3 sale from neighbors Tracie Spingarn, Bill Buchman, and Al Getz concerning the parking and traffic situation whereby Medlink visitors and employees continue to park on neighborhood streets. The underground garage may be more (not completely) available than last year, but ~103 surface spaces are now chained off due to the sale so the net Medlink parking shortage remains and if anything it is worse. To help define the parking problem around Medlink last fall, I provided with my 9-18-00 letter to you an informal parking survey that our volunteers conducted on Sunday, August 13 2000, between 10 and 11 PM on 58 blocks (segments, not squares) around Medlink. There were only 17 net legal available parking spaces. A DPW parking study is pending.

C) The applicant states the modification is required to allow the applicant to comply with governing BZA orders and Zoning Regulations -- we disagree.

- It is interesting that the request for this modification is dated May 2, 2001, and Capitol Hill Group sold the Square 865 lots [866, 862, (and 34 with structure) on May 3, 2001 for the new "Union Square" townhouse development by Holladay Corporation. (Deed of May 3, 2001, recorded May 4, document #2001041579). The applicant took action before the BZA had the opportunity to hear the matter or make a decision regarding the waiver. The applicant is now asking for lowering offstreet requirements to the number of spaces it now has physically left on Square 895 (~24 surface + 147 underground) and a waiver to do so.

- The applicant on page three states "This amount of parking is both unnecessary and, in light of the expiration of the special exception for accessory parking, incapable of being provided." If in fact this special exception for accessory parking has expired, this argument is not relevant for requesting a modification of reducing offstreet-parking requirements.

D) According to the zoning administrator, the applicant claimed in April 2001 that it was winding down operations in the nursing facility, but numerous others say it running full steam ahead. According to inside sources, employees were told in late spring 2001 that they would be there for two years. Councilmember's Allen's office a few weeks ago stated Medlink was close to full capacity in the nursing home and slightly less in the acute care beds. New patients are being accepted daily. In my June 26, 2001 phone conversation with Gerald Kasunic, Acting Director of the Office of the District of Columbia Long-Term Care Ombudsman, he stated "At this point in time we have received no official discharge plan from the Department of Health or the provider, Medlink. At this time, the Long Term Care Ombudsman is doing its best to determine the nature of the move. The Ombudsman has requested information several times, contacted the Department of Health and Medlink personnel to ensure a smooth transition but so far no information." There are many unanswered questions about Medlink and its actual status concerning "closure."

E) The applicant's modification request only refers to 117 licensed nursing home beds. As you know, unlike nursing home beds, hospital beds did not require a special exception when 16407 was issued and so the applicant does not mention the 60 acute care beds the facility is licensed for and must provide parking for (License #HFD01-0221). See attached copy of the Hospital's (not nursing home) Certificate of Occupancy for 60 beds. There appear to be discrepancies in how many nursing home beds Medlink is actually licensed for, as the Department of Health in January 2001 told ANC6A Commissioner Janet Quigley that Medlink was licensed for a total of 145 Nursing Home beds and 60 Acute Care beds. This does not even address other programs that we understand are currently operating out of Medlink's facility, including at least one ongoing nursing training program and at least three programs for about 90 mentally challenged. Surely these additional programs and 60 acute beds are using parking spaces in addition to those for the nursing home. According to 11 DCMR, §2118.5, "...Parking spaces for one use shall not be considered as providing the required parking spaces for any other use."

F) Interestingly, 16407's "Statement of Proceedings and Evidence," Number 9, states that 302 staff existed for the existing 130 nursing beds, and there would be ~342 employees after the extra 32 beds (and 40 staff) would be added. In Number 13, Ellen McCarthy's testimony for Medlink stated "with the increase in (skilled nursing) staff at only 40 positions spread over three shifts per day there would only be 140 to 150 employees at the site at any given time. The applicant's May 2, 2001 modification request, page three, states "...and 140-150 employees on site at any given time." The applicant's previous testimony and current request indicate that the current number of employees is at the level anticipated by the expansion allowed under order 16407. This would indicate that perhaps the number of nursing beds did increase from the 130 level to a higher level. Again, these numbers do not take into account non-nursing home bed types or other uses.

We ask the BZA schedule a public hearing as soon as possible to ensure that Medlink provides adequate offstreet parking as long as it is in operation, and to remedy the current parking problem resulting from the premature sale of lots on Square 865. If this means accessory parking in addition to ~171 spaces on Lot 76, according to 11 DCMR §2116.8 "the accessory parking spaces shall be located so as to furnish reasonable and convenient parking facilities for the occupants or guests of the building or structures which they are designed to serve." §2116.1 (with exceptions) and §2116.7 prefer accessory spaces to be either on the lot with the buildings they serve, or on adjacent lots or lots separated only by an ally from the buildings' lot. We ask the BZA to look at the Medlink facility' in its totality and within the larger context. Medlink's numbers need verification in every category, including but not limited to licensing /utilization levels for every patient bed type, and number of employees. We do not believe the applicant has provided proof that the BZA should reduce its offstreet parking space requirement. Your time and serious consideration of these matters on a timely basis are greatly appreciated.

Yours truly,

Nancy J. Simpson

Nancy J. Simpson
Chairperson, 202-544-0732

Enclosures: May 17, 2001 Al Getz E-mail
May 24, 2001 William Buchman E-mail
May 31, 2001 Tracie Spingarn E-mail
9-7-99 DCRA Certificate of Occupancy for 60 hospital beds, Lot 76, Square 895

CC: Mayor Anthony Williams
Deputy Mayor Eric Price
Office of Zoning Director Jerrily Kress
DCRA Director David Clark
DPW Director Dan Tangherlini
ANC6A Chairperson Ivette Basterrechea
ANC6A Zoning and License Chair Greg Ferrell
ANC6A05 Commissioner Janet Quigley
ANC6A06 Commissioner Marina Martin
Fr. Richard Downing, St. James Episcopal Church
Stanton Park Neighborhood Association Chairperson Warren Friedman
CHCSD Vice Chair Avis Bohlen

Subj: **Notes and WordPerfect5 file**
Date: Thursday, May 17, 2001 3:45:27 PM
From: AGetz@samhsa.gov
To: CHCforSensDev@aol.com
cc: JanetQuigley@email.msn.com

From: Al Getz
To: Nancy Simpson
CHCforSensDev@aol.com
Date: May 16, 2001
Subject: Re: Medlink Parking Lots/Holladay Townhouse Construction

Nancy:

Per our conversation, I"ve transcribed my notes from my conversation on Friday May 4, 2001 with Michael Johnson, Zoning Administrator. The conversation occurred when he returned a couple of calls that I left with earlier that afternoon.

Al

>>>>>>>>>>>>
On the morning of Friday, May 4th around 8:30 am, I noticed a traffic jam at the corner of 7th and Mass. Ave - apparently caused by the fact that MedLink's 7th St lots were closed off by chains. I made a number of calls to District agencies, since I knew that BZA Order #16407 was supposed to be in place requiring MedLink to provide parking both on these lots and the underground parking lots. All my calls referred me to Yvonne Rockett. She responded to my messages by saying that all calls re MedLink should be forwarded to the Zoning Administrator, Michael Johnson, per his request. After leaving a couple of messages, he called me back.

At first he appeared not to know why I was calling regarding MedLink. As our conversation continued, it was clear that he was rather familiar with the Holladay/MedLink proposal - and the developer's arguments for their proposal. He said that he made the decision to overturn the BZA decision since MedLink was down to 25-50 patients, and parking wasn't needed at the same intensity - and that he only has 2 inspectors to cover the city. He also noted that the situation has changed since Holladay purchased (or was about to purchase the property) and was soon to develop the property as "a matter of right." I suggested that this wasn't so simple, since the original zoning increase was granted only for the hospital, and that the Comprehensive Plan for Ward 6 states that there would br

no matter of right for apartment buildings. He responded by saying the Comp Plan was a general outline that was filled in by zoning. I responded by saying that regulations cannot supercede statute, and that the Comp Plan was statute. He acknowledged that he knew some neighbors were concerned about the size of the proposal, but..... He suggested that we call Andy Altman, head of Planning.

---------- Headers ----------
Return-Path: <AGetz@samhsa.gov>
Received: from rly-yc05.mx.aol.com (rly-yc05.mail.aol.com [172.18.149.37]) by air-yc03.mail.aol.com (v77_r1.36) with ESMTP; Thu, 17 May 2001 15:45:27 2000
Received: from samhsa.gov (samhsagw.samhsa.gov [162.99.14.20]) by rly-yc05.mx.aol.com (v77_r1.36) with ESMTP; Thu, 17 May 2001 15:44:56 -0400
Received: from SAMHSA-Message_Server by samhsa.gov
with Novell_GroupWise; Thu, 17 May 2001 15:44:41 -0400
Message-Id: <sb03f1e9.008@samhsa.gov>
X-Mailer: Novell GroupWise 5.2
Date: Thu, 17 May 2001 15:44:01 -0400
From: "Al Getz" <AGetz@samhsa.gov>
To: CHCforSensDev@aol.com
Cc: JanetQuigley@email.msn.com
Subject: Notes and WordPerfect5 file
Mime-Version: 1.0
Content-Type: multipart/mixed; boundary="=_441E7639.2243009F"

> --- William Buchman <webuchman@yahoo.com> wrote:
> > Date: Thu, 24 May 2001 07:11:51 -0700 (PDT)
> > From: William Buchman <webuchman@yahoo.com>
> > Subject: Medlink transition question
> > To: quigleyjl@yahoo.com
> >
> > Hi Janet,

> > I'm curious about the current parking status for the
> > Medlink hospital, since aparently they are no longer
> > using the lot adjacent to Stanton Manor. Street
> > parking has become remarkably tight over the past week
> > or so, and it appears that Medlink staff are parking
> > exclusively on the street (7th and Mass), illegally
> > during the day I might add. It's also cutting into
> > the amount of street parking available in the evening.
> >
> > Does Medlink have plans to make on site parking
> > available to its staff (ie garage)? I'd hate to
> > complain to the Dept of Public Works, becaue the
> > Medlink staff would bear the cost of tickets when
> > Medlink may in fact be at fault for providing no
> > parking alternatives. Also, what is the estimated
> > time frame between now and the closing of the Medlink
> > facility, and how long can we expect this situation to
> > persist?
> >
> > As a fellow Stanton Manor resident, I appreciate that
> > you're involved with addressing these issues. I hope
> > this message doesn't sound like a grievance -- you
> > probably hear more than your share on this subject.
> > Any information on the status of this situation would
> > be greatly appreciated.
> > Thanks
> > Bill Buchman
> > SM #505
> >
> > _____
> > Do You Yahoo!?
> > Yahoo! Auctions - buy the things you want at great prices
> > http://auctions.yahoo.com/

Subj: **Fwd: Re: SPNA meeting Wednesday 5-30-01, 7:30PM**
Date: Thursday, May 31, 2001 9:11:20 AM
From: TracieNS
To: CHCforSensDev

Forwarded Message:

Subj: **Re: SPNA meeting Wednesday 5-30-01, 7:30PM**
Date: Wednesday, May 30, 2001 9:22:40 AM
From: TracieNS
To: FS Bridger

Hi Nancy --

Thanks for this latest email. Yes, since the day Holladay closed the Medlink parking lots on 7th Street, local parking has become a NIGHTMARE. Parking on 7th street from Massachusetts Ave to Maryland Ave, on C Street (I think that's the one) and Massachusetts Ave between 6th and 7th Streets has gone from bearable to next to impossible, unless you try to park midday when residents are at work. On several occassions, I've arrived home at 9pm or later and haven't been able to find parking AT ALL. Until that very day that the lots closed, I was always able to find a street parking space in my locale. Yes, Medlink staff and visitors can be seen arriving and departing the local streets at all times during the day and night. It is just an awful situation. And it is further worsened by the fact that, everyday, we see those two empty lots just sitting there vacant, barricaded with padlocked metal chains blocking the entrances to the lots, while we drive around looking for parking. Thus, insult is added to injury.

I can't imagine what will happen when construction begins and we lose more street parking, as Holladay is sure to park massive pieces of equipment throughout surrounding streets. Frankly, I'm looking forward to the day when they start to build the townhouses and realize that the small sidestreets cannot accommodate the transport of their construction equipment and supplies.

Thanks for all your hard work!

Sincerely,
Tracie Spingarn

BLRA-17
(Rev 12/85)

District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

106577

CERTIFICATE OF OCCUPANCY

9/7/99
(date)

Permission is hereby granted to ~~CAPITOL HILL COMMUNITY HOSPITAL~~
to use suite(s) _____ ~~2ND & 3RD~~ floor(s
of the building located on lot(s) ~~76~~ square ~~895~~
known as premises ~~700 CONST. AVE NE~~ for the followin
purpose(s) ~~HOSPITAL/ 60 BEDS~~
~~NOT SEXUALLY ORIENTED~~

BZA # _____ EXPIRATION DA _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

FEE $ 80.00

Director L. JORDAN

Designee

98-0802PM

Store# 0001 D.C. GOVERNMENT
Location: OTR/DOWNTOWN CASHIERS OFFICE
Rec# 0 09/07/99 at 15:26 CSP 11
EB22001216 Receipt# 0134198 Amount $*****80.00
OFFICE COPY - PERMIT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BRA-71
(Rev. 4/90)

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration

NO 00606991

Occupancy Payer's Receipt

This is Not a License

Store# 000 D.C. GOVERNMENT
Location: OTR/DOWNTOWN CASHIER OFFICE
Rec# 1 09/07/99 at 13:12 CSP 5
EB22001215 Receipt# 0134195 Amount $*****80.00
OFFICE COPY - PERMIT

Capitol Hill Community Hospital
700 Const Ave NE

..... 19 99

Amount $ 80.00

Credit 121

Pay to D.C. Treasurer

Note: A Fee of $15.00 is imposed for Dishonored Checks

WHITE—APPLICANT CANARY—FINANC & REVENUE PINK—DCRA

This Space For Use of The D.C. Treasurer Only

0-2411 wd-27