Stanton Park Neighborhood Association
P.O. Box 75085, National Capitol Station
Washington, DC 20013-5085

November 8, 2002

Mr. Robert Kelly
Zoning Administrator
District of Columbia Department of
Consumer and Regulatory Affairs
941 N. Capitol St., NE
Washington, DC 20002

16407

RECEIVED
D.C. OFFICE OF ZONING
2002 NOV 15 PM 2:54

Re: Ongoing Zoning Violations by MedLINK Hospital & Nursing Center

Dear Mr. Kelly,

On behalf of the Stanton Park Neighborhood Association – a nonprofit organization representing the interests of north Capitol Hill residents, from East Capitol Street to H Street NE, and from 2nd to 10th Streets NE – I write to request that you take enforcement action against a chronic violator operating within SPNA's boundaries. Specifically, SPNA requests that the Department of Consumer and Regulatory Affairs ("DCRA") find Capitol Hill Group dba MedLINK Hospital & Nursing Center ("MedLINK") in violation of the special exception authorizing it to operate a nursing facility at 700 Constitution Avenue, NE (square 895).

History of the Special Exceptions

SPNA bases its request on MedLINK's willful and repeated failure to comply with the special exceptions granted by the Board of Zoning Adjustment ("BZA") since 1991. As set forth more fully in the attached timeline (Attachment A), there are two BZA-approved special exceptions at issue:

- In July 1991, BZA granted a special exception allowing MedLINK to operate a health care facility with 130 beds and 250 employees, contingent on MedLINK providing 176 off-street parking spaces.

- In October 1999, BZA approved MedLINK's request for a modification of the 1991 special exception, providing for an expansion to 162 beds and 340 employees. In view of the expanded operation request and MedLINK's failure (for the entire period from 1991 to 1999) to comply with the parking conditions of the 1991 special exception, BZA imposed a requirement that MedLINK increase its parking allotment to 276 off-street spaces. (See enclosed copy of BZA order dated October 21, 1999) (Attachment B). By its terms, this order would expire after two years unless MedLINK obtained a certificate of occupancy reflecting the expanded operation.

BZA
Case No. 16407
Exhibit No. 121

Board of Zoning Adjustment
District of Columbia
CASE NO.16407
EXHIBIT NO.121

As noted in Attachment A, since 1999 MedLINK has sought a series of further modifications to the 1999 BZA order, either to reduce the parking requirement or to void the 1999 order altogether. Because none of these modifications was ultimately approved, they are not at issue.

The parking requirements imposed by the 1999 BZA order were to have been satisfied by a combination of parking facilities: two surface lots (totaling approximately 100 spaces) on square 865 (i.e., on the west side of 7th St. NE, across from the MedLINK complex), plus a combination of surface and underground parking (totaling approximately 176 spaces) on square 895.

Current Status and Use of the MedLINK Facility

In 2000, MedLINK reached an agreement with a real estate developer (Holladay Corporation) for the sale of the square 865 properties. In May 2001, these surface parking lots were sealed off – permanently eliminating 100 parking spaces – and title conveyed to Holladay. At present, the former surface parking lots are occupied by nearly-finished townhouses.

MedLINK also agreed to relocate and sell its building complex to Holladay for redevelopment into apartments and condominiums. In February 2002, however, MedLINK filed for Chapter 11 reorganization and is seeking court permission to renege on the sale contract. According to a September 2002 letter signed by MedLINK's president and its CEO, MedLINK plans to continue its operations. See Attachment C ("We have made it clear to all sides that we intend to stay where we are.") Significantly, MedLINK's letter confirms that it currently has "160 patients and residents," as well as a "dedicated staff of over 300 people."

The Ongoing Violations

If MedLINK is operating under the terms of the 1999 special exception, then its sale of the surface parking on 7th St. flagrantly violates the requirement to maintain 276 parking spaces. This violation was promptly brought to the attention of the Zoning Administrator in May 2001, but the Administrator advised the complainant that DCRA would not enforce the parking requirement in light of MedLINK's then-impending plans to relocate its operations and sell its building complex to Holladay. (See Attachment D, a May 2001 letter from the Advisory Neighborhood Commission 6A chair to the BZA chair.) In light of MedLINK's current intention not to relocate, as stated in September 2002 (Attachment C), DCRA's decision to overlook MedLINK's massive parking shortfall can no longer be justified.

SPNA has learned of statements by MedLINK's president (Dr. Peter Shin) indicating his belief that MedLINK is operating legally under the 1991 special exception. While it is possible that the 1999 order expired of its own terms in October 2001 if MedLINK failed to secure a certificate of occupancy, this would not bring MedLINK into compliance for three reasons:

- First, the 1991 special exception restricts MedLINK to 130 beds. Yet by the admission of both its president and its CEO, MedLINK currently houses 160 patients. (See Attachment C.)

- Second, the 1991 special exception restricts MedLINK to 250 employees. Yet by the admission of both its president and its CEO, MedLINK currently employs a staff in excess of 300. (See Attachment C.)

- Finally, the 1991 order requires MedLINK to provide a minimum of 176 parking spaces. But as the Zoning Administrator's representative determined during a September 15, 2000 inspection, MedLINK's underground parking facility has long suffered from defects (including water problems) rendering much of it unusable. SPNA questions whether the total available parking complies even with the lower 1991 requirement.

Conclusion

For all of the reasons described above, SPNA urges that MedLINK be found in violation of its obligations under the applicable special exception. SPNA further urges that fines and other penalties (up to and including referral to the BZA) be imposed commensurate with the egregious nature of MedLINK's repeated, willful, and ongoing noncompliance. Finally, SPNA hereby requests a meeting with your office to discuss how best to bring this longstanding issue to a prompt and satisfactory resolution.

Sincerely,

Warren Friedman

Warren Friedman
Chair

Attachments (4)

cc: Councilmember Sharon Ambrose
Jerrily Kress, DC Office of Zoning
Geoffrey Griffiss, Chair, DC Board of Zoning Adjustment
Rita Bamberger, Holladay Corporation
Dr. Peter Shin, MedLINK
Robert Nevitt, Capitol Hill Restoration Society

TIMELINE ON MedLINK ISSUES

The 1991 special exception with parking requirements:

7/24/1991 Final BZA order approving Application No. 15542 for a special exception for Capitol Hill Group dba MedLINK ("MedLINK") to operate 130 nursing facility beds with 250 employees, contingent on providing 176 off-street parking spaces.

The 1999 special exception modifying the 1991 order:

10/21/1999 Final BZA order approving Application No. 16407, granting approval for an expansion of MedLINK facility to 162 beds and 340 employees, contingent on MedLINK providing 276 off-street parking spaces on squares 865 and 895. (Order expires after two years unless building permit or certificate of occupancy applied for.) This order modifies the 7/24/1991 order in Application No. 15542.

The 2000 request for reduction of the parking requirement:

4/21/2000 MedLINK's counsel submits a letter application seeking to modify the order in No. 16407 to reduce the parking requirement to 199 spaces. The request is based on the statement that the accessory parking on Square 865 lies on land MedLINK has agreed to sell to Holladay Corporation for residential development. (This application is never properly served on the Advisory Neighborhood Commission, ANC 6A.)

6/7/2000 BZA hearing on MedLINK's 4/21/2000 application for modification. Unaware of the proceeding, no ANC 6A representative attends. BZA approves the unopposed application.

9/8/2000 Final BZA order 16407-A approving reduction in parking requirement to 199 spaces.

9/15/2000 DC Zoning Administration representative inspects MedLINK underground parking facility, finds water damage and determines that garage condition is not in compliance with requirements of 9/8/2000 BZA order.

2/12/2001 After ANC 6A obtains approval for a rehearing of the parking requirement reduction, MedLINK files a request to vacate the 9/8/2000 order (16407-A) granting the 4/21/2000 application, one day before the scheduled hearing.

3/7/2001 Final BZA order vacating the 9/8/2000 modification order: "The Board's Decision and Order dated October 21, 1999, including the conditions to the order, is therefore in full force and effect."

The 2001 request for reduction of the 1999 parking requirement:

5/2/2001	MedLINK resubmits its request to modify the 1999 order in No. 16407 to reduce the parking requirement.
5/3/2001	The surface parking lots on square 865 are permanently sealed off in connection with their sale to real estate developer Holladay Corporation.
6/27/2001	MedLINK requests that BZA vacate the order in No. 16407 in its entirety (but neglects to withdraw the 5/2/2001 request for modification of the same order).
7/3/2001	At BZA hearing, presiding Vice-Chair Renshaw notes "our understanding that the new Order [No. 16407] has not taken effect and that the Capit[o]l Hill Group is actually operating under [Order] 15542." Commissioner Mitten further notes that "there is a trigger mechanism for orders to go into effect which is either a building permit is sought or a certificate of occupancy is sought and neither of those things has happened...." BZA votes to take no action.
7/24/2001	MedLINK withdraws its request to modify and/or vacate the 1999 order.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16407 of Capitol Hill Group pursuant to 11 D.C.M.R.§ 3108.1 for a special exception under Section 359 for opening an additional 32 beds in an existing nursing facility at 700 Constitution Avenue, N.E. (Square 865, Lot 76).

HEARING DATE: January 6, 1999
DECISION DATE: February 3, 1999

ORDER

STATEMENT OF PROCEEDINGS AND EVIDENCE:

1. The property that is the subject of this application is located at 700 Constitution Avenue, N.E. and fills most of square 865. The lot number is 76. The site is bounded by Constitution Avenue and Massachusetts Avenue on the south, 7th Street on the west, C Street on the north and 8th Street on the east. It immediately abuts St. James Church. The site is zoned R-5-D.

2. The subject application was filed on September 23, 1998, on behalf of Capitol Hill Group d/b/a MedLINK Nursing Center at Capitol Hill ("Applicant" or "MedLINK") for a special exception pursuant to 11 D.C.M.R. § 3108.1. Specifically, Applicant requests approval under Section 359 for opening an additional 32 beds at its existing nursing facility located at the subject premises. On July 24, 1991, the Board of Zoning Adjustment ("Board"or "BZA"), in Application No. 15542, granted a special exception for the operation of 130 beds currently in service.[1] This application seeks a modification of that order, to permit an additional 32 beds.

3. Under Section 359 of the Zoning Regulations (11 D.C.M.R.), the Board may approve a special exception for an additional 32 beds at Applicant's facility provided that Applicant meets the conditions specified at Section 3108 and Sections 358.2 through 358.7.

4. Section 3108 provides that a special exception should be granted if the proposed project is in harmony with the Zone Plan and Zone Maps and is not likely to adversely affect the use of neighboring property.

5. Sections 358.2 through 358.7 provide that a special exception should be granted if (1) no other property in the same square contains a community based residential facility for seven or more persons, (2) no other property within a radius of five hundred feet from any portion of the subject property contains a community based residential facility for seven or more persons, (3) adequate, appropriately located and screened off-street parking is provided to meet the needs of

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[1] The previous BZA case listed the facility's address as 708 Massachusetts Avenue.

occupants, employees and visitors to the facility, (4) Applicant's facility meets all applicable code and licensing requirements and (5) Applicant's facility will not have an adverse impact on the neighborhood due to traffic, noise, operations or the number of similar facilities in the area. Additionally, the Board may approve more than one community based residential facility in a square or within five hundred feet if the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise or operations.

6. A hearing on this matter was held on January 6, 1999. At the hearing, Ms. Linda Grigsby, Applicant's Director of External Affairs, testified that the subject site has long been used as a site for medical facilities, including the Capitol Hill Hospital, which operated with approximately 250 beds. Ms. Grigsby also explained that Applicant provides many community services, including flu shots, health screenings, wellness programs, healthy lifestyle courses and exercise classes. Ms. Grigsby stated that Applicant notifies area residents about the services through the MedLINK Newsletter which is sent to all mailing addresses within zip codes 20001, 20002 and 20003. The newsletter is also inserted into copies of the Washington Post. Ms. Grigsby further explained that Applicant's property is monitored daily to ensure that it is free of litter and Applicant's security personnel patrol the site every hour and a half.

7. Additionally, Ms. Grigsby testified that Applicant permits parishioners from three nearby churches to park in Applicant's parking lots when parishioners attend church services or events. This includes parishioners from neighboring St. James Church with whom Applicant's predecessor entered into an agreement to provide parking in return for the closing of the alley that was located between the two properties. She testified that the hospital had been unaware of any dissatisfaction with the parking arrangement until immediately before a December 14, 1998, meeting of the Advisory Neighborhood Commission, when the pastor of St. James Church had sent a letter to that effect. Ms. Grigsby indicated that, since that time, the Chief Executive Officer of MedLINK had been attempting to set up a meeting to resolve the matter, but despite such efforts, had not been able to contact the pastor. Ms. Grigsby also stated that many of Applicant's employees rely on public transportation rather than drive vehicles to work.

8. Mr. John Lunsford, Applicant's General Counsel, testified that adding 32 beds to Applicant's operations would bring the total up to 162 beds, which is the number permitted by Applicant's Certificate of Need as issued by the State Health Planning and Development Agency ("SHPDA"). Additionally, Mr. Lunsford stated that Applicant currently has a waiting list of patients seeking care from its facility and that many of its patients rely on Medicare and Medicaid to obtain such care.

9. Mr. Lunsford further testified that Applicant anticipates hiring only 40 additional employees, spread out over three shifts per day, to accommodate patients assigned to the additional 32 beds. This increase in employees is small compared to the existing staff of 302 employees at the facility, the majority of which are residents of the District of Columbia. Additionally, since many of the employees rely on public transportation, there should not be any adverse impact on traffic.

10. Mr. Lunsford also stated that Applicant planned to open an underground garage that will add 144 parking spaces to the existing 132 spaces for a total of 276, which will be more than enough parking spaces to serve employees, doctors and visitors.[2]

11. Ms. Ellen McCarthy, an expert in land use and urban planning, testified on behalf of Applicant. Ms. McCarthy explained that an increase of 32 beds at Applicant's facility constituted a minor change and would meet an important community need for long-term care services. In fact, Ms. McCarthy pointed out that a change from 130 to 162 beds represented less than a 25% increase in patients and is consistent with Applicant's Certificate of Need. Ms. McCarthy also stated that a large percent of the individuals receiving health care from Applicant depend on Medicare and Medicaid in order to obtain such care.

12. According to Ms. McCarthy, adding 32 beds to Applicant's facility would not adversely impact adjacent property owners. Specifically, there is a long history of hospital use at the subject site. Moreover, Capitol Hill Hospital, the previous hospital at the site, involved a greater intensity of use than that proposed by Applicant, since it had operated with up to 250 beds and was an acute care facility. Ms. McCarthy also testified that adding 32 beds would have no impact on the residential character of the neighborhood since Applicant's proposal required no increase in the physical size of the facility or modification to the exterior of the structure. Moreover, the proposed use is, in fact, a residential use of the property.

13. Additionally, Ms. McCarthy stated that adding 32 beds to the facility would not adversely impact traffic or parking in the neighborhood. According to Ms. McCarthy, skilled nursing care facilities generate low amounts of traffic, and with the increase in 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. Ms. McCarthy concluded that the 276 parking spaces would be more than enough to accommodate the facility's employees and visitors. Ms. McCarthy also explained that the underground parking facility had not been used to date because there had been no requirement for the additional parking spaces. She stated that ample parking had been provided continuously for Applicant's employees and visitors and that area residents had never complained about such employees or visitors parking on the street or using scarce public parking spaces.

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[2] Mr. Lunsford also explained that even though Applicant has not complied with the Board's 1991 order directing Applicant to provide 176 parking spaces, Applicant has continuously provided ample parking to serve the needs of employees, residents, visitors and parishioners. Mr. Lunsford further stated that the underground garage would be open by February 1, 1999. Additionally, in accordance with the Board's request, a certificate of occupancy for the garage was filed with the Office of the Board of Zoning Adjustment on January 15, 1999. Prior to that date, Applicant had no authorization from the District of Columbia Government to utilize the garage.

14. Ms. McCarthy also testified that adding 32 beds to Applicant's facility would not adversely impact the integrity of the Zone Plan. She pointed out that, under the Zoning Regulations, a hospital, sanitarium or clinic is permitted as a matter of right in more restrictive R-4 zones. Ms. McCarthy added that a special exception will not even be required for a community based residential facility if a proposed Zoning Commission rule is approved and adopted. Additionally, there are no other residential uses on Square 865. Ms. McCarthy further testified that the Generalized Land Use Map designates the subject site as moderate density residential and it is immediately adjacent to a mixed-use, moderate density residential / low density commercial area along 8th Street, N.E.

15. Ms. McCarthy also outlined Applicant's efforts to discuss any concerns that area residents may have had regarding Applicant's request for a special exception. For instance, Ms. McCarthy explained that Applicant's representatives addressed three meetings held by Advisory Neighborhood Commission ("ANC") 6A. These meetings were held on November 5, December 3 and December 14, 1998. Ms. McCarthy also described Applicant's efforts to share information regarding the proposal with the Stanton Park community organization and Ward 6 Council member, Ms. Ambrose.

16. ANC 6A submitted a letter to the Board which indicated that its Zoning and Licensing Committee had unanimously agreed to support the application, with three conditions, at its December 14 meeting. Because the ANC had no quorum, it could not officially adopt the committee's recommendation.

17. At the hearing, commissioners from ANC 6A testified that the ANC supported the Application. Its conditions included continued availability of parking spaces for St. James parishioners and assurances that Applicant would continue to empty its exterior trash barrels regularly. Commissioners Daniel Pernell and Gregory Ferrell acknowledged that they were present at a December 14, 1998, meeting held by the ANC 6A Zoning and Licensing Committee and that during the meeting the committee unanimously approved Commissioner Pernell's motion to endorse Applicant's request for a special exception.

18. Ms. Karen Wirt, a neighborhood resident and former Commissioner of ANC 6A, testified in support of Applicant. Ms. Wirt stated that Applicant has been a good neighbor to the area residents, provided many services to the community and maintained its property. She also stated that Applicant provided a vital service by operating a long-term care facility and should be allowed to add 32 beds to its operations.

19. Two neighbors appeared in opposition to the application. Although he did not complain specifically about any litter or unsafe conditions at the subject site, Mr. Ronald Nelson stated that he has never personally witnessed trash pick-up or security patrols. Mr. Nelson also stated that he has never seen any publications regarding the exercise and health programs that Applicant

offers to area residents. Mr. William Silagi was concerned that Applicant had not provided the number of parking spaces required under the 1991 Board order and that Applicant had inadvertently operated for a short period with a few more beds than was permitted under the 1991 order.

PROPOSED FINDINGS OF FACT:

1. Applicant has previously been granted a special exception under Section 359 to establish a health care facility with 130 beds at the subject premises.

2. Applicant must obtain a special exception to add 32 beds to its existing health care facility.

3. Increasing the number of beds will not require any changes to the exterior of the structure or increase the physical size of the facility.

4. No other property in the same square as Applicant's facility contains a community based residential facility of seven or more persons.

5. No known property within a radius of five hundred feet from any portion of Applicant's facility contains a community based residential facility for seven or more persons.

6. Applicant is providing adequate, appropriately located and screened off-street parking for the needs of occupants, employees and visitors to the facility.

7. Applicant's facility meets all applicable code and licensing requirements.

8. Applicant's facility will not have an adverse impact on the neighborhood due to traffic, noise, operations or the number of similar facilities in the area.

9. The addition of 32 beds to Applicant's facility is in harmony with the Zone Plan and Zone Maps and is not likely to adversely affect the use of neighboring property.

CONCLUSIONS OF LAW AND OPINION:

Applicant seeks a special exception in order to add 32 beds to its existing nursing facility at 700 Constitution Avenue, N.E. The Zoning Regulations provide that the Board may grant special exceptions as follows:

Pursuant to authority contained in the Zoning Act of June 20, 1938 (52 Stat. 797), as amended, the Board is authorized to grant special exceptions, as provided in this title where, in the judgement of the Board, those special exceptions will be in harmony with the general

purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in title 11 D.C.M.R. § 3108.1

Therefore, the Board's discretion in deciding Applicant's request for a special exception is limited to determining whether Applicant's request complies with the requirements enumerated in the particular regulation pursuant to which the exception is sought. If Applicant has met its burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981); *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).

MedLINK thus has the burden of demonstrating that its request addresses the issues set forth at sections 359 and 3108.1 of the Zoning Regulations. Generally, MedLINK must show that (1) the use, height, bulk, and design are in harmony with existing uses and structures on neighboring property; (2) ample parking space is provided; and (3) the use will not create dangerous or other objectionable traffic conditions.

Based on the testimony and evidence presented at the hearing, MedLINK has met its burden. Adding 32 beds at its nursing facility will not change the use, height, bulk or design of the structure, which was previously approved by the Board in 1991. Moreover, Applicant's parking facilities provide ample parking spaces for occupants, employees and visitors and the proposal will not create dangerous or other objectionable traffic conditions. The Board has further determined that Applicant's request complies with the requirements enumerated at section 359.

The proposed expansion of the facility is also consistent with the Zoning Regulations and the Zoning Map. Hospitals are permitted as a matter of right, not only in R-5-D districts, but in more restrictive R-4 districts as well. It is only because the nursing facility in this matter is considered a community-based residential facility that a special exception is required. More importantly, however, Applicant's proposed use is a residential use and it is consistent with the site's zoning. Additionally, the increase in the number of nursing facility beds meets an important need in the District as it provides long-term care to those who require it. The facility is also accessible to those who must depend financially on either Medicare or Medicaid, and as there is a waiting list at the facility, the expansion will enable Applicant to serve those who are waiting for such care.

The Applicant has also demonstrated that the increase in beds will not adversely affect the neighborhood. Special exceptions are expressly provided for in the Zoning Regulations, *see Stewart, supra,* 305 A.2d at 518, and the Board's function in this instance is simply to determine whether a reasonable accommodation has been made between Applicant and the neighbors, which does not interfere with the legitimate interests of the latter. *Glenbrook Road v. District of Columbia Board of Zoning Adjustment*, 605 A.2d 22, 32 (D.C. 1992), *citing Cornell University v. Bagnardi,* 68 N.Y.2d 583, 589, 503 N.E.2d 509, 511, 510 N.Y.S.2d 861, 866 (1986).

The Zoning Regulations require only that Applicant demonstrate that it is not *likely* that the proposed expansion of service will make the facility objectionable to neighboring properties. Further, the Board may grant a special exception for health care facilities in residential and special purpose districts "where in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the zoning regulations and maps and will not tend to affect adversely the use of neighboring property...." *Levy v. Board of Zoning Adjustment,* 570 A.2d 739, 742 (D.C. 1990) (quoting 11 D.C.M.R. § 3108.1). *See Rose Lees Hardy Home and School Association v. District of Columbia Board of Zoning Adjustment,* 324 A.2d 701, 706 (D.C. 1974). "[T]he applicant is not charged with considering every option that any party in opposition might conceptualize...." *Don't Tear It Down, Inc. v. District of Columbia Dept. of Housing and Community Dev.,* 428 A.2d 369, 379 (D.C. 1981).

The proposal by MedLINK accommodates the reasonable concerns of the residents and otherwise meets the requirements for a special exception. Many or most of those who own property neighboring the facility agree with MedLINK.

The only areas which might have the potential to provide an adverse impact are parking and traffic disruption. No increase in the physical size of the facility and no modification to the exterior of the structure will occur. As to the issue of traffic, since all of the increased beds are nursing facility beds the patients are not expected to be driving motor vehicles. Moreover, the addition of 40 full-time employees will generate only a nominal increase in traffic, especially since a large number of employees use public transportation.

With regard to parking, MedLINK's parking facilities, providing a total of 276 parking spaces, is more than adequate to serve the needs of the facility's occupants, employees and visitors.

Based upon the record before the Board, the Board finds that Applicant has met the burden of proof, pursuant to 11 D.C.M.R. 3108, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The Board further finds that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of ten years from the final date of this order.

2. The Applicant must provide 162 beds.

3. The number of employees shall not exceed 340.

4. The Applicant must provide 276 off-street parking spaces.

5. The Applicant must meet four (4) times per year with ANC 6A and other concerned neighbors.

6. The Applicant must keep the subject site and surrounding property clear of trash as needed.

VOTE: **3-0** (Betty King, Sheila Cross Reid and Jerry Gilreath to grant).

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

Final Date of Order: OCT 21 1999

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 SUBSECTION 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 TWO YEARS 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.

ord16407/POH

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO.: 16407

As Director of the Office of Zoning, I certify and attest that on OCT 21 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard B. Nettler, Esquire
1801 K Street, NW, Suite 1200
Washington. D.C. 20006

Daniel M. Pernell, III, Chairperson
Advisory Neighborhood Commission 6A
St. James Parish Church
1132 4th Street, NE
Washington, D.C. 20002

Linda M. Grigsby, Director of External Affairs
MedLINK Nursing Center at Capitol Hill
700 Constitution Avenue, NE
Washington, D.C. 20002

Attested by: _____
JERRILY R. KRESS, FAIA
Director

Date: OCT 21 1999

Attest/O-16407 /POH

MedLINK

HOSPITAL & NURSING CENTER

at Capitol Hill

Greetings Everyone!

March of 2002, just several months ago, marked the 10th anniversary of the founding of MedLINK Hospital and Nursing Center at 7th and Constitution. And in those 10 short years, we have gone from heights of euphoria to bottom of despair on many fronts. Today, in the coolness of September morning, I am extremely pleased to report to you, the staff and people in the community, that MedLINK has never been stronger in terms of quality of care and in terms of financial stability. The dedicated staff of over 300 people and a talented group of physicians have done a wonderful job of making sure that each resident in the Nursing Center and each patient in the Hospital Center get the kind of attention and care they deserve. There is pride in the voices and steps of our staff that is reflective of our dedication to the people we serve and the family members of the sick have taken notice. The management and the staff both know that we still have quite a few things to work on, but for now we can be a bit reflective and say, "We have come a long way," since we started in 1992. When a group of 300 people get together on a mission, you see a miracle in the making.

Some of you may wonder, "I thought the place was sold to a developer and the facility will close." What's the status? Well, I can tell you that without a relocation site identified to care for 160 patients and residents, **we cannot close**. All of us have worked too long and too hard to vacate without a place to go. While relocation to DC General site or Columbia Hospital for Women looked positive - we have drafted memos and leases with these entities - for various reasons, we could not ultimately close the deal. Both entities were forced to backed away at the last moment. So that we can stay and give the comfort of stability to both our staff and patients, the hospital and nursing centers' legal team are working with the developer to resolve some of the issues that remain. We have made it clear to all sides that we intend to stay where we are.

Finally, MedLINK is pleased to announce the "BEAUTIFICATION PROJECT." The project will make our facility look refreshed from within, but equally important, we want to make our neighbors take notice our improvement on the outside. Soon you will see our lawns and shrubs looking clean, green and gleaming. (We expect to add other colors to the surroundings.) There will be multiple flowerbeds and the grounds will be swept clean at least twice daily and more often when necessary. Give us another 3-4 weeks and then let us know what you think. All of us are excited by what has transpired at MedLINK. Watch us grow and become even better in coming days, months and years. Before you know it, we will celebrate our second 10-year anniversary.

Regards to all and God bless,

Dr. Peter Shin
President MedLINK Hospital and Nursing Center

James J. Gerrity
Chief Executive Officer

District Of Columbia Government
ADVISORY NEIGHBORHOOD COMMISSION 6A
Commissioner Ivette Basterrechea, Chair
1610 D Street, NE, Washington, DC 20002

May 3, 2001

Ms. Sheila Cross Reid
Chair
Board of Zoning Adjustment
441 4th St., NW, Suite 210
Washington, DC 20001

Re: BZA Order 16407, Request for Modification of Order dtd May 2, 2001, Capital Hill Group/Medlink Hospital, 700 Constitution Avenue, NE, Squares 865 & 895

Dear Ms. Reid:

We understand that the Capital Hill Group has requested a modification of BZA Order 16407 to reduce the number of parking spaces required to support the hospital's staff, patients and visitors. This issue was discussed in a preliminary fashion at ANC 6A's May 9, 2001 Zoning and Licensing Committee meeting. The committee voted, with a quorum present, to request the following actions of the BZA. These requests were ratified by the full ANC on May 17, 2001.

1. That this matter be addressed at a public hearing rather than a public meeting. The scope of the request, as well as its timing (i.e. more than eighteen months since adoption), makes it more than a minor modification which could be addressed at a public meeting. Also, we believe the subject merits public input, which public meetings do not accommodate. Our initial reading of the Modification Request finds several potential discrepancies which require further research and verification. Parking is a major issue in this neighborhood and we respctfully request that residents have an opportunity to voice their opinions on this matter.

2. That the Board of Zoning review the Zoning Administrator's apparent refusal to enforce the current requirements of BZA Order 16407. At some point during the week of April 30, 2001 the Capital Hill Group sold the property on 7th Street, NE between Massachusetts Ave. and C Street to the Holladay Corporation. On May 3, 2001 the two surface lots facing 7th Street, NE were chained off. These lots represent 103 of the 276 offstreet parking spaces which CHG/Medlink is required to provide pursuant to the Order, thus placing the hospital in violation. This has had an immediate impact on parking in the neighborhood. On May 4, 2001 a neighbor of the hospital had a conversation with the Zoning Administrator, who informed him that the Order would not be enforced because the number of patients had been reduced and because of the imminent sale of the property (see enclosure). We believe the factual basis for this rationale requires verification, and that in any event no relief should be granted until the matter has been reviewed by BZA. We respectfully request that the Board of Zoning Adjustment address this situation with the Department of Consumer and Regulatory Affairs.

Please feel free to contact Commissioner Janet Quigley at (202) 433-6386 if there are any questions. ANC 6A thanks you in advance for your attention to these matters.

Sincerely,

Ivette Basterrechea
Chair
ANC 6A

Enclosure: 5/16/01 E-mail from Mr. Al Getz

J Quigley

From: Al Getz <AGetz@samhsa.gov>
To: <CHCforSensDev@aol.com>
Cc: <JanetQuigley@email.msn.com>
Sent: Thursday, May 17, 2001 3:44 PM
Attach: mjohnsonnotes5.wp
Subject: Notes and WordPerfect5 file

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

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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.