ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

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RICHARD B. NETTLER
(202) 775-0725

December 23, 1998

BY HAND

'98 DEC 24 A8:51
OFFICE OF ZONING
DISTRICT OF COLUMBIA

Ms. Shelia Cross Reid
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

Re: BZA Application No. 16407

Dear Ms. Reid and members of the Board of Zoning Adjustment:

I have enclosed for your consideration the prehearing statement of the applicant in the above-referenced matter I appreciate your consideration.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler

BZA
Board of Zoning Adjustment
District of Columbia
CASE NO.16407
EXHIBIT NO.31

CASE No. 16407
EXHIBIT No. 31

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of
Capitol Hill Group

BZA Application No. 16407
Hearing Date: January 6, 1998

STATEMENT OF THE APPLICANT

I.

Introduction

This is an application 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 (see Exhibits A & B attached hereto). Capitol Hill Group, d/b/a Medlink Nursing Center at Capitol Hill, wishes to increase the number of beds available to meet the demand for skilled nursing care, from the existing 130 beds to the 162 beds permitted by its Certificate of Need, granted to it by the State Health Planning and Development Agency ("SHPDA"). The proposed increase in the number of beds will not necessitate any physical expansion of the building, merely a return to a level of service closer to what was originally provided on the site when it was an acute care hospital, and had 230- 250 beds. The Board of Zoning Adjustment, in Application No. 15542, previously granted a special exception for the operation of the 130 beds currently in service (see Exhibit C & D attached hereto). This application seeks a modification of that order, to permit an additional 32 beds.

The facility address is 700 Constitution Avenue, N.E., which fills most of Square 865; the lot number is 76, which was listed in the previous BZA case as 708 Massachusetts Avenue. The site is zoned R-5-D. Capitol Hill Group submits that it meets the criteria for a special exception.

DISTRICT OF COLUMBIA
OFFICE OF ZONING

'98 DEC 23 P4:15

12/28/98

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to 11 D.C.M.R. 3108.1.

III.

Project Description

Capitol Hill Group d/b/a Medlink Nursing Center at Capitol Hill (Capitol Hill Group) presently operates 130 skilled nursing beds in its facility at 700 Constitution Avenue, NE. An additional number of acute care beds are located at the facility, but are not the subject of this application and are not expected to increase. Capitol Hill Group currently holds a Certificate of Need from the SHPDA for 162 beds. It wishes to bring its certificate of occupancy into conformance with its certificate of need. The total footprint of the building, and its amount of gross floor area will not increase.

The closure of D.C. Village, a nursing home previously operated by the District of Columbia government, and the aging of the District's population has placed a strain on the existing supply of nursing home beds. Medlink Nursing Center at Capitol Hill currently has a waiting list of patients who would like to utilize the facility. The overwhelming number of these patients are District residents. Virtually all of the patients served by Medlink are provided care through Medicare or Medicaid.

The expansion in the number of beds will necessitate a small increase in staff, of approximately 40 full-time equivalent (FTE) employees, spread over three shifts. In order to make certain that there are no parking problems associated with the expansion in the scope of the operations of the facility,

Medlink will also open an underground parking structure, which has been closed since the closure of Capitol Hill Hospital. This parking garage will add 144 spaces to the 132 existing spaces, for a total of 276, more than enough spaces to serve the employees, doctors and visitors. (See Exhibit E.).

Under § 359 of the zoning regulations:

359.1 Health care facilities for sixteen (16) to three hundred (300) persons not including resident supervisors or staff and their families, shall be permitted in an R-5 district if approved by the Board of Zoning Adjustment, in accordance with the conditions specified in §3108 of chapter 31 of this title, subject to the provisions of this section.

359.2 The applicant shall meet the standards and requirements set forth in §§358.2 through 358.7.

359.3 The Board may approve a facility for more than three hundred (300) persons, not including resident supervisors or staff and their families, only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District of Columbia.

359.4 The Board shall submit the application to the Director of the Office of Planning for coordination, review, report, and impact assessment along with reports in writing of all relevant District departments and agencies, including but not limited to the D.C. Departments of Public Works, Human Services, and Corrections, and, if a historic district or historic landmark is involved, of the State Historic Preservation Officer.

Regarding the conditions referenced in the above regulations, they are as follows:

358.2 There shall be no other property containing a community based residential facility for seven (7) or more persons in the same square.

358.3 There shall be no other property containing a community based residential facility for seven (7) or more persons within a radius of five hundred feet (500 ft.) from any portion of the subject property.

358.4 There shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility.

358.5 The proposed facility shall meet all applicable code and licensing requirements.

358.6 The facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.

358.7 The Board may approve more than one (1) community based residential facility in a square or within five hundred feet (500 ft.) only when 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.

The site is located at 700 Constitution Avenue, NE, lot 76 of Square 865, 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 Nursing Center has undertaken a consultative process with the community. Hospital officials made an informal presentation to ANC 6A in November, 1998. On December 14, the ANC's Zoning and Licensing Committee unanimously approved the expansion, with some minor conditions. The ANC meeting did not have a quorum, so it was unable to formally ratify the Committee's recommendation.

In addition, information about the request was shared with the Stanton Park community organization and the Ward 6 Council member, Ms. Ambrose. Discussions are being held with St. James Church to finalize plans for cooperation on parking for those attending services or functions at the church.

IV.

The Project Meets the Criteria for a Special Exception

As for the criteria for a special exception, 11 D.C.M.R. § 3108.1 permits the Board to grant special exceptions, pursuant to the following:

> 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 this title . . .

In short, the Board is empowered to grant a special exception where it finds

(1) The proposed use is in harmony with the Zone Plan and Zone Maps;

(2) The proposed use is not likely to adversely affect the use of neighboring property

The Board's discretion in reviewing an application for a special exception is limited to a determination of whether the Applicant has complied with requirements of the section. If the Applicant meets this 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).

Generally, Medlink has the burden of demonstrating that its proposal addresses the issues reflected in §§ 359 and 3108.1 of the zoning regulations. That is, 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) that "the use will not create dangerous or other objectionable traffic conditions." Based on the attached information, and the testimony and

evidence which will be presented at the public hearing, and given that there is no change in use, height, bulk, and design, Medlink has met its burden.

V.

The Proposed Project Does Not Impair the Integrity of the Zoning Map

In R-5-D residence districts, hospitals are permitted as a matter of right; in fact, hospitals are first permitted as a matter of right in R-4 districts. Even though the nursing facility is included within a building which also contains a hospital, and which formerly was a hospital, because the nursing facility is considered a community-based residential facility, at this point in time, it must be approved as a special exception. However, the changes recently approved by the Zoning Commission for community-based residential facilities would permit community-based residential facilities as a matter of right in R-4 zones. This provision has been advertised as a new § 330.5(i) in the December 4, 1998 D.C. Register, with comments due back within 30 days. Thus, it seems quite clear that the proposed expansion of the use of this building is consistent with the zone plan and the Comprehensive Plan. Indeed, soon after this matter will be heard by the Board, special exception relief will no longer be needed.

In fact, the proposed increase in the number of nursing facility beds is meeting an important need in the District. As mentioned above, the closure of D.C. Village and the aging of the District's population have increased demand for nursing home beds. As a facility which is accessible to those who must depend financially on either Medicare or Medicaid, Medlink has a waiting list; this expansion should enable the nursing facility to serve those who are waiting for care.

VI.

The Increase in Nursing Beds Will Not Adversely Affect the Neighborhood

The proposed increase in beds does not present an adverse impact. Here, we are dealing with special exceptions contemplated by the zoning regulations, see Stewart, supra, 305 A.2d at 518, and the Board's function on these facts is simply to determine whether a reasonable accommodation has been made between Medlink and the neighbors, which does not interfere with the legitimate interests of the latter. Glenbrook, supra, 605 A.2d at 32 citing Cornell University, supra, 68 N.Y.2d at 589, 503 N.E.2d at 511, 510 N.Y.S.2d at 861. The zoning regulations require only that Medlink demonstrate that it is not *likely* that the proposed expansion of service will make the facility objectionable to neighboring properties. 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 Hous. 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. Medlink is prepared to present evidence, including the testimony of a planner, which will demonstrate that this standard is met here, since the proposed use

is a minor addition in terms of overall size, and is accompanied by a substantial increase in parking capacity.

The only areas which might have the potential to provide for an adverse impact are traffic and parking. There will be no increase in the physical size of the facility, or any modification to the exterior of the structure. The entire increase in beds will be met by using space which is currently underutilized by prior reductions in the use of the hospital.

Regarding traffic, since all of the increased beds are nursing facility beds, the patients are not expected to be doing any driving. This type of use generates far fewer trips than an acute care facility. The planned increase in staff is only 40 FTE's, spread over three shifts per day, compared to the existing staff of 302 FTE's. This level of staffing is expected to generate only a nominal increase in traffic, since a large number of employees take public transit. For those who drive, street access to the facility is quite adequate.

With regard to parking, as explained in Exhibit E, Medlink plans to open its underground parking garage, which had been closed due to lack of need. The facility will be controlled-access, for staff only, with the surface parking lots, which currently have 132 spaces, provided for visitors.

VII.

Exhibits In Support of The Application

Exhibit A	BZA Application, Form 2 & Plat
Exhibit B	January 8, 1997 Letter of the Zoning Administrator
Exhibit C	Decision & Order in Application No. 15542
Exhibit D	Decision & Order in Application No. 15542 on Modification Request
Exhibit E	Parking Plan

VIII.

Witnesses

A. Mr. John Lunsford, General Counsel, Medlink Hospital and Nursing Center at Capitol Hill

B. Linda Grigsby, Director of External Affairs, Medlink Hospital and Nursing Center at Capitol Hill

C. Ellen McCarthy, Robins, Kaplan, Miller & Ciresi, Director of Planning and Land Use Services

IX.

Conclusion

For the above reasons, Capitol Hill Group d/b/a Medlink Hospital and Nursing Center at Capitol Hill respectfully requests that the Board grant the relief sought.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



Richard B. Nettler

1801 K Street, NW
Suite 1200
Washington, D.C. 20006
(202) 775-0725

QUALIFICATIONS OF EXPERT WITNESSES

AND OUTLINE OF TESTIMONY OF PLANNER

Ellen M. McCarthy

I. Introduction

- A. Qualifications
- B. Summary

II. Lack of Adverse Impact on the Integrity of the Zone Map

III. Lack of Adverse Impact on the Neighboring Property

- A. Traffic
- B. Parking

STATEMENT OF QUALIFICATIONS

Ellen M. McCarthy
Director of Planning and Land Use Services
Robins, Kaplan, Miller & Ciresi

Master of City Planning, 1974
Harvard University
Bachelor of Arts, 1972
University of Maryland

Ms. McCarthy has over 24 years of experience in land use and transportation planning. She was formerly the Executive Director of the D.C. Downtown Partnership, and served as a zoning consultant for D.C. cases before the Zoning Commission and the Board of Zoning Adjustment for 8 years in independent practice, before joining Robins, Kaplan, Miller & Ciresi.

She also served as president of the local chapter of the American Planning Association, and on the Board of Directors of the Washington Area Community Investment Fund and the D.C. Preservation League. She currently serves as the Vice-Chair of the Board of Trustees of the Committee of 100 on the Federal City and Co-Chair of its Planning and Zoning Committee.



BZA Form 2
(Revised 7/17/95)

Docket No. 16407

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION

NOTE: See reverse side of this application for filing instructions, filing fees and information required by the Board

DO NOT MAIL DO NOT MAIL

TO THE BOARD OF ZONING ADJUSTMENT:

Pursuant to Section(s) 3108.1 of the Zoning Regulations of the District of Columbia, an application is hereby made for the following action: To modify the special exception granted in Case # 15542 to increase the number of beds permitted in a health care facility from 130 to 162 beds., which is provided for by Section(s) 359 of the Zoning Regulations.

Premises affected are located at 708 Massachusetts Avenue, N.E. (street address)

Lot(s) 76, Square(s) 865,

in the District of Columbia, in Zoning District R-5-C.

Present Use of Property: Health Care Facility with 130 beds.

Proposed Use of Property: Health Care Facility with 162 beds.

Owner of Property: Capitol Hill Group.

Address or Owner: 700 Constitution Avenue, N.E.

State briefly the bases for action sought: Applicant seeks to increase the utilization of the existing facility, but no increase in building size is proposed.

Date: 9/21/98 Signature [signature] (Applicant)*

*The owner of the property for which application is made or his/her authorized agent may file an application. In the event an authorized agent files an application on behalf of the owner, the notice of application shall be accompanied by a letter signed by the owner authorizing the agent to act on his behalf in this application.

TO BE NOTIFIED OF HEARING AND DECISION:

Name Richard B. Nettler, Esquire

Address 1801 K Street, N.W., Suite 1200, Washington, D.C.

Zip Code 20006 Phone No. (202) 775-0725

98 SEP 23 A 9:24
OFFICE OF ZONING
DISTRICT OF COLUMBIA

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

4

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D. C., ...09:..12:.... 19..98

Plat for Building Permit of ..SQ..U.A.R.E...8.95.....LOT.76

Scale: 1 inch = ...50...feet Recorded in Book .....159.... page 183

Receipt No. 2260.....

Furnished to ..ELLEN...McCARTHY.....

.....
for Surveyor, D. C.

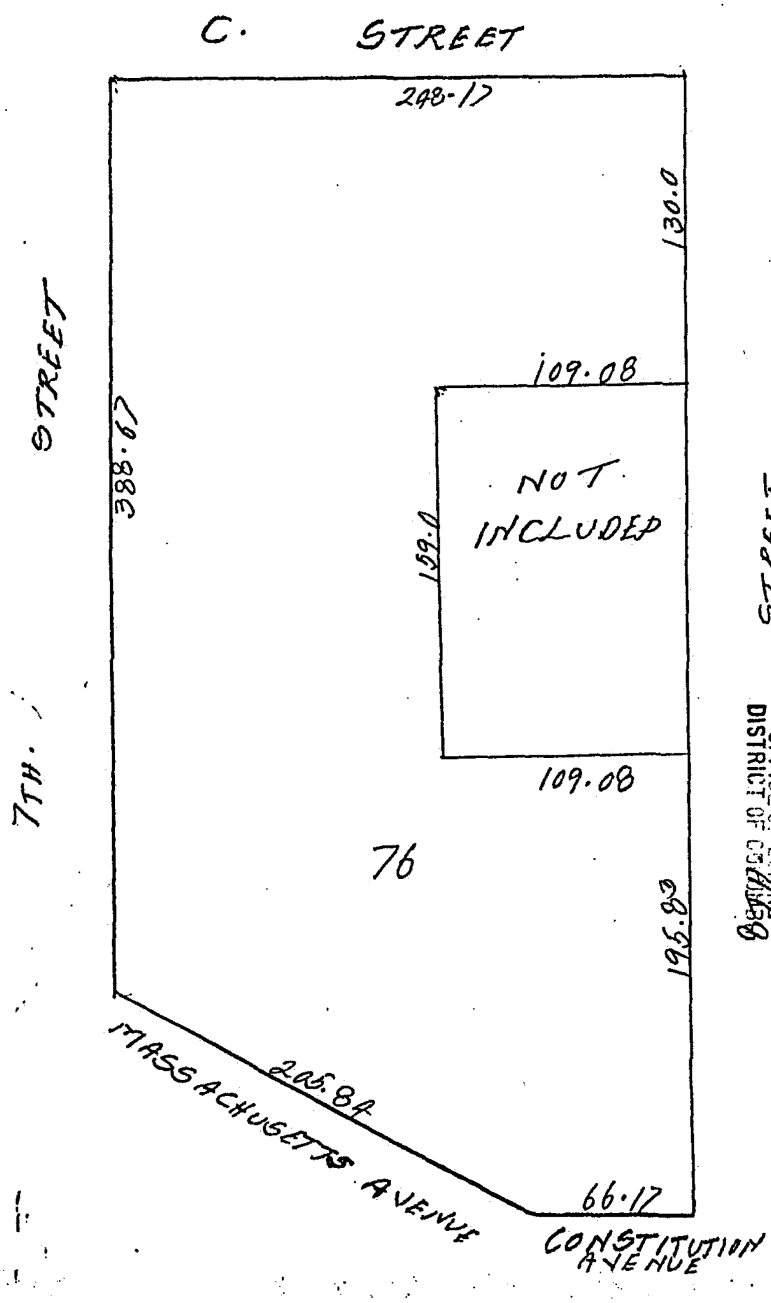
By: D.M.E.....

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plan as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb or alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property).

Date .....

.....
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



'98 SEP 23 A9:24
OFFICE OF ZONING
DISTRICT OF COLUMBIA

2-93270

S.O. Form 12.0



B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

January 8, 1997

Ali Zolnor
Capital Hill Healthcare Group
700 Constitution Avenue, N.E.
Washington, D.C. 20002

Re: 700 Constitution Avenue, N.E.
Square: 76 Lot(s): 895
(Bsmt. thru 6th Floor)
Zoned: R-5-D

Dear Mr. Zolnor:

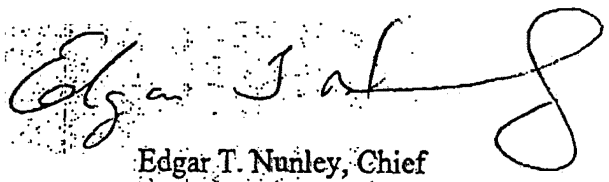
Your certificate of occupancy application #513596 filed on behalf of Capital Hill Healthcare Group to use the subject premises as "Nursing Facility and Skilled Nursing Facility - 149 Beds" is disapproved due to the need for Board of Zoning Adjustment approval.

You will be required to obtain a special exception under the provisions of DCMR Title 11, Section 359.1 to establish your use in the R-5-D Zone.

The Board of Zoning Adjustment has authority to grant special exception under provisions of DCMR Title 11, Section 3108.1.

This letter must be presented to the Office of the Board of Zoning Adjustment, Room 210, 441 4th Street, N.W., when filing for the hearing. If your request is granted, a new certificate of occupancy application must be filed.

Sincerely,



Edgar T. Nunley, Chief
Zoning Review Branch

C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15542 of Capitol Hill Hospital, pursuant to 11 DCMR 3108.1, for a special exception under Section 359 to establish a health care facility with 130 beds and 250 full-time staff, basement through sixth floors, in an R-5-C District at premises 708 Massachusetts Avenue, N.E., (Square 895, Lot 76).

HEARING DATE: July 24, 1991
DECISION DATE: July 24, 1991 (Bench Decision)

SUMMARY ORDER

The Board duly provided timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6A and to owners of property within 200 feet of the site.

The site of the application is located in ANC 6A. ANC 6A, which is automatically a party to the application, by letter dated July 18, 1991, submitted written issues and conerns in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 359. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party in opposition to this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, and that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and map and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and maps. It is therefore **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. The facility shall comply with final conditions specified by the District of Columbia State Health Planning and Development Agency Certificate of Need.

2. The applicant shall provide 176 on site, screened parking spaces for employess, residents, and visitors with preference for employees to occupy free parking in the underground garage in the same square.

3. The applicant shall cease using the 7th Street entrance for loading/unloading ambulances and reopen the 8th Street entrance prior to operating as a long term care facility.

4. The applicant shall not have retail operations other than what is required by the Public Health Regulations for the convenience of the occupants.

5. The applicant shall not rent office space to physicians not associated with the operation of the facility.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: 3-0 (Charles R. Norris, Paula L. Jewell and Carrie L. Thornhill to grant; Sheri M. Pruitt and William L. Ensign not present, not voting).

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

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: AUG 16 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT 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.

15542Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15542 of Capitol Hill Hospital, pursuant to 11 DCMR 3108.1, for a special exception under Section 359 to establish a health care facility with 130 beds and 250 full-time staff, basement through sixth floors, in an R-5-C District at premises 708 Massachusetts Avenue, N.E. (Square 895, Lot 76).

HEARING DATE: July 24, 1991
DECISION DATE: July 24, 1991 (Bench Decision)

DISPOSITION: The Board **GRANTED** the application by a vote of 3-0 (Charles R. Norris, Paula L. Jewell, and Carrie L. Thornhill to grant; Sheri M. Pruitt and William L. Ensign not present, not voting).

FINAL DATE OF ORDER: **August 16, 1991**

ORDER

The Board granted the application by its order dated August 16, 1991, subject to five conditions. By letter dated February 14, 1992, counsel for the applicant filed a timely motion requesting the Board to approve modifications to the previously approved plans.

At its public meeting of March 4, 1992, the Board deferred consideration of the motion to afford Board members Pruitt and Clarens an opportunity to read the record and participate in the decision on the requirement for modification of plans.

The plans originally approved by the Board included the conversion of the dock which formerly provided ambulance access to the emergency room into an 800 square-foot enclosed solarium with ground level access to approximately 1,000 square feet of outdoor recreation space. The requested modification of plans is proposed to improve the design and appearance of the solarium and provide for handicapped access and flexibility in the use of space. The proposed modification of plans is summarized as follows:

1. Delete the proposed greenhouse enclosure illustrated in the original concept sketches. Provide skylights.

2. Provide for 800 square feet of enclosed lounge area for long term care patient use.

3. Maintain a minimum clear width of 20 feet for two ambulance docks.

4. Provide an enclosed outdoor deck of approximately 400 square feet adjacent to the patient lounge area.

5. Provide for handicapped accessibility to all areas.

6. Maintain existing canopy details in extension of canopy.

7. Consider operable skylights with screens and remote controls.

8. Provide for flexible use of space, one large group or two smaller groups, re-arrangable seating, etc.

9. Consider sliding window units for summer operation.

The requested modification of plans does not alter the zoning relief originally granted by the Board. There was no opposition to the proposed modification of plans.

Upon consideration of the motion, the record in the case, and its final order, the Board concludes that the proposed modifications are minor in nature and do not substantially alter the overall project as approved by the Board. No additional zoning relief is required. The material facts relied upon by the Board in approving the application are still relevant. It is therefore **ORDERED** that the **MODIFICATION** of **PLANS** is hereby **APPROVED, SUBJECT** to the **CONDITION** that construction shall be modified as shown on the revised plans marked as Exhibit No. 32A of the record. In all other respects the order of the Board dated March 8, 1992 shall remain in full force and effect.

DECISION DATE: April 8, 1992

VOTE: 4-0 (Sheri M. Pruitt, Paula L. Jewell and Angel Clarens to approve; Carrie L. Thornhill to approve by proxy).

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

ATTESTED BY: Madeliene H. Robinson
MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: APR 24 1992

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.

15542Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15542

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 24 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

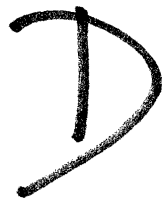
Phil Feola, Esquire
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Craig Lisk, Chairperson
Advisory Neighborhood Commission 6A
Maury School
13th & Constituation Avenue
Washington, D.C. 20002

MADELIENE H. ROBINSON
Acting Director

DATE: APR 24 1992

15542Att/bhs



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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15542 of the Capitol Hill Group, as amended, pursuant to 11 DCMR 3108.1, for a special exception under Section 359 to establish a health care facility with 130 beds and 250 full-time staff, basement through sixth floors, in an R-5-C District at premises 708 Massachusetts Avenue, N.E., (Square 895, Lot 76).

HEARING DATE: July 24, 1991
DECISION DATE: July 24, 1991 (Bench Decision)

DISPOSITION: The Board **GRANTED** the application by a vote of 3-0 (Charles R. Norris, Paula L. Jewell, and Carrie L. Thornhill to grant; Sheri M. Pruitt and William L. Ensign not present, not voting). The Board **APPROVED** a **MODIFICATION OF PLANS** by a vote of 4-0 (Sheri M. Pruitt, Paula L. Jewell and Angel F. Clarens to approve; Carrie L. Thornhill to approve by proxy)

FINAL DATE OF ORDERS: August 16, 1991 and April 24, 1992

MODIFICATION ORDER

The Board granted the application by its order dated August 16, 1991 subject to five conditions. By its order dated April 24, 1992, the Board approved a request for modification of the originally approved plans.

By letter dated October 23, 1992, counsel for the applicant requested the Board to modify its approval of the application by adding the following condition:

> "The applicant shall be permitted to rent office space to the following health care providers: (a) Visiting Nurses Association, (b) Pentamidene clinic; (c) Chartered Health Plan, Inc.; (d) National Rehabilitation Hospital Research; and, (e) Brice Warren Corporation."

By letter dated November 12, 1992, counsel for the applicant submitted a letter agreement, dated June 27, 1990, executed by the State Health Planning and Development Agency (SHPDA) and the former owners of the property authorizing temporary use of 30 medical/surgical beds as skilled nursing beds, and Certificate of Need No. 90-6-3 authorizing the conversion of 130 medical/surgical beds to 70 intermediate and 60 skilled care nursing home beds.

Counsel for the applicant argued that the proposed modification to the order would be minor and that the resulting use of the building would be consistent with previous use of the building and the use approved by the State Health Planning and Development Agency and the Board.

Upon consideration of the motion, the record in the case, and its final orders, the Board concludes that the proposed modification is not consistent with the Board's previous approvals which specifically dealt with special exception approval necessary to establish a 130-bed health care facility and minor modifications to the design of the building.

The Board further concludes that the modification, as proposed, projects multiple uses of the building. Multiple uses of the building would be permitted, provided all such uses were allowed in the R-5-C District as a matter-of-right or had received appropriate variance or special exception relief to allow for their establishment in an R-5-C District. The Board concludes that the proposed uses have not been reviewed by the Zoning Administrator to determine whether they would be permitted as a matter-of-right or would require specific zoning relief. If the Zoning Administrator determines upon review of the applicant's proposal that the proposed uses are permitted as a matter-of-right, the certificate of occupancy would be issued as a matter of course. If the Zoning Administrator determines that zoning relief would be required in order to establish the proposed uses, the applicant would be required to file for appropriate action by the Board.

Based on the foregoing, it is hereby **ORDERED** that the motion for **MODIFICATION** of the order is hereby **DENIED** as not being properly before the Board.

DECISION DATE: December 2, 1992

VOTE: 4-0 (Paula L. Jewell, Sheri M. Pruitt, Angel F. Clarens and Carrie L. Thornhill to deny).

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

ATTESTED BY: Madeliene H. Robinson
MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: DEC 30 1992

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.

ord15542/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15542

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on DEC 30 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Barry E. Hill, Esquire
Dickstein, Shapiro & Morin
2101 L Street, N.W.
Washington, D.C. 20037

Phil Feola, Esquire
Linowes and Blocher
800 K Street, N.W., Suite 840
Washington, D.C. 20001

Craig Lisk, Chairperson
Advisory Neighborhood Commission 6-A
1341 Maryland Avenue, N.E.
Washington, D.C. 20002

MADELIENE H. ROBINSON
Acting Director

DATE: DEC 30 1992



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FACT SHEET ON PARKING ISSUES RE:
THE PROPOSED EXPANSION OF MedLINK HOSPITAL AND NURSING CENTER
BZA Case # 16407
Hearing Date: January 6, 1999

MedLINK Hospital and Nursing Center at Capitol Hill is proposing to increase their occupancy to 162 beds, to match the number permitted by their existing Certificate of Need. The increase in occupancy will occur entirely within the existing building -- no expansion of the building is proposed. All of the new beds, a total of 32, are in the nursing facility, not in the acute care section of the facility.

The Hospital currently has an employee base of 302 full-time equivalents (FTE's), spread over three shifts. The approximate number on site during the peak period, 9:00 AM to 5:00 PM, is 140 or less. As a result of the new beds, the Hospital estimates that 40 new employees will be hired, spread over three shifts. However, the Hospital plans to re-open a parking garage on the site which is currently closed. That will add 144 spaces, which should be more than enough to accommodate additional staff and visitors. Since the new beds are nursing facility beds, they are not expected to generate the same type of demand that acute care beds would provide. The total parking spaces which will be available will be 276, of which 132 are existing spaces.