St. James Parish
Capitol Hill 222 EIGHTH STREET, N.E., WASHINGTON, D.C. 20002 • 546-1746

THE REVEREND RICHARD E. DOWNING
Rector

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May 10, 2001

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

I am writing in my capacity as Rector and representative of St. James' Episcopal Church, the only abutting property owner on Square 895 to the MedLINK facilities under the aegis of Capitol Hill Group. I am requesting party status for BZA Application No. 16407 (Request for Modification of Order) which St. James' Parish strongly opposes. In viewing BZA Case No. 16407, Exhibit No. 96, I have serious concerns to a number of factual issues stated in this BZA Application for Request for Modification of Order:

1. On the first page of the application, the applicant states, "The Capitol Hill Group seeks a modification to the order, which reflects a reduction in the number of parking spaces to account for existing conditions." The wording of this statement is very nebulous in that no one in the neighborhood or the District of Columbia Municipal Government is able to document the said "existing conditions." Neighborhood groups have reported that the number of patients in the nursing center is unknown but could be as high as 120 when you include the acute care facility and two new patients were admitted last week. Prior to acting on this Application, the "existing conditions" should be catalogued in writing and provide some verifiable evidences as to the accuracy of the "existing conditions."

2. Also the Application notes that this modification is pursuant for Square 895 and not Square 865. The only possibility of complying with the BZA order for 276 off-street parking is to have the parking lots in Square 865 open to the public, Capitol Hill Group violated the zoning regulations by chaining the entrances to the parking lots on Square 865 in direct opposition to current litigation with St. James' Parish and in blatant disregard for the current BZA regulations for the property.

3. On page two of the application several serious flaws in fact are evident. Capitol Hill Group recognizes that it has not fully utilized the underground parking facility since 1991. In 2001, Yvonne Rockett, Inspector for the Office of the Zoning Administrator under the Department of Consumer and Regulatory Affairs has inspected the garage two times in the past four and a half months. It failed inspection in January 2001 and a fine was given to Capitol Hill Group. As of April, the lighting in the underground facility has been restored, the hospital equipment which was stored and filled half of the first subterranean floor was removed but small amounts of stagnant water were still

BZA
Case No. 16407
Exhibit No. 97

Board of Zoning Adjustment
District of Columbia
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EXHIBIT NO.97

present on the lowest level in the Northwest corner of the structure. Given these facts, Capitol Hill Group claims in this Application that it has been in violation of the BZA orders since 1991 and has not been able to provide and was unwilling to provide the 276 off-street parking spaces.

4. On page three, the applicant claims, "The sale of these properties [Square 865] has been postponed due to difficulties the applicant has met in meeting the requirements of 276 parking spaces." First, the most important issue is that this property on Square 865 can not be sold until current litigation with St. James' Parish has been satisfactorily settled via court trial or settlement. Secondly, if Capitol Hill Group claims they can not provide the needed 276 parking spaces, why have their parking lots on Square 865 been chained denying any access to hospital employees, visitors or the public. Thirdly, as to the lawsuit with St. James' Parish, Dr. Peter Shin (owner of MedLINK and Capitol Hill Group) admitted during deposition that his representative Mr. Lunsford did accurately under oath swore at the BZA public hearing on Wednesday, January 6, 1999 (in regards to the conditions of the September 29, 1971 Agreement between Rogers Memorial Hospital and St. James' Parish): "We certainly intend to be in compliance with that covenant which again, as I said, was made in 1971. As far as we are concerned, has always been honored not only by ourselves but also by Atlantic when they owned the hospital, and prior to that, by Rogers Memorial Hospital from 1971 further. ...and that we are intending to abide by each and every private covenant that we might have with another party and public law or regulation as it comes to our attention." These statements are at the core of the current litigation between St. James' Parish and the applicant. If this modification is granted, Capitol Hill Group will not be able to provide adequate parking for its facility let alone meet the obligations it has to neighboring groups. Even in the application, the applicant admits to failing in compliance with the zoning regulation for 276 parking spaces, is it right and appropriate to offer a Modification of Order, BZA Application No. 16407 after the fact of noncompliance since 1991(page three of application)? Should modifications to any Zoning Regulations be granted when the Department of Consumer and Regulatory Affairs states it will not provide further enforcement? This does not demonstrate good faith or a good neighbor policy which Mr. Lunsford stated was Capitol Hill Groups goal in his sworn testimony mentioned above.

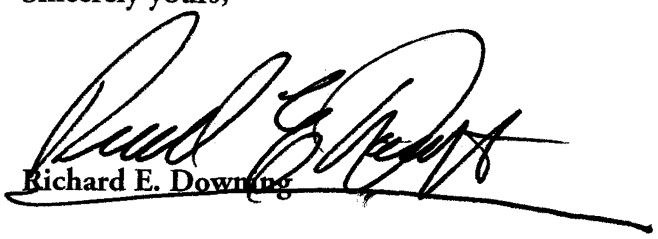
5. On page three of the application, the applicant states "...the 176-space underground parking garage remains available." This is not the factual evidence and communication should be established between the inspector, Yvonne Rockett as to the actual availability of the underground garage and following her April 2001 inspection when several spaces were claimed to be undersized and not meeting zoning regulations. Also, "available" is not the same as "accessible" because on the day of the inspection approximately twenty-five cars (employees) were located in the underground garage but the garage is not "available" to visitors. There is no staff for the underground garage and no visitor or staff member of Capitol Hill Group can enter the underground garage without a card key. I emphasize that the underground facility is constantly locked and is not available to the public!

6. On page two of the application, the applicant claims, "Instead, the applicant has contracted to sell the underlying property to Holladay for a matter of right residential

development." As mentioned, the development of Square 865 is pending on current litigation between St. James' Parish and Holladay Corporation/Capitol Hill Group. The transfer of the property can not be official until this lawsuit is either settled or dismissed. At this time, neither of these two conditions apply and the litigation is still pending. However, by closing off the parking lots on Square 865 and stating the imminent sale of Square 895 (including the underground garage) Capitol Hill Group could not provide enough parking even under its perceived status "to wind down its operations." As for winding down its operations, two new patients to the acute care facility were admitted last week. Active admissions do not indicate a policy toward closure and puts into question the factual needs for parking and not the perceived needs as listed in this application. Appropriate agencies should be asked to give an accurate report on the "existing conditions" of the nursing home and acute care facilities!

Above all, I request that no modification be granted for BZA Appliation No. 16407, until all facts are clearly in evidence, that the nebulous language of the application is clearly defined, and until the litigation binding these properties is settled. I also request that any hearings for this request for modification of order be duly announced and published to the neighborhood community. In the past, Capitol Hill Group has not made known its intentions and appropriate notification of hearings was never given to neighborhood groups especially St. James' Episcopal Church, the neighborhood organization that would be greatly affected by any BZA activity in regards to BZA Application No. 16407 Request for Modification of Order.

Sincerely yours,



Richard E. Downing

cc: Jerrily R. Kress, FAIA, Director, Office of Zoning
Council Member Sharon Ambrose
The Honorable Anthony Williams
Andrew Altman, Director, Office of Planning
Karina Ricks, Ward 6 Planner
Representatives of ANC 6A
Stanton Park Neighborhood Association
Capitol Hill Coalition for Sensible Development