BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

STANTON PARK NEIGHBORHOOD
ASSOCIATION,

Appellant

Vs. BZA Appeal No. 17043

DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS,

Appellee

HEARING STATEMENT OF ADVISORY NEIGHBORHOOD COMMISSION 6C
SUPPORTING THE STANTON PARK NEIGHBORHOOD ASSOCIATION APPEAL
Statement of Bill Crews, ANC6C07, Representing ANC 6C

On behalf of Advisory Neighborhood Commission 6C and the residents of our Commission area, we join in support of the Stanton Park Neighborhood Association's appeal of the decision of the Zoning Administrator of the Department of Consumer and Regulatory Affairs in issuing new Certificates of Occupancy to 1) the Capitol Hill Health Care Group (CO 51289) and 2) Capitol Hill Community Hospital (CO 51290).

We ask the Board to revoke the two Certificates of Occupancy and exercise your duty to determine adequate off-street parking requirements for these facilities.

Both you as Board members and we as Commissioners voluntarily serve to represent the residents of the District in a manner that ensures fair and equable implementation of statutes and regulations.

The subject property is located in ANC 6C. Interestingly enough the interests of ANC 6C and ANC 6A do differ. For ANC 6C we represent both the neighboring residents of Medlink as well as the 'residents' of Medlink. We believe that we can reach a fair and balanced resolution to the needs of both sets of residents. The residents of Medlink deserve the care that is necessary for their serious health care needs and for their quality of life. By Medlnk's own admission before the DC State Health Planning & Development Administration on October 31, 2003 in a hearing for a requested transfer of the certificates of need, the hospital and nursing home provide that care by operating as an integral operation providing high levels of staffing to ensure a high quality, seamless provision of health care. They tout this integration as unique in the District. These residents deserve an adequate staff and that staff needs parking.

The neighboring residents of ANC 6C continue to be affected by the demand for on-street

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parking generated by this property along residential streets within ANC 6C. Evening and night parking in the surrounding area is in high demand, creating hardships and safety concerns for residents who must walk long distances after prolonged searches for legal street parking. Especially when non-residents use on street parking illegally.

These competing values, the conflicts they provide and past balanced resolutions and requirements are well documented in the public record of the Office of Zoning as well as this Board.

ANC 6C believes that 11 DCMR 2101.1 requires this Board (BZA) to determine parking requirements for Community Based Residential Facilities housing 16 or more persons in a residential district.

We contend that this appeal is different from the Nebraska Avenue decision in Appeal No. 16716A in that the Decision and Order in that case said nothing about a challenge to following 11 DCMR 2101.1. That decision and order did not specifically ask nor answer the root question of whether the BZA or Zoning Administrator has the authority to set parking requirements. It simply talked about the zoning administrator's process and rational for deciding the number of parking. In addition that decision was based upon speculative plans, not an actual ongoing operation subject to various hearings, finding os fact and other determinations of the actual parking needs and impact of these needs on residents, staff and neighbors

Stanton Park's testimony pointed out that the BZA decision in Nebraska Avenue was based upon a decision made before the zoning ordinance was amended and apparently before the Zoning Administrator, illegally we contend, interpreted 11DCMR 2101.1 as not requiring BZA determination of off-street parking requirements for CBRF with 16 or more beds.

Therefore this is the first time this interpretation by the Zoning Administrator is being directly reviewed by this Board.

I reviewed the on-line version of 11 DCMR 2101.1 this morning and it still reads that Board of Zoning Adjustment shall determine parking requirements for Community Based Residential facilities with 16 or more persons housed.

Under usual statutory construction, changing another section of the regulations relating to matter of right uses without specifically changing this specific requirement would require this specific requirement to remain valid and operative. This interpretation makes imminent public policy sense in that while matter of right use for housing for the handicapped may be required under federal law, there is reasonable public policy concerns for legitimate impacts such a facility, especially a large facility, can cause on the public infrastructure and surrounding neighborhood's right to safety and public welfare, thereby warranting a public process by the BZA to determine

parking requirements.

Following the letter of 11 DCMR 2101.1 allows for public involvement in the decision on required parking.

We also strongly believe that the Appellee's and property owner's assertion that 11 DCMR 330.5(i) overrules 11DCMR 2101.1 is wrong. The operative phrase in section 330.5(i) is *"that otherwise complies with the zoning requirements of this title that are of general and uniform applicability to all matter of right uses in an R-4 District,"*

ANC 6C believes that the requirement for the BZA to set off street parking requirements for CBRF of 16 or more beds is of 'general and uniform applicability.' It applies to all CBRF whether there are handicapped residents or not. It therefore in NO way discriminates against handicapped persons or their housing.

There is nothing absurd about a matter of right use to have requirements enacted to protect public welfare and safety. Several other sections of Chapter 21 (e.g. 2103.4, 2107.2, 2108.3) list several criteria for the Board to consider in determining the required number of off-street parking. All these criteria can be used reasonably by the Board for the required determination under 2101.1

We believe the appellee needs to have you rule on this important distinction before it continues to cowedly cave to any and all litigation claiming discrimination against the handicapped. We have heard a statement by the appellee's counsel that this current determination was the result of wanting to settle a law suit. And just after the continuation of this hearing last week, an article appeared in the November 19th Washington Post, Page B1, stating that DCRA had once again cowedly changed a decision based upon a threat of a law suit claiming discrimination against the handicapped. Clearly section 2101 does not discriminate as it applies equally to those CBRF with handicapped residents or those who don't include handicapped residents.

Are the appellee and the property owner contending and is this Board prepared to rule that any facility claiming any amount of handicapped residents is entitled to the special right to completely ignore any provision of the zoning ordinance by threatening a law suit or that they disagree with or that causes the owner of the property a hardship? Does DCRA and the property owner contend that Section 2115, 2116, 2117 and 2118 don't apply because it would be discriminatory. Or should this board determine that these sections are also *'of general and uniform applicability to all matter of right uses'?*

It is time for you to stand up to this intimidation, protect the residents of this city from bullying, and fairly and equitably administer the letter of the regulation.

In the alternative, we would argue that the zoning administrator's decision is arbitrary and

capricious given the very public record of impacts of this facility on the parking situation in the neighborhood. The two previous orders of this board demonstrate the serious impacts of this facility on the neighborhood. Even if these orders may not be enforceable now, the underlying facts of the impact remain and have grown based upon the testimony of the property owner before the DC State Health Planning & Development Administration on October 31, 2003.

There was testimony by the DCRA representative and a statement by its counsel that the Zoning Administrator did not even look at existing conditions. How arbitrary - apparently based upon the convenience of the desire to settle a law suit rather than the intrinsic nature of the actual demand for parking and the impact on all residents. - See Merrian-Webster's Collegiate Dictionary, Eleventh Edition, Page 63, definition 3a of Arbitrary.

We also question the inconsistency in the facilities public statements in this and other venues. The operation of this facility does not seem similar to either a rooming house or boarding house in any plain meaning of the terms. In testimony given before the DC State Health Planning & Development Administration on October 31, 2003, the facility's representatives bragged about the extreme, staff intensive, quality of care provided residents and patients at the facility. They talked about a seamless operation between the nursing home and hospital.

Therefore, if you fail to determine that this Board should make the determination on parking requirements under the plain language of 11DCMR 2101.1, you should at a minimum find the zoning administrator failed in not determining that the nursing home, as described by the facility, was much more like a Hospital and require 1 parking space for each bed. This doesn't even begin to discuss the difference between the current number of beds (60 Hospital and 117 nursing home) on the application for the CO and the much larger number of licensed beds (125 Hospital and 162 Nursing Center)

We would join in the Stanton Park Neighborhood Associations restatement of the history of beds, employees and the potential future demands for parking as the facility emerges from bankruptcy and the landowner seeks additional uses for the building as well as other arguments of fact and law..

While we appreciate the service these facilities apparently provide to their patients, some of who are potentially residents of 6C and we stand ready to work with them, their track record of cooperation and following previous BZA orders cannot give us hope. Truly you members of the Board of Zoning Adjustment serving in the public interest, must grant this appeal and put in motion a transparent process for fairly determining the parking requirements for this facility as required by law that protects the public interest, health safety and general welfare and the rights of DC residents to equal enforcement of laws and regulations designed to protect public welfare and safety..