BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA
Statement of Advisory Neighborhood Commissioner Cody Rice
Representing
Advisory Neighborhood Commission 6A
Case No. 17043
November 25, 2003

D.C. ZONING COMMISSION
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Good afternoon. My name is Cody Rice. I am the Advisory Neighborhood Commissioner for Single Member District 6A03 immediately across the street from the subject property. Thank you for the opportunity to make this statement.

As has been mentioned before, Advisory Neighborhood Commission 6A is on record in support of the appeal of the Stanton Park Neighborhood Association for the reasons outlined in our letter of June 12, 2003. In response to statements during this hearing, I have 3 brief points I would like to make in this testimony.

First, parking is a serious concern in the neighborhood. I encourage the Board to look to the many letters from residents of the area on this appeal, well as previous letters and testimony in the record of the previous BZA orders for this property. Please let me know if you need additional details.

Second, the plain language of the zoning regulations at section 2101.1 requires BZA to determine the parking requirements for facilities like MedLink. There are many ways the text could have been written by the Zoning Commission to create a different requirement, but it is noteworthy that the plain meaning of the text requires BZA to make a determination. For example, the regulations do not say "the Zoning Administrator determines" using certain ratios, nor do they say "BZA shall delegate authority to the Zoning Administrator," nor are they silent.

There are essentially three ways that parking requirements may be determined according to the zoning regulations. First, the regulations may be silent, in which case the Zoning Administrator has some discretion to make a determination. Second, the regulations may specify numerical rules, in which case the Zoning Administrator implements the rules. Third, as in this case, the regulations require that BZA determine parking requirements for any Community-Based Residential Facilities with 16 or more persons in a residential district (whether the facility houses the handicapped or not).

On the issue of section 330.5(i) and whether it overrides section 2101.1, I would encourage the Board to look to Zoning Order 869 in thinking about whether it has any bearing on the requirements of section 2101.1. In the second paragraph of the first page, this order states that:

> "The Zoning Regulations define group homes for handicapped persons as community based residential facilities (CBRFs). As such, they are subject to special spacing and size limits, and requires approval of the Board of Zoning Adjustment. These same requirements do not apply to multifamily housing facilities not specifically designated to serve handicapped persons."

Thus, at issue was the *differential* treatment of facilities for handicapped and non-handicapped persons. In this case, there is equal treatment of CBRF dwellings: for those with 16 or more residents, BZA determines parking requirements. This provision applies whether the subject property is for handicapped or non-handicapped persons and addresses the legitimate issue of whether there is adequate parking for facilities that are likely to have extensive staffing requirements.

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Third, it is vitally important that BZA make the determination. With a BZA process, there is notice of significant actions that affect a neighborhood, as well as an opportunity to solicit input from affected parties. In this case, absent a BZA process the Zoning Administrator has taken an arbitrary action. The Zoning Administrator only looked at residential use categories in setting parking requirements and did not consider other uses with extensive staffing (like hospitals). It appears that the Zoning Administrator did not consider employment of the facility at all, which is like treating a residential dwelling with 177 residents and doorman the same as a combination hospital/nursing center with hundreds of employees. This is certainly a strange result. I would ask that when this Board determines the parking requirement, that it consider the record of past BZA orders for this property and not ignore the letters of affected residents who are familiar with the parking demand created by the staff, residents, and visitors to MedLink.

In conclusion, I will reiterate the point made in our initial letter of June 12, 2003. It makes no sense to hold available spaces out of circulation when doing so contributes to a parking shortage in the neighborhood. If the owner of the property desires a reclassification, the owner should ask for a BZA determination like any other CBRF operated for 16 or more persons, whether handicapped or not.

Thank you for your consideration.

12/30/03

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