GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 17043 of the Stanton Park Neighborhood Association, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator in the issuance of Certificate of Occupancy Permit Nos. CO51298 and CO51290, to Capitol Hill Healthcare Group, dated March 26, 2003, for a community residence facility and hospital (60 beds and 60 parking spaces) respectively. The R-5-D zoned subject premise is located at 700 Constitution Avenue, N.E. (Square 875, Lot 76).

HEARING DATES: July 29, 2003, November 4, 2003, November 18, 2003, November 25, 2003

DECISION DATE: January 6, 2004

DATE OF DECISION ON RECONSIDERATION: February 24, 2004

ORDER

PRELIMINARY MATTERS

On May 23, 2003, appellant Stanton Park Neighborhood Association ("Appellant") filed this appeal with the Board of Zoning Adjustment ("Board") alleging error in the Zoning Administrator's ("ZA") March 26, 2003 issuance of two Certificates of Occupancy, Nos. 51289 and 51290. Certificate of Occupancy No. 51289 was issued to Capitol Hill Healthcare Group for a "Community Based Residential Facility-Health Care Facility That Provides Housing For The Handicapped. 25 Parking Spaces & 117 Beds." Certificate of Occupancy No. 51289 described the use as a "Health Care Facility," which is a specific type of community-based residential facility ("CBRF") under the Zoning Regulations, but then, in the same C of O, also characterized the use as a "Community Residence Facility," which is a different type of CBRF. Certificate of Occupancy No. 51290 was issued to Capitol Hill Community Hospital for a "Hospital 60 Beds & 60 Parking Spaces."

There were two earlier Board Orders with respect to the property that is the subject of the two Certificates of Occupancy. In 1991, Board Order No. 15542 granted a special exception pursuant to § 359 of the Zoning Regulations to Capitol Hill Hospital to operate a health care facility with 130 beds, 250 employees, and 176 off-street parking spaces. This Order was modified by Order No. 16407, issued to the Capitol Hill Group, and dated February 3, 1999, which permitted an expansion of the CBRF use to 162 beds and 340 employees with 276 off-street parking spaces. Order No. 16407 was never implemented and so lapsed after two years from its effective date.

On April 30, 1999, the Zoning Regulations were amended to make CBRFs housing handicapped individuals a matter-of-right use in all residential zones. Based on this regulatory amendment,

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17043
EXHIBIT NO. 111

Board of Zoning Adjustment
District of Columbia
CASE NO. 17043
EXHIBIT NO. 111

the ZA issued Certificates of Occupancy Nos. 51289 and 51290 as matter-of-right uses. The Zoning Regulations specify a parking ratio of one off-street parking space per bed for a hospital. Therefore the ZA required the hospital, with 60 beds, to provide 60 spaces. There was, however, no parking schedule in the Zoning Regulations for the health care facility, covered by the 1999 zoning amendments. Therefore, the ZA looked to the parking schedule in the Zoning Regulations and applied the ratio applicable to what he determined was the most comparable facility set forth therein - a rooming house. Accordingly, he reduced the required off-street parking to 25 spaces for the health care facility.

In this appeal, Appellant claims that the ZA disregarded the two previous Board Orders in issuing the matter-of-right certificates of occupancy and that he was without authority to do so. In the alternative, the Appellant claims that, even if the certificates of occupancy were properly issued, the ZA was without authority to determine parking requirements under them, as that authority is expressly given to the Board by the Zoning Regulations.

The Board did not hear this appeal on the originally scheduled hearing dates of July 29, 2003, and November 4, 2003. A public hearing was held on November 18, 2003, and continued and concluded on November 25, 2003. At the hearing, ANC 6C was automatically a party. The Board granted party status to ANC 6A, which is located across the street from the subject property, and to Father Richard Downing, pastor of St. James Parish, which is located in the same square as the subject property.

At its January 6, 2004 public decision meeting, the Board denied the appeal by a vote of 3-2-0. On February 10, 2004, however, the Board, on its own motion, voted 5-0-0 to reconsider part of the denial. On February 24, 2004, the Board voted 5-0-0 to partially deny and partially grant the appeal.

FINDINGS OF FACT

The Subject Property and its Use

1. The subject property is located in an R-5-D zone district at 708 Massachusetts Avenue, N.E. (a.k.a. 708 Constitution Avenue, N.E.) and 700 Constitution Avenue, N.E., in Square 895, Lot 76.[1]

2. The subject property is owned by the Capitol Hill Group ("CHG"), which leases portions of the property for use as a hospital and a health care facility.

3. Certificate of Occupancy No. 51289 refers to the nursing center[2] as both a "health care facility that provides housing for the handicapped" and a "community residence facility."

---

[1]The advertisement for this appeal refers to Square 875, Lot 76, however, when the case was announced at the November 18, 2003 hearing, it was announced as Square 895, Lot 76. The first pair of certificates of occupancy (Nos. 51289 and 51290) issued on March 26, 2003 refer to Square 865, Lot 862, while the second pair, issued under the same numbers and on the same date, refer to Square 895, Lot 76. The Board need not resolve this discrepancy, since the material facts of this case are not altered and there is no prejudice as there is no question as to what facility or what issues are involved in this appeal.

4. These two types of facilities are not interchangeable, but are two distinct types of CBRF uses. The Zoning Regulations definitions (11 DCMR § 199.1) for both these types of CBRFs refer to their respective (and now superseded) definitions in the public health regulations at 22 DCMR § 3099.1. Based upon the definitions at 22 DCMR § 3099.1, all the evidence in the record, and the two prior Orders that treat the same use at the same facility as a health care facility under § 359 of the Zoning Regulations, the Board finds that the nursing facility is a health care facility.

6. The health care facility is operated by the Capitol Hill Healthcare Group and is located at address 708 Massachusetts Avenue, N.E. The hospital is operated by Capitol Hill Community Hospital and is located at address 700 Constitution Avenue, N.E. The hospital occupies the basement, part of the first floor, and the second and third floors of the building on the subject property. The health care facility occupies part of the first floor, and the fourth, fifth, and sixth floors of the building. The hospital is permitted as a matter-of-right in the R-5-D district. 11 DCMR §§ 350.4(a) and 330.5(f).

History

7. Prior to April 30, 1999, the date of enactment of 11 DCMR § 330.5(i), all health care facilities for 16 or more residents in an R-5 zone, whether providing housing for the handicapped or not, required special exception approval under § 359 and required that the number of parking spaces be determined by the Board of Zoning Adjustment. 11 DCMR § 2101.1.

8. Board Order No. 15542, dated August 16, 1991, granted a special exception under § 359 to Capitol Hill Hospital, for the establishment of a health care facility with 130 beds and 250 full-time staff at 708 Massachusetts Avenue, N.E. (Square 895, Lot 76). Exhibit No. 76, Attachment B.

9. Order No. 15442 mandated that the health care facility provide 176 on-site screened parking spaces for employees, residents and visitors. *Id.*

10. Board Order No. 16407, dated October 21, 1999, granted a special exception under § 359 to the Capitol Hill Group "for opening an additional 32 beds in an existing nursing facility at 700 Constitution Avenue, N.E." Order No. 16407 conditioned the special exception with a 10-year term and further required that the health care facility have a maximum of 340 staff, no more than 162 beds, and 276 off-street parking spaces. Exhibit No. 76, Attachment C.

11. CHG never added the 32 beds or 100 more parking spaces authorized by Order No. 16407. Because the Order was not implemented within the necessary 2-year period from its effective date, it lapsed. *See,* November 25, 2003 hearing transcript at 145, lines 4-12 and at 154, lines 2-15.

---

[2] In the record, the hospital and health care facility are sometimes collectively referred to as "MedLink" and the latter is sometimes referred to as the "nursing center."

12. In Order No. 869, the Zoning Commission amended the Zoning Regulations to add a new section 330.5(i), effective April 30, 1999, which states:

> The following uses shall be permitted as a matter of right in an R-4 District:
>
> (i) Community-based residential facility; provided that, notwithstanding any provision in this title to the contrary, the Zoning Administrator has determined that such community-based residential facility, 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, is intended to be operated as housing for persons with handicaps. For purposes of this subsection, a "handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities, or a record of having, or being regarded as having, such an impairment, but such item does not include current, illegal use of, or addiction to, a controlled substance.

13. A health care facility is a type of CBRF. 11 DCMR § 199.1 (definition of Community-based residential facility).

14. The definition of "handicap" in § 330.5(i) contains the same language as that found in the definition of "handicap" in the Fair Housing Act, as amended, 42 U.S.C. § 3602(h).

15. Subsection 330.5(i) applies in R-5-D zone districts by virtue of § 350.4(a), which states: "[t]he following uses shall be permitted as a matter of right in an R-5 District: ... (a) Any use permitted in the R-4 District" subject to certain requirements not relevant here.

16. On November 5, 2002, Denzil Noble, Acting Administrator of the Building and Land Regulation Administration ("BLRA") of DCRA, and therefore, the supervisor of the ZA, sent a letter to CHG pointing out that there were several certificates of occupancy for the subject property. Mr. Noble requested that CHG consolidate the multiple certificates of occupancy into one for the entire building to ensure compliance with the two previous Board Orders and to reflect the requirements of Board Order No. 16407.

17. In response, CHG requested new matter-of-right certificates of occupancy for the health care facility and the hospital, pursuant to the change in the regulations brought about by § 330.5(i). *See,* November 25, 2003 hearing transcript at 157, lines 19-24.

18. On March 18, 2003, then-ZA Robert Kelly sent a letter to CHG's attorney indicating that CHG had not submitted any information to verify that it was providing housing for handicapped persons, and he requested this information. Exhibit No. 91, Attachment B.

19. CHG submitted to DCRA the appropriate information verifying its provision of housing for the handicapped at the health care facility. *See,* Exhibit No. 91; *see also,* hearing

transcript of November 18, 2003, at 310-311, lines 21-25 & 1-12. Specifically, CHG submitted to DCRA a copy of its application for a license for a health care facility, its certificate of licensure, its long term facility application for Medicare and Medicaid, and an affidavit of its Chief Financial Officer. *See,* Exhibit No. 91, Attachment C, and Exhibit No. 76, Attachment F.

20. Based on its review of this information, DCRA found that the health care facility provides housing for the handicapped.

21. DCRA also found that the health care facility complies with the zoning requirements of general and uniform applicability to all matter-of-right uses in an R-5-D zone district.

22. Therefore, on March 26, 2003, DCRA issued Certificate of Occupancy No. 51289 for a matter-of-right "Community-Based Residential Facility-Health Care Facility That Provides Housing For The Handicapped. 25 Parking Spaces & 117 Beds."

23. Also on March 26, 2003, DCRA issued Certificate of Occupancy No. 51290 for a "Hospital 60 Beds & 60 Parking Spaces," pursuant to § 2101.1 of the Zoning Regulations, which requires a hospital in an R-5-D district to provide one off-street parking space per hospital bed.

24. The Zoning Regulations state that the number of parking spaces required by a CBRF with more than 16 residents in all zones other than C-3, C-4, and C-5, is to be determined by the Board. 11 DCMR § 2101.1.

25. When the Zoning Commission amended the Zoning Regulations to permit a health care facility housing the handicapped as a matter of right, it did not amend the parking schedule set forth at 2101.1 that provides for the BZA to determine the number of parking spaces for CBRF's with 16 or more residents, nor did the Commission establish a separate parking ratio for a matter-of-right health care facility with 16 or more residents in zones other than C-3, C-4, and C-5.

26. Because the Zoning Administrator determined that the health care facility was matter-of-right and there was no established parking ratio for that specific matter-of-right use, he chose the parking schedule for what he determined to be the most analogous matter-of-right use in the same (R-5) zone.

27. The Zoning Administrator limited his review of comparable facilities to residential uses.

28. The ZA deemed the use in § 2101.1 entitled "rooming or boarding house: All districts" to be the most analogous residential use. He therefore applied its parking schedule of "1 plus 1 for each 5 rooming units" to the health care facility. This resulted in the ZA requiring the health care facility to provide 25 off-street parking spaces.

CONCLUSIONS OF LAW

An appeal may be taken by a person aggrieved by, or District agency affected by, any decision of a District official in the administration and enforcement of the Zoning Regulations, including the issuance of a certificate of occupancy. D.C. Official Code § 6-641.07(f) (2001). Appellant timely appealed DCRA's March 26, 2003 issuance of two certificates of occupancy, numbers 51289 and 51290. Appellant sets forth two issues on appeal: (1) the ZA was without authority to issue a matter-of-right certificate of occupancy for the health care facility use so long as the Board Order granting a special exception was in place,[3] and (2) alternatively, even if the certificates of occupancy were properly issued, the ZA was without authority to set the parking requirement for the health care facility as only the Board has the authority to do so.[4] Although the Board finds both arguments unpersuasive, the Board nevertheless grants the appeal because the Zoning Administrator erred by limiting himself to residential uses when determining the parking requirement. Rather than remand the appeal to the Zoning Administrator, the Board finds that the most analogous matter-of-right use would be that of a hospital, and therefore reforms the certificate of occupancy to reflect a parking requirement of one off-street parking space for each bed. 11 DCMR § 2101.1 (parking requirement for hospital).

Appellant's two issues actually subsume the following questions within them. First, after the enactment of § 330.5(i), was the health care facility still subject to the special exception order previously issued by the Board, and, in particular, the parking requirements set forth therein? Second, if the health care facility were no longer subject to the special exception order, would the Board still have jurisdiction to determine the parking requirement pursuant to § 2101.1? Lastly, if the Board was without jurisdiction to determine the parking requirements, then did the ZA properly determine them? Each of these questions will be answered in turn.

1. The Zoning Commission's enactment of 330.5(i) on April 30, 1999 changed the status of health care facilities housing the handicapped from special exception to matter-of-right use and thereby removed them from the jurisdiction of the Board.

Prior to April 30, 1999, the health care facility was subject to special exception approval pursuant to § 359 of the Zoning Regulations. A special exception for the health care facility was first approved in 1991 by Board Order No. 15542. Order No. 15442 imposed no temporal condition on the use, but required the provision of 176 off-street parking spaces.

Effective April 30, 1999, the Zoning Commission, in Order No. 869, made CBRFs located in R-4 and the less restrictive residential and commercial zones, that provided housing for the handicapped, matter-of-right uses, provided they comply with the "zoning requirements of ... general and uniform applicability to matter-of-right uses" in the district in which the CBRF is

---

[3]Only Order No. 15542 is actually in question. *See,* Finding of Fact No. 11.

[4]Although the Appellant appealed the issuance of the certificates of occupancy for both the health care facility and the hospital, the certificate of occupancy for the hospital was never seriously challenged and was properly issued as a matter-of-right use with 60 beds and 60 off-street parking spaces. *See,* 11 DCMR §§ 350.4(a) and 330.5(f), and § 2101.1. During the hearing, the Appellant stated that it was not disputing "the hospital portion" of the parking required by the ZA. *See,* November 18, 2003 hearing transcript at 344, lines 2-3. Therefore, only the certificate of occupancy and the parking requirement for the health care facility are actually in question here.

located.[5] "Zoning requirements of general and uniform applicability" mean basic area requirements for matter-of-right development in that zone, such as maximum height or lot occupancy. Under § 330.5(i), therefore, a CBRF in an R-5 zone district which provides housing for the handicapped and meets the generally and uniformly applicable Zoning Regulations for that zone district is a matter-of-right use and not a special exception.

Section 330.5(i) defines "handicap" as "a physical or mental impairment which substantially limits one or more of such person's major life activities...." The Affidavit of the health care facility's Chief Financial Officer, which was submitted to the ZA, states that "[a]ll of the ... residents require assistance in performing one or more of their major life activities, including, but not limited to, eating, bathing, dressing, getting out of bed, taking medication, etc." Exhibit No. 76, Attachment F. These residents suffer mental and/or physical disabilities caused by strokes, respiratory problems, Alzheimer's disease, or the like. *Id.* The health care facility provides residential and 24-hour medical care to its residents. *Id.* Based on these facts, the ZA found, and the Board concurs, that the health care facility provides housing for the handicapped as "handicapped" is defined in § 330.5(i).

The Appellant does not contest the ZA's determination that the health care facility complies with the requirements of general and uniform applicability to matter-of-right uses in an R-5-D zone. Accordingly, the Board finds that the ZA correctly determined that the health care facility housed the handicapped and complied with the applicable general and uniform zoning requirements. It therefore falls squarely within § 330.5(i) and is no longer a special exception use. The enactment of § 330.5(i) removed this use from the category of special exceptions and placed it in the category of matter-of-right uses.

Because the health care facility is a matter-of-right use, it is no longer subject to the earlier Board Order. It is axiomatic that matter-of-right uses are not subject to Board approval. Pursuant to § 330.5(i), CBRFs housing handicapped persons are a matter-of-right use in an R-5-D zone. They are not subject to a greater level of regulation than that applicable to a row dwelling or a multiple dwelling and so, cannot be made to come before the Board for a special exception or be subject to Board conditions. This is borne out by Zoning Commission Order No. 869, which enacted § 330.5(i). Part of the impetus for the enactment of § 330.5(i) was the determination by the Department of Justice that the Zoning Regulations did not provide equal housing opportunity for handicapped persons in multifamily zones. One of the inequities cited was that CBRFs housing handicapped persons required Board approval, while multifamily housing not specifically designated to serve handicapped persons did not. *See,* Exhibit No. 96, Zoning Commission Order No. 869 (1999), at 1. Section 330.5(i) was enacted to remove the requirement of Board approval for multifamily handicapped housing, thus making it no more regulated than other matter-of-right multifamily housing.

Section 330.5(i) must be construed to cause the least restriction necessary on the use of the land. *See,* Rathkopf's *The Law of Zoning and Planning,* 4th ed., § 5:13 (2001). The enactment of § 330.5(i) changed the status of this health care facility from a special exception to a matter-of-

[5]Although § 330.5(i) only refers to the R-4 District, § 350.4 provides that the same uses permitted as a matter of right in the R-4 District shall be permitted as a matter of right in an R-5 District subject to conditions not relevant here.

right use and terminated the special exception just as if the Order had had a termination date. Given the fact that the Commission understood that subjecting these uses to special exception review was discriminatory, it is unlikely that the Commission intended to maintain in place orders that would continue such disparate treatment. Therefore, the health care facility is no longer subject to Order No. 15542.

2. Because the health care facility is no longer a special exception, the Board does not determine its parking requirement.

The Appellant argues that because the health care facility houses more than 16 persons, its parking requirement must be determined by the Board, whether or not it is still treated as a special exception, pursuant to the specified parking requirement set forth in § 2101.1. Although § 2101.1 provides that the number of parking spaces required for a CBRF housing 16 or more persons shall be determined by the BZA, the Board concludes that the Appellant's argument runs counter to the general scheme of the Zoning Regulations and the language of § 330.5(i).

Section 2101.1 sets forth the parking schedule for all uses and includes a provision setting forth parking requirements for CBRFs. This provision specifies a parking requirement for CBRFs in C-3, C-4, and C-5 districts, all of which are a matter-of-right. It also specifies a parking requirement for all CBRFs in all other zones which house between 1 and 8 residents. These, too, are all matter-of-right uses in their respective zones. It also specifies a parking ratio for all CBRFs with up to 15 residents, some of which are matter-of-right. *See, e,g.,* 11 DCMR § 350.4(f). Therefore, all matter-of-right CBRFs have parking requirements set out in the Zoning Regulations. No matter-of-right CBRFs have their parking requirement left to the determination of the Board.

The only CBRFs whose parking requirement is left to the Board are those in zones other than C-3, C-4, and C-5, which house 16 or more persons. These CBRF's are all special exceptions, not matter-of-right uses. A careful reading of § 2101.1 then shows that only CBRF's which are special exceptions have their parking determined by the Board.

Prior to § 330.5(i), all CBRFs in residential zones for 16 or more persons, whether handicapped or not, were special exceptions, so it made sense for the Board to determine their parking. That changed with the enactment of § 330.5(i), but no new parking ratio for an over-16-person matter-of-right CBRF housing handicapped persons was added to the Zoning Regulations. Until this lack of a parking ratio is rectified, there is a gap in the regulations, but the general scheme of the regulations is clear – special exception CBRFs go to the Board for parking, while matter-of-right CBRF's do not.

The wording of § 330.5(i) also undermines the Appellant's position. It states that a CBRF housing the handicapped is a matter-of-right use "notwithstanding any provision in this title to the contrary."(Emphasis added). To the extent that 2101.1's provision that CBRFs for more than 16 persons shall have their parking determined by the Board conflicts with the matter-of-right status conferred by § 330.5(i), § 2101.1 must fail. Section 2101.1's provision would apply to a CBRF in an R-5-D district with more than 16 residents, none of whom are handicapped, because

this would not be a matter-of-right use. However, § 2101.1's provision does not apply to the same CBRF with handicapped residents, as here, because it is a matter-of-right use.

Finally, this Board concludes that the Zoning Commission intended to eliminate all discrimination between CBRFs housing the handicapped and in compliance with the applicable general and uniform zoning requirements and other multi-family dwellings. This would include a requirement for these CBRFs to come to the BZA to determine their parking, when there is no such requirement for all other matter-of-right uses.

3. Because the Zoning Regulations do not specify a parking ratio for this matter-of-right use and § 2101.1's requirement of parking determination by the Board applies only to special exceptions, the ZA had the authority to determine parking for the health care facility. The issue then before the Board is whether the ZA properly determined the parking requirement for health care facilities where no specific ratio is designated in the regulations.

Since the enactment of § 330.5(i), the ZA has properly interpreted § 2101.1's provision regarding parking for CBRFs housing 16 or more persons as applying only where Board approval is required for a special exception, not where the CBRF is established as a matter-of-right. When, as here, the ZA is presented with a matter-of-right use for which no parking ratio is set forth in the Zoning Regulations, he applies the parking ratio for the most analogous use for which such a ratio is specified. The ZA's action falls within his authority to administer the Zoning Regulations and was recently upheld by the Board in Order No. 16716A. *See,* Reorganization Plan No. 1, 1982, Subchapter V, Part II (e) and Reorganization Plan No. 1, 1983, Subchapter VI, Part III (B)(1).

Case No. 16716A, *Appeal of Nebraska Avenue Neighborhood Association*, (the *Sunrise* Case), is, in this respect, analogous to the instant situation. In Case No. 16716A, the applicant was constructing a CBRF/community residence facility, not a CBRF/health care facility, but the *Sunrise* facility was determined to be a matter-of-right facility under § 330.5(i). The ZA in that case was presented with the same lack of a specific parking ratio for the matter-of-right facility, and so, looking to the most analogous use, he applied the parking ratio for a rooming and boarding house. The Board upheld the ZA's action, concluding that, "a ruling from the Zoning Administrator was *necessary* because the regulations do not set forth specific parking ... ratios for a community residence facility in the R-5-D zone." (Emphasis added.) *See,* Exhibit No. 76, Attachment E, Order No. 16716A, at 15. Similarly, the regulations do not set forth a parking ratio for a matter-of-right health care facility in an R-5-D zone. Therefore the Board concludes that a parking determination from the ZA was also necessary here.

Although the Board concludes that the ZA had to determine parking for the health care facility, the Board further concludes that he erred in the determination he made. The ZA erred in limiting his parking determination to just residential uses and therefore did not choose the proper most analogous use. Because he chose the incorrect most analogous use, he applied the incorrect parking ratio.

The ZA chose a "rooming or boarding house" as the use most similar to the health care facility for which a parking ratio is set forth in § 2101.1. The parking ratio for a rooming or boarding

house in all zone districts is "1 plus 1 for each 5 rooming units." Thus the ZA concluded that the health care facility required 25 parking spaces. 11 DCMR § 2101.1. The Chief of BLRA's Zoning Review Branch testified that, in making this choice, the BLRA looked only at residential uses because it considered the health care facility a residential use. *See,* November 18, 2003 transcript, at 354-355, lines 6-25 & 1-5. She also testified that BLRA relied on the decision in the *Sunrise* Case, because the choice of rooming or boarding house was upheld there. *See, Id.,* at 318, lines 18-24.

Neither the Chief of the Zoning Review Branch nor counsel for DCRA could point to any authority for the proposition that the ZA was constrained to look only at residential uses. This may have been DCRA's past practice, but the Board is not persuaded that it is a sound one, particularly here, where the health care facility is operated as a commercial enterprise. *Accord.,* 11 DCMR § 801.2.

The fact that a CBRF is listed as a residential use in the parking table set forth in 2101.1 does not necessarily mean that the parking requirement for a health care facility should be compared only to other residential uses. A large health care facility such as this has different parking needs from the average residential use. It must provide parking not only for visitors and possibly residents, but also for a large staff coming and going in shifts, 24 hours a day. It has 117 beds, 29 of which are deemed for "skilled care," the highest level of care under the definition of health care facility at 22 DCMR § 3099.1. On the other hand, a rooming or boarding house provides accommodations and possibly housekeeping services, but it does not provide any specialized supervision, therapeutic services, or medical care. It would likely have no staff other than perhaps a manager and/or a housekeeper/janitor. *See, e.g., Hooker v. Edes Home,* 579 A.2d 608 (D.C. 1990). Its parking needs would therefore be significantly less than the health care facility here.

The ZA's reliance on the *Sunrise* decision (Order No. 16716A) was also misplaced here. The use at issue in *Sunrise* was a community residence facility, not a health care facility. Both the Zoning Regulations and the Department of Health regulations at 22 DCMR § 3099.1 make a clear distinction between the two types of uses. CHG's health care facility provides 24-hour medical care and continuous nursing coverage under the supervision of physicians to residents with physical or mental impairments which substantially limit one or more of their major life activities. By contrast, a community residence facility, such as the one in *Sunrise,* provides a much lower level of care. It provides a safe, hygienic, sheltered living arrangement for residents who "are ambulatory and able to perform the activities of daily living with minimal assistance." 22 DCMR § 3099.1 (definition of community residence facility). During the hearing, DCRA conceded that the facility in *Sunrise* does not provide the level of medical care that CHG's health care facility does. *See,* November 18, 2003 transcript, at 341, lines 14-19.

There are significant differences in resident population, level of care provided, and size of staff between a community residence facility and a health care facility. These differences dictate a difference in parking requirements. Therefore, the *Sunrise* case is not helpful in determining the use in the Zoning Regulations most analogous to a health care facility in order to determine the correct parking ratio for such a facility.

The services provided by the health care facility and the staffing necessary to provide them are most analogous to a hospital. A hospital is a "place where sick or injured persons are given medical or surgical care." *Webster's Third New International Dictionary* (Unabridged), 1986. Analogously, a health care facility is a place where sick or disabled persons are given medical and residential care. A hospital is listed as an "institutional" use in the § 2101.1 parking schedule, but may also be considered a residential use. *See, e.g.,* 11 DCMR §§ 634.3, 636.6, 638.3 and discussion in *Wallick v. Board of Zoning Adjustment,* 468 A.2d 1183, 1186 (D.C. 1985). This hybrid nature is similar to the commercial/residential nature of the health care facility. The Board therefore concludes that the ZA should have looked beyond uses categorized as "residential" in § 2101.1 and should have applied the parking ratio for a hospital -- 1 space for each bed. The ZA erred in requiring the health care facility to provide 25 off-street parking spaces. Instead, the health care facility must provide 1 off-street parking space for each bed in the facility.

For the reasons stated above, the Board **denies the appeal in part** with respect to Appellant's claims that the ZA lacked authority to issue Certificates of Occupancy No's. 51289 and 51290 and to determine the parking requirements for the uses in those Certificates of Occupancy. The Board **grants the appeal in part in** concluding that the ZA imposed the incorrect parking requirement on the health care facility use for which Certificate of Occupancy No. 51289 was issued. Therefore, it is hereby **ORDERED** that this appeal be **DENIED IN PART AND GRANTED IN PART.** It is further **ORDERED** that Certificate of Occupancy No. 51289 be reformed to reflect a parking requirement of one off-street parking space for each bed.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., David A. Zaidain, and Anthony J. Hood, to deny in part and grant in part.)

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

Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: September 9, 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.LM/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA APPEAL NO. 17043

As Director of the Office of Zoning, I hereby certify and attest that on SEP 0 9 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Monte Edwards
Stanton Park Neighborhood Association
330 E Street, N.E.
Washington, D.C. 20002

The Reverend Richard E. Downing, Rector
St. James Episcopal Church
222 8th Street, N.E.
Washington, D.C. 20002

Paul A. Tummonds, Jr., Esq.
for Capitol Hill Healthcare Group
Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037

Laura Gisolfi Gilbert, Esq.
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002

Robert Hall, Chairperson
Advisory Neighborhood Commission 6A
815 F Street, N.E.
Washington, D.C. 20002

Cody Rice, Commissioner 6A
Advisory Neighborhood Commission 6A03
815 F Street, N.E.
Washington, D.C. 20002

Sharon Ambrose, City Councilmember
Ward Six
1350 Pennsylvania Avenue, N.W., Suite 102
Washington, D.C. 20004

Denzil Noble, Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning