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- **Order No. 16407:** In October 1999, the BZA approved Capitol Hill Group's request for a modification of the 1991 order, providing for an expansion to 162 beds and 340 employees. In view of the expanded operation request and Capitol Hill Group's failure for the entire period from 1991 to 1999 to comply with the parking conditions of the 1991 order,[1] BZA imposed a requirement that Capitol Hill Group increase its parking allotment to 276 off-street spaces. These parking requirements were to have been satisfied by a combination of parking facilities: two surface lots (totaling approximately 100 spaces) on square 865 (i.e., on the west side of the 200 block of 7th St. NE, across from the Capitol Hill Group complex), plus a combination of surface and underground parking (totaling approximately 176 spaces) on square 895.

As noted in Attachment A, from 1999 to 2001 Capitol Hill Group sought a series of further modifications to the 1999 BZA order, either to reduce the parking requirement or to void the 1999 order altogether. Because none of these modifications was ultimately approved, they are not at issue.

Note that it is unclear whether Capitol Hill Group ever perfected the authorization granted under Order No. 16407. (By its terms, this order was set to expire after two years unless Capitol Hill Group obtained a certificate of occupancy reflecting the expanded operation.[2])

Current Status and Use of the Site

In 2000, Capitol Hill Group reached an agreement with a real estate developer (Holladay Corporation) for the sale of the square 865 properties. In May 2001, these surface parking lots were sealed off – permanently eliminating 100 parking spaces – and title conveyed to Holladay. At present, the former surface parking lots are occupied by newly constructed townhouses.

Capitol Hill Group also agreed to relocate and sell its building complex (in square 895) to

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[1]See BZA Order No. 16407 at 3 n.2 (noting Capitol Hill Group's concession that "Applicant has not complied with the Board's 1991 order directing Applicant to provide 176 parking spaces").

[2]At the July 3, 2001 BZA hearing on one of Capitol Hill Group's later unsuccessful efforts to modify or rescind Order No. 16407, presiding Vice-Chair Renshaw noted "our understanding that the new Order [No. 16407] has not taken effect and that the Capit[o]l Hill Group is actually operating under [Order] 15542." Commissioner Mitten further noted that "there is a trigger mechanism for orders to go into effect which is either a building permit is sought or a certificate of occupancy is sought and neither of those things has happened...."

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Holladay for redevelopment into apartments and condominiums. In February 2002, however, Capitol Hill Group filed a bankruptcy petition seeking to reorganize under Chapter 11, and has sought the bankruptcy court's permission to void its sale contract with Holladay. According to a September 2002 letter signed by the President and the CEO, the hospital and nursing center plan to continue their operations. See Attachment B ("We have made it clear to all sides that we intend to stay where we are.") Significantly, this letter confirms that the facilities currently have "160 patients and residents," as well as a "dedicated staff of over 300 people."

The Ongoing Violations

Capitol Hill Group has repeatedly defied the BZA's orders regarding parking requirements:

- As noted above, for the entire period from 1991 to 1999, Capitol Hill Group failed to provide the 176 off-street spaces required under Order 15542.

- The Zoning Administrator's representative determined during a September 15, 2000 inspection that the underground parking facility had long suffered from defects (including water problems) rendering much of it unusable and therefore unavailable as off-street parking to comply with the BZA's orders.

- Capitol Hill Group's 2001 sale of the square 865 surface parking on 7th St. flagrantly violates the requirement to maintain 276 parking spaces set forth in Order No. 16407 (1999). This violation was promptly brought to the attention of the Zoning Administrator in May 2001, but the Administrator advised the complainant that DCRA would not enforce the parking requirement in light of Capitol Hill Group's then-impending plans to relocate its operations and sell its building complex to Holladay. (See Attachment C, a May 2001 letter from the ANC6A chair to the BZA chair.)

- A Notice of Infraction was issued on November 20, 2002 against Capitol Hill Group for failure to comply with its certificate of occupancy -- specifically, for not providing the number of parking spaces required under BZA Order No. 16407.

BASIS FOR APPEAL

The Zoning Administrator was without authority to disregard BZA Orders 15542 and 16407 and to issue Certificates of Occupancy 51289 and 51290. Indeed, the Zoning Administrator himself adopted that position – asserting the continuing applicability of the BZA's

prior orders – until Capitol Hill Group circumvented the zoning process by suing the District government (in bankruptcy court, no less), after which the Administrator reversed his position.

In the alternative, the Zoning Administrator was without authority to set parking requirements for the newly issued certificates of occupancy. According to the schedule set forth at 11 DCMR 2101.1, the minimum parking requirements in a residential district are

- for a hospital, 1 for each bed
- for a community-based residential facility housing 16 or more persons, "[a]s determined by the BZA" (emphasis added)

Thus, the zoning regulations on their face delegate authority in the latter case strictly to the BZA.[3]

Moreover, in setting the parking requirements for CO 51289 at 25 spaces, the Zoning Administrator apparently applied the standard for rooming/boarding houses (1 space plus 1 for each 5 rooming units). SPNA urges the Board, in exercising its discretion under section 2101.1, to reject this methodology as wholly inadequate in this case to meet the needs of the operation or to serve the interests of the surrounding neighborhood.

The need for substantial onsite parking at the Capitol Hill Group facility is no less today than before. In 1991, the Board imposed a requirement of 176 parking spots to support the operation of only 130 beds and 250 employees; in 1999, the Board permitted Capitol Hill Group to expand to 162 beds and 340 employees, provided it make available 276 parking spaces. Today, Capitol Hill Group has more beds than ever (177) and "over 300" employees – yet the Zoning Administrator's unilateral decision to disregard the Board's prior orders reduces the requirement to only **85 parking spaces**, an amount insufficient to accommodate the needs of the hospital and nursing center staff, patients, and visitors.

As the ANC stated in its May 3, 2001 letter (Appendix C) to the BZA opposing Capitol Hill Group's request to reduce the parking requirements of BZA Order No. 16407, "Parking is a major issue in this neighborhood." Indeed, the sale of Capitol Hill Group's former surface lots on 7th St., and the development of those lots into 18 two-unit rowhouses, has had the doubly deleterious effect of increasing demand for on-street parking and reducing off-street parking for

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[3]SPNA is aware that in Order 16716A (Appeal of Nebraska Avenue Neighborhood Association), the BZA seemed to endorse the Zoning Administrator's decision to set parking requirements for the CBRF of 16 or more persons at issue in that case. Insofar as the case stands for that proposition, it conflicts directly with the express language of the operative regulation (section 2101.1) and should therefore be disregarded.

Capitol Hill Group's employees. And while nearby streets are subject to residential permit parking restrictions, those restrictions do not apply to overnight parking, with the result that local residents are forced to compete with Capitol Hill Group's night-shift employees for scarce on-street spaces. Finding a nearby parking space after 8 p.m. on weekdays is often nearly impossible, creating for local residents not only a hardship but also a personal safety concern for those forced to walk long distances from their cars to their homes late at night.

In light of these circumstances, Capitol Hill Group's consistent history of disobeying the parking requirements imposed by the BZA, and the distinct possibility that Capitol Hill Group intends to sell the remainder of its square 895 property for residential or other development, it is unacceptable to allow a 180,000-square-foot facility with over 300 employees and 177 beds to operate with an off-street parking requirement of 85 spaces.

The maximum number of spaces available is 176, but only if the deficiencies noted in the Zoning Administrator's September 15, 2000 inspection report and the November 20, 2002 notice of infraction are corrected. The Board should first determine the extent to which those deficiencies have been corrected, and the resultant number of parking spaces that are physically available. If 176 off-street parking spaces are available, then the Board should amend Certificate of Occupancy 51289 to impose a requirement of 116 parking spaces; if fewer spaces are in useable condition, the Board should order the full complement (other than the 60 spaces reserved for hospital use) to be dedicated to the nursing center use, with a corresponding reduction in the number of beds permitted.

CONCLUSION

For the foregoing reasons, SPNA respectfully requests that the Board rescind Certificates of Occupancy 51289 and 51290 and reaffirm its prior orders concerning the Capitol Hill Group facility. In the alternative, that the Board order Certificate 51289 amended to require 116 parking spaces (or such lesser number as may be available on site for use, with a corresponding reduction in the number of beds permitted).