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

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D.C. BOARD OF ZONING ADJUSTMENT

PRE-HEARING STATEMENT OF THE
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Appellant challenges 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 for the nursing home at 708 Massachusetts Avenue, N.E. a/k/a 700 Constitution Avenue, N.E. (CO 51289) and 2) the Capitol Hill Community Hospital for the hospital at the same address (CO 51290) [Attachment A]. In short, Appellant urges that the Capitol Hill Hospital and Capitol Hill Nursing Center (also called the Medlink Nursing Center) should still be subject to the terms of the Board of Zoning Adjustment (BZA) Order # 15542; alternatively, Appellant urges that the DCRA Zoning Administrator had no authority to determine the parking requirements and that the issue of parking was required to come before the BZA pursuant to 11 DCMR 2101.1.

The Department of Consumer and Regulatory Affairs does not contest the apparently legitimate concerns raised by members of the Stanton Park Neighborhood Association with respect to the negative impacts on the community resulting from the

BZA
Case No. 17043
Exhibit No. 91

Board of Zoning Adjustment
District of Columbia
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operations of the Capitol Hill Hospital and Nursing Center and the lack of off-street parking. DCRA disagrees with Appellant concerning the applicable law and the application of the law to the facts of this case.

Because both the Appellant in its Appeal and the property owner in its Statement . . . in Opposition to the Appeal, have reviewed the factual background of this case at length, Appellee will not review the factual history of this case in any detail. The most important facts are that under the District's Zoning Regulations as the regulations existed prior to 1999, the Capitol Hill Nursing Center required a special exception, which was granted subject to certain conditions, including specific parking requirements, which were included in BZA Order #15542 dated July 24, 1991, and required 176 off-street parking spaces. (BZA Order #16407 increased the parking requirement, based upon a proposed expansion of the facility, but expired by its own terms two years later.) The Zoning Regulations were amended in 1999 to provide that a community based residential facility providing housing for the handicapped was a matter of right use in an R-4 or higher zone district.

I. THAT THE CAPITOL HILL NURSING CENTER IS A COMMUNITY RESIDENCE FACILITY THAT PROVIDES HOUSING FOR THE HANDICAPPED AND IS THEREFORE A MATTER OF RIGHT USE IN THE R-5-D ZONE IN WHICH IS IT LOCATED.

The DC Zoning Regulations define a "community based residential facility" as "a residential facility for persons who have a common need for treatment, rehabilitation, assistance or supervision in their daily living . . ." The definition includes "facilities formerly known as convalescent or nursing home . . ." (11 DCMR §199.1)

The definition also states that all community-based residential facilities shall be included in one or more of the subcategories listed. The subcategories include:

(a) Adult rehabilitation home – . . .

(b) Community residence facility – a facility that meets the definition for and is licensed as a community residence facility under the Health Care Facilities and Community Residence Facilities Regulations, 22 DCMR §3099.1 (1986) (superceded);

(c) Emergency shelter- . . .

(d) Health care facility – a facility that meets the definition for and is licensed as a skilled care facility or intermediate nursing care facility under the Health Care Facilities and Community Residence Regulations, 22 DCMR §3099.1 (1986) (superceded):

(e) Substance abusers home – . . .

(f) Youth rehabilitation home – . . .

(g) Youth residential care home- . . .

Pursuant to these definitions, a nursing home such as Capitol Hill Nursing Center is a "community based residential facility" and falls within the subcategory of "health care facility" which includes skilled care and intermediate nursing care facilities.[1]

[1] Under the new "Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act", D.C. Official Code §44-501, there is no definition of a health care facility. However, a "nursing home" is defined as a "24-hour inpatient facility, or distinct part thereof, primarily engaged in providing professional nursing services, health-related services, and other supportive services needed by the patient/resident." The current regulations promulgated by the DC Department of Health implementing the above-referenced act on January 18, 2002, that govern nursing facilities (22 DCMR Chapter 32) define a "nursing facility" as "a 24-hour institution or distinct part of a 24-hour institution that: (1) is primarily engaged in providing nursing care and related services to residents who require medical or nursing care, or rehabilitation services for the rehabilitation of persons who are injured, disabled, or sick; (2) is not primarily for the care and treatment of mental diseases; and (3) has in effect a transfer agreement that meets the requirements of 42 U.S.C. §1395 with one (1) or more hospitals that have a provider agreement in effect that meets the requirements of 42 U.S.C. §1395."

Under the Zoning Regulations that existed prior to 1999, "a youth residential care home, community residence facility or health care facility for seven (7) to fifteen (15) persons" was matter of right in an R-5 District provided there was no other community-based residential facility for 7 or more persons within 500 feet. (§350.4(f)) However, Health care facilities for 16 to 300 persons required a special exception pursuant to §359. (It was under these regulations that the BZA Orders in Case #15542 dated July 24, 1991 and #16407 dated February 3, 1999 were issued, granting a special exception for the Capitol Hill Nursing Center.)

The Zoning Regulations were amended on July 30, 1999, in conformity with a consent agreement entered into between the District of Columbia and the United States Department of Justice in order to ensure the District's compliance with protections for the handicapped under the federal Fair Housing Act.

The amended regulations provide in §330.5 of Title 11 DCMR that the following use 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 that 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 addition to, a controlled substance. [Emphasis added.]

Assuming that nursing homes are community-based residential facilities intended to be operated as housing for persons with handicaps, they are matter of right in R-4 of higher zone districts and the provisions of §§350.4(f) and §359 are superseded.

In reviewing the provisions of the federal Fair Housing Act and relevant case law, it is clear that a legitimate nursing home will generally meet the criteria for a community-based residential facility intended to be operated as housing for the handicapped. The Fair Housing Act, 42 U.S.C. §3604(f) makes it unlawful:

> To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap . . .

"Handicap" in defined in the Act at 42 U.S.C. §3602(h) (as it is in the District's current Zoning Regulations) to include:

> (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
> (2) a record of having such an impairment, or
> (3) being regarded as having such an impairment.

"To Rent" as defined in the Fair Housing Act:

> includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant. [42 U.S.C. §3602(e)]
>
> "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families . . . [42 U.S.C. §3602(b)]
>
> "Family" includes a single individual. [42 U.S.C. §3602(c)]

Thus, a single handicapped person who pays to occupy a portion of a building or space in a nursing home as their dwelling place or residence, is protected under the Fair Housing Act.

A number of court cases have confirmed that nursing homes must be considered housing for handicapped persons under the Fair Housing Act. In United States v. The Commonwealth of Puerto Rico, 764 F. Supp. 220 (1991), the United States District Court overturned a decision by the lower court and Puerto Rico's zoning agency that refused to allow the Isla Verde Nursing Home to operate in an RT-3 residential district. The home housed thirteen (13) elderly handicapped persons, and under the zoning law, nursing homes could only be granted permits to operate in an RT-3 district by applying for a variance.

The Court granted a preliminary injunction in favor of the nursing home citing 42 U.S.C. §3604(f) and the definition of "handicap" in 42 U.S.C. 3602(h) (both cited above) and further stating that the Fair Housing Act makes it illegal to refuse on the basis of handicap to:

> make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

In Hovsons, Inc. v. Township of Brick, 89 F.3d 1096 (3d Cir. 1996), the court addressed the question of whether the township's refusal to grant a variance to enable Hovsons to building a nursing home in a predominantly residential R-R-2 zone violated the Fair Housing Amendments Act (FHAA) of 1988. The court reviewed the fact that a nursing home could not be built without a certificate of need and that Hovson's had obtained the necessary certificate. The R-R-2 district allowed one-family dwellings, planned residential communities and schools, and conditionally allowed hospitals, quasi-public buildings, churches, convents, etc. The District Court was satisfied that the

nursing home "should be classified as a 'dwelling' under the Federal Housing Act, because it would be a home to its prospective residents." The 3rd Circuit agreed, stating:

> The Township of Brick's argument that the proposed nursing home is not a "dwelling" under the FHAA is similarly without merit. To the handicapped elderly person who would reside there, Holiday Village would be their home, very often for the rest of their lives. We therefore hold that the proposed nursing home is a "dwelling" within the meaning of §3602(b). [89 F3d at 1102]

With respect to the question of whether the residents would meet the definition of "handicapped", the court stated:

> The parties do not dispute that the nursing home patients at Holiday Village would be "handicapped" within the meaning of the FHAA. See 42 U.S.C. §3602(h) (defining the term "handicap" under the FHAA); see also Wagner v. Fair Acres Geriactric Ctr., 49 F3d 1002, 1010 (3d Cir. 1995) ("Obviously, everyone that applies for admission to a nursing home does so because of his or her disabilities. Indeed, no one would be able to meet a nursing home's admission requirements in the absence of some handicapping condition necessitating nursing home care.") [89 F.3d at 1103]

The court, in the Hovson's case, held that the refusal to grant Hovson's a variance to build the proposed nursing home in the R-R-2 zone violated the "reasonable accommodation" requirements of the Fair Housing Act.

In Lapid-Laurel, LLC v. Zoning Board of Adjustment, 248 F.3d 442 (3d Cir. 2002), the Third Circuit, while questioning the Hovson's decision with respect to who has the burden of demonstrating reasonable accommodation, affirmed the holding of Hovson's that nursing homes provide housing for the handicapped:

> As an initial matter, there are two points on which the parties agree or that are settled beyond dispute with respect to the reasonable accommodations claim: (1) that the future residents of the Facility that Lapid proposed to build would be handicapped within the

> meaning of Section 3604(f), see **Hovsons, 89 F.3d at 1103 n.3;** and (2) that a nursing home like the one that Lapid proposed qualifies as a "dwelling" within the meaning of the statute, see **89 F.3d at 1102.** [248 F.3d at 459]

There is no District of Columbia case directly on point, however, in the case of Wai v. Allstate Insurance Company, 75 F. Supp. 2d 1 (U.S. Dist. Ct, D.C. 1999), a case questioning whether denial of property insurance to the handicapped was a violation of the Fair Housing Act, the case of Hovsons v. Township of Brick was cited with approval in regard to the need to provide reasonable accommodation to handicapped persons. The Hovsons case was also cited with approval by the BZA in the Sunrise Assisted Living facility case. (BZA Appeal 16716A, Order issued 10/2/01)

Prior to making a determination that the Capitol Hill Nursing Center qualified as a community residence facility that provided housing for the handicapped, DCRA required the Capitol Hill Health Care Group to submit appropriate documentation, including proof that it was a properly established and licensed nursing facility under the District of Columbia law. DCRA made these requirements clear in a letter to Capitol Hill's attorney dated March 18, 2003. [Attachment B] In response, Capitol Hill Group submitted a copy of Medlink Nursing Center's Certificate of Licensure issued by the DC Department of Health on November 6, 2002, as well as, a copy of its Application for Health Care Facility License to the DC Department of Health, including a copy of the "Long Term Care Facility Application for Medicare and Medicaid" submitted to the U.S. Department of Health and Human Services. Capitol Hill Group also submitted an affidavit from its Chief Financial Officer, dated March 26, 2003, with respect to the scope of services provided at the Capitol Hill Nursing Center, the nature of the patients and their average length of stay. [Attachment C]

Based upon the submission by the Capitol Hill Group and law cited above, DCRA determined that the Capitol Hill Nursing Center qualified as a community residence facility providing housing for the handicapped and is a matter of right use in an R-5-D zone in the District of Columbia.

II. BECAUSE THE NURSING CENTER IS A MATTER-OF-RIGHT USE UNDER THE CURRENT ZONING REGULATIONS, THE CONDITIONS IN THE BOARD OF ZONING ADJUSTMENT SPECIAL EXCEPTION ORDERS HAVE NO CONTINUING FORCE OR EFFECT.

There is a presumption in favor of the validity of zoning ordinances and amendments to zoning ordinances, which is described in the zoning treatises as follows:

> A property owner has no vested right to "continuity of zoning of the general area" in which he resides. Likewise, the owners of property adjacent to a district which is restricted to a particular use have no vested right to the continuation of that use when the public interest dictates otherwise. . . . A landowner possesses no constitutional rights which are violated by a zoning amendment which is within the power of a municipal legislative body and which bears a reasonable relation to the police power of the municipality.
>
> Anderson, Robert, American Law of Zoning 3d, §4.28

> . . [T]he presumption of validity attending the original ordinance must give way to the presumption of the correctness of the amendatory ordinance. The Legislature not only conferred upon municipalities the power to adopt zoning ordinances, but also the power to amend, change, modify or repeal them, and to change the boundaries of districts from time to time.
>
> Rathkopf's The Law of Zoning and Planning, §40:12 "Rezonings treated as presumptively valid," citing New Jersey case, Bartlett v. Middletown Township, 143 A.2d 778 (App.Div. 1958)

With respect to the impact of an amendment to the zoning ordinance on a special exception, the following is stated:

> The grant of a special exception permit means that the board or body to which the application was made has found that the standards required by the ordinance for the use have been met. . . . The permit is not, and cannot be, personal to the applicant, but runs with the land. A transferee of the land succeeds to any benefits that the original grantee of the permit enjoyed, as well as being subject to its conditions. . . . The grant of an application for a special permit use is an official quasi-legislative, quasi-judicial determination that the use or structure is not offensive to the ordinance and conforms to the standards established thereby for the location and use approved. . .
>
> **If the ordinance is amended so as to delete the provision authorizing the conditional use, the prior grant of approval is nullified except where rights have vested.** [citing Fornaby v. Feriola, 239 N.Y.S.2d 185 (1963), Application of Town Bd. of Town of Huntington, 214 N.Y.S.2d 164 (1961) and Preble Aggregate Inc. v. Town of Preble, 263 A2d 849 (1999) **The effect of such an amendment is the same as where an amendment deletes a use from among the uses permitted as of right.** [Emphasis added.]
>
> Rathkopf's The Law of Zoning and Planning, §61.50

In Fornaby v. Feriola, cited above, the appellant applied for and was granted a special exception to construct a gas station on her property. Subsequent to being granted the special exception, but prior to beginning construction, the local zoning ordinance was amended to prohibit any special exception use which conflicted with the proposed development of the area set forth in the Master Plan adopted by the Planning Board. Since a gas station was not allowed under the Master Plan and since the appellant had not acquired any vested rights, the determination approving the special exception use was "wiped out":

> It is not claimed that, following such determination, the intervenor obtained any vested rights; and this appeal should be decided on the law and the facts as they now exist [citing Application of Town Bd. of Town of Huntington]."

The above-cited cases are distinguished on their facts from the situation in which a neighborhood was "upzoned" to a less stringent zoning category, as in the instant case. In the

case of upzoning, however, there is even less rationale for allowing a ruling under prior law to have continuing force, since clearly the property owner is not being deprived of any vested rights. As stated above, owners of adjacent property have no vested right to the continued restriction of a particular use. (Anderson §4.28)

In a Rhode Island Supreme Court case, Kent v. Zoning Board of Review of the City of Pawtucket, 236 A2d 124, at 125 (1967) while an application for an exception or variance was pending before the zoning board, the city council amended the city's ordinance to repeal the map and law upon which the application was based. The court stated:

> In the case at bar the board lost jurisdiction to act under the prior ordinance the moment the new ordinance took effect. By adoption of the new ordinance the application was rendered abortive and any decision of the board granting or denying it would be null and void.

The Kent case is distinguished on its facts in that a decision had not yet been rendered by the Board.

Based upon the above-cited authorities, there is no basis to continue to impose the conditions in the Special Exception Orders # 15542 or # 116407 issued by the BZA, now that the use is a matter of right. The only requirement was that the owner should apply for a new Certificate of Occupancy in order to remove the BZA conditions recorded on the prior Certificates of Occupancy.

III. THAT THE ZONING ADMINISTRATOR HAD THE AUTHORITY TO DETERMINE THE APPROPRIATE NUMBER OF REQUIRED PARKING SPACES.

Appellant has urged that, even if the nursing home qualifies as a matter of right use, that under the Zoning Regulations, the Board of Zoning Adjustment was required to determine the required number of parking spaces.

11 DCMR 2101.1 lists the schedule of off-street parking requirements for various uses within the District of Columbia. For community-based residence facilities exceeding 16 persons, the regulations state: "As determined by the BZA." In this regard, it is emphasized that, prior to the 1999 amendments to the Zoning Regulations, pertaining to housing for the handicapped, all applications for CBRF's for 15 or more persons in residential zone districts, required BZA approval. Therefore, it made sense that the number of parking spaces should also be determined by the BZA.

As stated, §330.5 of the Zoning Regulations was amended in July 1999 to make community residence facilities, providing housing for the handicapped, a matter of right in an R-4 or higher zone district. Since that time, the Zoning Administrator has interpreted the parking regulation for CBRFs housing 16 or more persons, as applying only where the CBRF requires BZA approval as a special exception. Where a use is established as a matter of right, the Zoning Administrator has concluded that an applicant should not be required to go before the BZA in order to establish the off-street parking requirements.

This interpretation was affirmed by the Order of the Board of Zoning Adjustment in Appeal No. 16716A pertaining to the Appeal by the Nebraska Avenue Neighborhood Association of DCRA's decision to issue a building permit to the Sunrise Assisted Living facility at 5111 Connecticut Avenue, N.W. [Decision September 4, 2001 and October 21, 2001] In that case, DCRA determined that Sunrise qualified as a CBRF intended to be used as housing for the handicapped, and should be permitted as a matter of right use. In its Findings of Fact pertaining to parking, the BZA found:

65. The plans meet the parking requirement the Zoning Administrator applied to the proposed use.
66. The Zoning Regulations do not explicitly establish a ratio of required parking spaces for community residence facilities in the R-5-D zone. The Zoning Administrator applied the ratio applicable to publicly assisted housing for the elderly because the Regulations do not provide a parking ratio for the proposed use.
67. In reviewing the permit application, the Chief of the Zoning Review Branch applied an even more restrictive standard, that for a rooming house or a boarding house. The project also satisfied the more restrictive requirements for a rooming or boarding house.

In its Conclusions of Law, the BZA states:

> The Board concludes that the Zoning Administrator applied general and uniform zoning requirements applicable to multi-family residences in an R-4 District, such as parking requirements, in his review of the application for a building permit. . . Community residential facilities for handicapped persons in the multi-family districts are not subject to a greater level of regulation than that applicable to housing for non-handicapped persons.

The Board states further:

> In addition the plans include 31 parking spaces, which exceed the number required for comparable uses under the regulations. The Board concludes that the Zoning Administrator correctly determined the applicable parking and loading requirements, and that a ruling from the Zoning Administrator was necessary because the regulations do not set forth specific parking and loading ratios for a community residence facility in the R-5-D zone.

Thus, the BZA has clearly held that the Zoning Administrator had the authority to determine the number of required parking spaces for a CBRF that qualified as a matter of right use, since the regulations do not set forth specific parking requirements.

In the instant case, therefore, the Zoning Administrator was required to determine what he considered to be the use that was most comparable to a nursing home, for the purposes of determining the required parking. In making this determination, the Zoning

Administrator reviewed a variety of uses listed in 11 DCMR 2101.1 to determine which was most similar (in terms of parking requirements) to a nursing home, including:

1)	Institutional - Hospital	1 for each bed
2)	CBRF	2 for 9-15 persons
3)	Dormitory	1 for every 5 beds
4)	Rooming or boarding house	1 plus 1 per 5 beds
5)	Publicly assisted housing for the elderly/handicapped	1 for every 6 units
6)	Apartment house/multi-family dwelling	1 for every 3 dwelling units

The Zoning Administrator determined that a nursing home was most similar to a rooming home or boarding house, and did not have the same kind of traffic that is associated with a hospital. In making this determination, the Zoning Administrator had to consider, not only the situation of the Capitol Hill/Medlink Nursing Center, but also the situation of other nursing homes throughout the city.

DCRA recognizes that there is some ambiguity in the current Zoning Regulations, which ideally should be resolved by an amendment to the Zoning Regulations by the Zoning Commission. In the interim, DCRA acted in a manner that was consistent with the BZA's determination in the Sunrise Assisted Living case. -- that it is up to the Zoning Administrator to determine the appropriate number of parking spaces by reviewing similar uses.

RECOMMENDATION TO BOARD

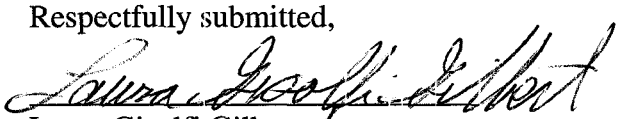
It is suggested that the hearing in this case should be bifurcated in order to consider the strictly legal issues first. In this regard it should be noted that the Appellant has not challenged the fact that the Medlink Nursing Center is a community based residential facility providing housing for the handicapped. Since there is no dispute in

this regard, the BZA can first proceed to determine the following legal issues which do not require testimony:

1) Whether Special Exception Order #15542 has any continuing force or effect, since the district has been upzoned to allow CBRFs, providing housing for the handicapped, as a matter of right in the R-5-D zone district. Appellee believes that the BZA will properly conclude that the answer is "No".

2) Whether the Zoning Administrator had the authority under the Zoning Regulations to make a determination with regard to the required number of parking spaces. If the BZA reverses its holding in the Sunrise Assisted Living case and decides that the Zoning Administrator did not have the authority to make this determination, then the BZA can take testimony on the appropriate parking requirement. If, on the other hand, the BZA agrees that the Zoning Administrator had the authority to determine the parking, then the Appeal should be dismissed; unless the BZA decides to take testimony on the narrow issue of whether the Zoning Administrator decision, that the parking requirements for a nursing home were comparable to the parking requirements for a rooming or boarding house, was arbitrary and capricious.

Respectfully submitted,



Laura Gisolfi Gilbert
Attorney for Appellee
Department of Consumer &
Regulatory Affairs
Suite 9400
941 N. Capitol Street, N.E.
Washington, D.C. 20002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Pre-Hearing Statement is being mailed postage prepaid to Appellant, c/o Mr. Monty Edwards, Co-Chair, SPNA Land Use Committee, 330 E Street, N.E., Washington, D.C. 20002 and to Mr. Paul Tummonds, counsel for property owner, at Shaw Pittman, 2300 N Street, N.W., Washington, D.C. 20037 on November 10, 2003.

Laura Gisolfi Gilbert

Department of Consumer and Regulatory Affairs
Building and Land Regulation Adminstratio
941 North Capitol Street N.E. room 2100
Washington D.C. 20002
Tel. (202) 442 - 4470 Fax (202) 442 - 4862

Government of the District of Columbia BLRA 94A

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 51289

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 3/26/2003

ADDRESS : AKA 700 CONSTITUTION AVE NE 708 MASSACHUTTES AVE NE	FLOOR(S): BASEMENT 1ST. 4TH. 5TH. 6TH. FL.	PRCLID : 0895 (square) -0000- 0076 (lot) WARD : 6 ZONE : R5D

PERMISSION IS HEREBY GRANTED TO :
CORPORATION : CAPITOL HILL HEALTHCARE GROUP.
ID No.: 921732

TRADING AS:

APPROVED USES :	PREVIOUS USES
COMMUNITY RESIDENCE FCL	**COMMUNITY RESIDENCE FCL**

TYPE :	BZA NO. :	OCCUPIED SQ. FOOTAGE:	OCCUP. LOAD:	EXPIRATION DATE:
USE CHANGE		**95,000**	**117**	**NONE**

DESCRIPTION OF USE:
COMMUNITY BASED RESIDENTIAL FACILITY-HEALTH CARE FACILITY THAT PROVIDES HOUSING FOR THE HANDICAPPED. 25 PARKING SPACES & 117 BEDS

FEE :
$444.00

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated. VALID ONLY for the premise at the above address or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

David A. Clark
DIRECTOR

PERMIT CLERK:
THINGOC MACXOAN

Department of Consumer & Regulatory Affairs
Protected by Columbia Government

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administrat
941 North Capitol Street N.E. room 2100
Washington D.C. 20002
Tel. (202) 442 - 4470 Fax (202) 442 - 4862

Government of the District of Columbia BLRA 94A

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 51290

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 3/26/2003

ADDRESS :	FLOOR(S):	PRCLID :			
AKA 700 CONSTITUTION AVE NE 708 MASSACHUTTES AVE NE	BASEMENT 1ST, 2ND & 3RD FLOORS	0895 (square)	-0000-	0076 (lot)	
		WARD : 6		ZONE : R5D	

PERMISSION IS HEREBY GRANTED TO :
CORPORATION : CAPITOL HILL COMMUNITY HOSPITAL
ID No.: 952308

TRADING AS:

APPROVED USES :
HOSPITAL

PREVIOUS USES :
HOSPITAL

TYPE :	BZA NO. :	OCCUPIED SQ. FOOTAGE:	OCCUP. LOAD:	EXPIRATION DATE:
USE CHANGE		85,000	60	NONE

DESCRIPTION OF USE:
HOSPITAL 60 BEDS & 60 PARKING SPACES

FEE :
$414.00

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

David A. Clark
DIRECTOR

PERMIT CLERK:
THINGOC MACXOAN

Department of Consumer & Regulatory Affairs
District of Columbia Government

Exhibit B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

March 18, 2003

Paul Tummonds, Esq.
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Re: 700 Constitution Avenue, N.E., Lot 76, Square 895
(also known as 708 Massachusetts Avenue, N.E.)

Dear Mr. Tummonds:

This letter is in response to your letter dated December 16, 2002 requesting reconsideration of the Department's position with respect to the status of the Medlink Nursing Center under the District's Zoning Regulations. As you are aware, this matter was initially referred for legal review by the Department's Office of General Counsel. Because your office decided to file suit against the District and the Department of Consumer and Regulatory Affairs (DCRA) before the Department was able to respond, the Office of the Corporation Counsel (OCC) has also been involved in review of the legal issues you have raised.

Therefore, after consultation with the DCRA Office of General Counsel and OCC, this office has reached the following conclusions.

First, it must be stated that, contrary to the statement in your December 16, 2002 letter, DCRA did not make a specific determination that the Medlink Nursing Center was not housing for the handicapped. Rather, Capitol Hill Group did not submit any information or documentation to DCRA verifying that the Medlink Nursing Center is in fact a residential facility that provides housing, or a dwelling, for the handicapped. Nor did Capitol Hill Group verify Medlink's legal status as a nursing facility and long term acute care facility.

The fact that DCRA agreed in 1998 that the Sunrise Assisted Living apartments in the 5100 block of Connecticut Avenue, NW, would constitute housing for the handicapped,

if the newly proposed §330.5(i) of the Zoning Regulations was adopted, is not dispositive of this case. Nor is BZA Order 16716A. Handicapped persons rent apartment units in assisted living facilities in the same manner that non-handicapped persons rent apartments. Therefore, in the Sunrise case, it was clear that the facility was a residence and a dwelling within the meaning of the Fair Housing Act and the Zoning Regulations. Further, the appellants in that case did not contest the handicapped status of the residents of that particular facility.

Second, DCRA agrees that BZA Orders 15542 and 16407 will no longer govern the Medlink Nursing Center provided that Medlink can establish that it comes within the matter of right provisions of 11 DCMR §330.5(i) by doing the following:

a) Medlink must apply for a single Certificate of Occupancy for the entire nursing center as directed on November 5, 2002, so that a Certificate may be issued that is not conditioned upon compliance with BZA Orders 15542 or 16407;

b) the Medlink Nursing Center must demonstrate to DCRA, through acceptable documentation submitted in support of the application for a Certificate of Occupancy, that it is a residential facility for persons who have a common need for treatment, rehabilitation, assistance or supervision in their daily living and that it is intended to be operated as housing for persons with handicaps, that is, for persons with physical or mental impairments that substantially limit one or more major life activities.

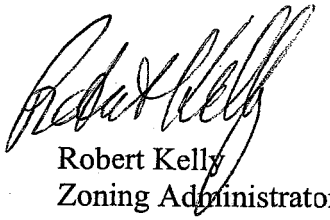
Third, DCRA acknowledges that you supplied to the DCRA Office of General Counsel, by FAX on February 27, 2003, a copy of Medlink Nursing Center's nursing facility license, upon the request of that office. DCRA is prepared to make this a part of the record in support of the Certificate of Occupancy request, but requests that you submit a clear copy together with your application for a new Certificate of Occupancy.

In addition, please submit to DCRA a copy of all documents submitted to the Center for Medicare and Medicaid Services of the U.S. Department of Health and Human Services in support of Medlink Nursing Center's most recent application to be qualified as a Long Term Acute Care (LTAC) facility. You may also submit any additional documentation that you consider pertinent with respect to the health status of the persons whom the Medlink Nursing Center serves or the length of time current or past clients have remained at the facility. This information will facilitate DCRA's ability to make a final determination with respect to whether your client has met the requirements to qualify as a matter of right use under 11 DCMR §330.5(i).

Once this information has been submitted, and assuming DCRA concludes that the Medlink Nursing Center meets the definition of a community-based residential facility providing housing for the handicapped, the Zoning Administrator will advise you how many parking spaces will be required for the facility and of any other requirements under the Zoning Regulations.

We trust that this correspondence adequately answers any questions that you may have We regret that this process has been so lengthy, but note that the filing of a lawsuit by your client, contributed to the delay.

Sincerely,



Robert Kelly
Zoning Administrator

Exhibit C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

HEALTH REGULATION ADMINISTRATION
HEALTH CARE FACILITIES DIVISION

Certificate of Licensure

Pursuant to Title II, Section I of the D.C. Health Care Facilities Regulation, Licensure is Granted to:

MEDLINK NURSING CENTER

To Maintain and Operate

A HEALTH CARE FACILITY

which is located at

700 CONSTITUTION AVE NE, WASHINGTON, D.C.

as a

NURSING FACILITY

with an authorized total capacity of 117 beds for the period of June 13, 2002 through June 12, 2003, with the beds in the following categories:

Skilled: 39
Nursing Facility: 78

License Number: HFD02-0024

Administrator

NOV 0 6 2002
Date

This license is required to be framed under clear glass or plastic and posted in a conspicuous place in the main lobby or administrative office of the licensed premises. It is valid only for the licensee(s) and premises named above, and only for the period specified and is not transferable.

This Health Care Facility has affirmed its compliance with Title VI of the Civil Rights Act of 1964

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
HEALTH REGULATION ADMINISTRATION

HEALTH CARE
FACILITIES
DIVISION

PHONE: 202-442-5888
FAX : 202-442-4831

MAILING ADDRESS:

825 North Capitol Street, N.E.
2nd Floor
Washington, D. C. 20002

APPLICATION FOR HEALTH CARE FACILITY LICENSE

Any person (s) desiring to operate a health care facility in the District of Columbia must complete this form and return it to the Department of Health. The form must be completed in its entirety.

Return Application to:

Administrator
Health Regulation Administration
825 North Capitol Street, NE 2nd Floor
Washington, DC 20002

IDENTIFYING

A. APPLICANT: If the applicant is a corporation or association complete the information item for each officer and director.

PART I

1. **Name** Peter Shin, DPM 2. **Age** 51

3. **Address** 6740 Greentree Road Bethesda, MD 20817 4. **Phone**

4. **Occupation** President 5. **Phone #** (202) 546-5700 x 2

Name Henry J. Vaughn **Age** 51

Address: 10600 Woodpointe Ct, Glen Dale, MD 2074

Occupation CFO **Phone #** 202 546-5700 x 2

Name Cynthia Carter **Age** 37

Address 13425 Tamarack Road, Silver Spring, MD 2

Occupation Executive Asst. **Phone #** 202 546-5700 x 2

Name James J. Berrity **Age** 49

Address 2101 Illinois Street, Arlington, VA 22205

Occupation CEO **Phone #** (202) 546-5700 x 22

B. **FACILITY ADMINISTRATOR:** This information pertains to the individual designated by the applicant as the Administrator of the facility.

Name James J. Gerrity Age 49

Address 2101 Illinois Street, North Arlington, VA 22

Occupation CEO Phone (202) 541-5700 x2201

Other Pertinent Information _____

C. **FACILITY:** This information pertains to the premises which are to constitute the health care facility.

1. Name Medlantic Nursing Center
2. Address 700 Constitution Avenue, NE Wash. DC 20002
3. Description of all structures and facilities which comprise the premises (attach additional pages if necessary) One brick bldg.

4.

a. Type		b. Distinct Part	c. Beds
[X] Skilled Nursing	[X]		38
[X] Nursing Facility Care	[ ]		78

If application is for distinct part certification, attach a list showing number of beds by room number for each distinct part.

5. Certificate of Occupancy # _____

OWNERSHIP INFORMATION

District of Columbia regulations require full and complete ownership information and prompt reporting of any and all changes which affect accuracy of this information.

PART II A. Type of Organization

- [ ] sole proprietorship
- [X] non-profit corporation
- [ ] corporation for profit
- [ ] partnership
- [ ] other - specify _____

1. California Jurisdiction of Corp.
2. N/A IRS Exemption Cert. #
3. N/A Social Security #
4. 52-1792300 Employers ID. #

B. Mandatory Insurance Coverage: [X] yes [ ] no

TYPE	COMPANY NAME	POLICY NUMBER
Gen Liab/Prof.	Lexington Ins.	016790991
Worker Comp	AIG	9387960

C. List name of each person having a direct or indirect interest of 1% or more in the facility, corporation operating the facility, or who is owner (in whole or in part) of any mortgage, deed, or trust, note, or other obligation secured (in whole or in part) by the facility or any property or assets of such facility:

Name Peter C. Shin, DPM

Address 6740 Greentree Road, Bethesda, MD 2081

Name _____

Address _____

Name _____

Address _____

Name _____

Address _____

Name _____

Address _____

D. **If the facility is organized as a corporation, list name and address of each officer and director of the corporation. Provide a Certificate of Corporation in Good Standing.**

Name Peter C. Shin, DPM

Address 6740 Greentree Road, Bethesda, MD 20817

Name Henry J. Vaughn

Address 10600 Woodpointe CT, Glen Dale, MD 20769

Name Cynthia Carter

Address 13425 Tamarack Rd, Silver Spring, MD 20904

Name James J. Gerrity

Address 2101 Illinois street, North Arlington, VA 22

Name _____

Address _____

E. **If the facility is organized as a partnership, list name, and address of each partner.**

Name_____

Address_____

Name_____

Address_____

Name_____

Address_____

Name_____

Address_____

Name_____

Address_____

F. **List the name, address, and occupation of individuals not identified in items D, and E, who will be entitled to receive directly or indirectly through design or assignee, any pecuniary profit from the operation of the home, other than compensation for services rendered.**

Name_____ **Occupation**_____

Address_____

Name_____ **Occupation**_____

Address_____

Name_____ **Occupation**_____

Address_____

Name_____ **Occupation**_____

Address_____

Name_____ **Occupation**_____

Address_____

LICENSURE PART 111

1. **Type of License**

[X] Skilled 39 beds
[X] Nursing Facility 18 beds
[ ] Other _____ beds

2. **Have you ever had a license to operate a convalescent and/or personal care home?**
[ ] yes [X] no

3. **Have you ever been denied a License?** [ ] yes [X] no
If yes, indicate when

_____ ___ ___
Month Day Year

4. **Name(s) of Licensed Administrator(s)**
James J. Secrity
D.C. 214

5. **Administrator(s) License Number(s)**

6. **Hours on Duty/week**
9-5 M-F

TRANSFER AGREEMENTS

Facility has a written agreement in effect with a hospital for transfer of patient medical and other information between the institutions.

PART IV

1. [X] yes (list) Providence.
2. [ ] no (If no, attach statement) _____
3. [ ] Negotiations in process

SERVICES PROVIDED

PART V

Identify below all services provided by the facility. Write a (D) by each service that is provided directly and a (C) by each service provided by contract with outside resource.

1. [D] Nursing
2. [D] Physical Therapy
3. [D] Occupational Therapy
4. [D] Speech Therapy
5. [D] Social Services
6. [N] Recreational Therapy
7. [D] Pharmacy
8. [C] Clinical Lab.
9. [D] Diagnostic x-ray
10. [C] Dentistry
11. [C] Podiatry
12. [C] Ophthalmology
13. [D] Dietary
14. [D] Other: Respiratory Therapy

EMPLOYEE INFORMATION

PART VI

Enter the number of persons employed by the facility according to profession.

	Total
1. Registered Nurses	16
2. Licensed Practical Nurses	43
3. Licensed Physical Therapists	2
4. Qualified Speech Therapists	1
5. Licensed Occupational Therapists	.5
6. Licensed Pharmacists	1
7. Licensed Social Workers	2.5
8. Other Social Work Personnel	0
9. Medical Records Practitioners	1
10. Licensed Dietitians	1
11. Other	

PHYSICIAN SERVICES

Name of Principal Physician or Medical Director

Manisha Singal, MD

PART VII

PART VIII

All statements are true. **(Other reasonable information which is required in order to ascertain the ability to operate a health care facility in conformity with DCMR 22 "Public Health and Medicine" be made available upon request. In addition, any changes in the facts stated in this application will be transmitted to the Department of Health within ten (10) days of the change).**

SIGNATURE(S)	TITLE	DATE
[signature]	CEO	10/2/02

In the case of an individual ownership, the signature is that of the individual; if a partnership, the signature is that of all partners; if a corporation, the signature is that of two (2) of the Officers, one of whom is the President.

PART IX **Attach application together with a Check or Money Order made PAYABLE TO THE D. C. TREASURER.**

PAY THIS AMOUNT $ 500.00

YOU CAN HELP ELIMINATE FRAUD, WASTE, ABUSE AND MISMANAGEMENT IN THE DISTRICT GOVERNMENT BY REPORTING VIOLATIONS TO THE OFFICE OF THE INSPECTOR GENERAL BY CALLING HOTLINE (202) 727-2540. ALL CALLS ARE CONFIDENTIAL.

DEPARTMENT OF HEALTH AND ''MAN SERVICES
HEALTH CARE FINANCING ADM STRATION

LONG TERM CARE FACILITY APPLICATION FOR MEDICARE AND MEDICAID

Standard Survey
From F1 [ ][ ] [ ][ ] [ ][ ] To F2 [ ][ ] [ ][ ] [ ][ ]
M M D D Y Y M M D D Y Y

Extended Survey
From F3 [ ][ ] [ ][ ] [ ][ ] To F4 [ ][ ] [ ][ ] [ ][ ]
M M D D Y Y M M D D Y Y

Name of Facility	Provider Number	Fiscal Year ending:
Medlink Nursing Center	095027 - Medicare	F5 12 31 02 (M M D D Y Y)

Street Address	City	County	State	Zip Code
700 Constitution Avenue, N.E.	Washington		DC	20002

Telephone Number: F6	State/County Code: F7	State/Region Code: F8
202 546-5700		

A. F9 [03]
01 Skilled Nursing Facility (SNF) - Medicare Participation
02 Nursing Facility (NF) - Medicaid Participation
03 SNF/NF - Medicare/Medicaid

B. Is this facility hospital based? F10 Yes [X] No [ ]

If yes, indicate Hospital Provider Number F11 [ ][ ][ ][ ][ ][ ]

Ownership F12 [05]

For Profit	NonProfit	Government	
01 Individual	04 Church Related	07 State	10 City/County
02 Partnership	(05) Nonprofit Corporation	08 County	11 Hospital District
03 Corporation	06 Other Nonprofit	09 City	12 Federal

Owned or leased by Multi-Facility Organization F13 Yes [ ] No [X]

Name of Multi-Facility Organization F14

Dedicated Special Care Units (show number of beds for all that apply)

F15 [ ][ ][ ]	AIDS	F16 [ ][ ][ ]	Alzheimer's Disease
F17 [ ][ ][ ]	Dialysis	F18 [ ][ ][ ]	Disabled Children / Young Adults
F19 [ ][ ][ ]	Head Trauma	F20 [ ][ ][ ]	Hospice
F21 [ ][ ][ ]	Huntington's Disease	F22 [017]	Ventilator / Respiratory Care
F23 [ ][ ][ ]	Other Specialized Rehabilitation		

Does the facility currently have an organized residents group?	F24	Yes [X]	No [ ]
Does the facility currently have an organized group of family members of residents?	F25	Yes [X]	No [ ]
Does the facility conduct experimental research?	F26	Yes [ ]	No [X]
Is the facility part of a continuing care retirement community (CCRC)	F27	Yes [ ]	No [X]

If the facility currently has a staffing waiver, indicate the type(s) of waiver(s) by writing in the date(s) of last approval. Indicate the number of hours waived for each type of waiver granted. If the facility does not have a waiver, write NA in the blanks.

Waiver of seven day RN requirement. Date: F28 [ ][ ] [ ][ ] [ ][ ] Hours waived per week F29 _____
Waiver of 24 hr licensed nursing requirement. Date: F30 [ ][ ] [ ][ ] [ ][ ] Hours waived per week F31 _____
M M D D Y Y

Does the facility currently have an approved Nurse Aide Training and Competency Evaluation Program F32 Yes [ ] No [X]

	Tag Number	A. Services Provided 1	2	3	B. Full-Time Staff (hours)				C. Part-Time Staff (hours)				D. Contract (hours)			
Administration	F33				72	0										
Physician Services	F34															
Medical Director	F35								10							
Other Physician	F36															
Physician Extender	F37	Y											80			
Nursing Services	F38															
RN Director of Nurses	F39				80											
Nurses with Admin. Duties	F40				40	0			96							
Registered Nurses	F41				24	0			0							
Licensed Practical/ Licensed Vocational Nurses	F42				72	19			353							
Certified Nurse Aides	F43				33	75			836							
Nurse Aides in Training	F44															
Medication Aides/Technicians	F45															
Pharmacists	F46	Y			18	1			99				160			
Dietary Services	F47	Y														
Dietitian	F48				80								160			
Food Service Workers	F49				86	8			290							
Therapeutic Services	F50															
Occupational Therapists	F51	Y			16	0										
Occupational Therapy Assistants	F52															
Occupational Therapy Aides	F53															
Physical Therapists	F54	Y			80				36							
Physical Therapy Assistants	F55															
Physical Therapy Aides	F56				68											
Speech/Language Pathologist	F57	Y			62				64							
Therapeutic Recreation Specialist	F58	Y			80											
Qualified Activities Professional	F59	Y			95											
Other Activities Staff	F60	Y			162				54							
Qualified Social Workers	F61	Y			160											
Other Social Services Staff	F62	N														
Dentists	F63	Y							8							
Podiatrists	F64	Y							8							
Mental Health Services	F65	Y														
Vocational Services	F66	N														
Clinical Laboratory Services	F67	N														
Diagnostic X-ray Services	F68	Y														
Administration and Storage of Blood	F69	N														
Housekeeping Services	F70	Y			1462				135							
Other	F71				1684				273							

Name of Person Completing Form	James F. Gerrity
Signature	
Time	
Date	8/28/02

Form HCFA-671 (7-95)

DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS
CERTIFICATION

TO THE APPLICANT: *PLEASE READ CAREFULLY AND COMPLETELY BEFORE SIGNING. A FALSE STATEMENT ON THIS CERTIFICATION REQUIRES THAT THE DEPARTMENT PROCEED IMMEDIATELY TO REVOKE THE LICENSE OR PERMIT FOR WHICH YOU ARE NOW APPLYING, AND FINE YOU $1,000.00. THIS CERTIFICATION IS REQUIRED BY THE "CLEAN HANDS BEFORE RECEIVING A LICENSE OR PERMIT ACT OF 1996," (EFFECTIVE MAY 11, 1996, D.C. LAW 11-118, D.C. CODE §47-2861 et seq.).*

I, Medunk Nursing Center, certify that as of 10-2-12, I do not
PRINT NAME CLEARLY *DATE*
owe more than $100.00 to the District of Columbia government as a result of:

1. Fines, penalties or interest assessed pursuant to the Litter Control Administration Action of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Code §6-2901 et seq.);

2. Fines, penalties or interest assessed pursuant to the Illegal Dumping Enforcement Act of 1994, effective May 20, 1994 (D.C. Law 10-117; D.C. Code §6-2911 et seq.);

3. Fines, penalties or interest assessed pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1986 (D.C. Law 6-42; D.C. Code §6-2701 et seq.); or

4. Past due taxes.

I understand that if I knowingly falsify this Certification, the Department will move to revoke the license or permit for which I am applying, and to fine me $1,000.00. I further understand that the Department may conduct an investigation to ascertain the veracity of this certification.

I understand that this Certification is now required as documentation to accompany my application for a license or permit, and that by completing this Certification, I am not guaranteed that my license or permit will be approved.

CEO

SIGNATURE OF APPLICANT *TITLE*