*Government of the District of Columbia*
**OFFICE OF ZONING**

**Z.C. CASE NO.: 04-17A**

As Secretary to the Zoning Commission, I herby certify that on MAY 0 3 2006 copies of this Z.C. Order No. 04-17A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*

2. Jerry A. Moore, III, Esq.
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   Washington, DC 20001

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   Washington, D.C. 20004

6. Councilmember Vincent B. Orange, Sr.
   – Ward 5

7. Office of Planning (Ellen McCarthy)

8. Zoning Administrator (Bill Crews)

9. Office of the Attorney General
   (Alan Bergstein)

10. David Rubenstein, Esq.
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**ATTESTED BY:** Sharon S. Schellin
**Sharon S. Schellin**
**Acting Secretary to the Zoning Commission**
**Office of Zoning**

ZONING COMMISSION
District of Columbia
CASE NO. 04-17A
EXHIBIT NO. 6



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**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**ZONING COMMISSION**

# ZONING COMMISSION ORDER NO. 04-17A
**Z.C. Case No. 04-17A**
**(PUD Modification – MedStar Health)**
**October 24, 2005**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public meeting on October 24, 2005. At the meeting, the Zoning Commission approved an application from MedStar Health ("MedStar" or "Applicant") for a minor modification to an existing planned unit development (PUD) and a related map amendment to SP-1 and SP-2 for all of the area of Square 3129 that was zoned R-5-A, pursuant to Chapter 24 and § 102, respectively, of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning.

The Zoning Commission has determined that the modification request is properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

## FINDINGS OF FACT

By Z.C. Order No. 02-43 dated February 24, 2003, the Commission approved MedStar's application for second stage review and approval of a PUD and related map amendment to SP-1 and SP-2 for all of the area of Square 3129 that was zoned R-5-A, pursuant to Chapter 24 and § 102 respectively, of DCMR Title 11, Zoning.

The PUD approval was for the authority to implement a Master Development Plan, pursuant to the development plans and objectives set forth in "Master Plan 2000," for MedStar's campus of medical and related facilities on Square 3129. The application also sought approval of a map amendment, described in Master Plan 2000 as "Zoning Strategy B," the approval of which would result in a maximum total gross floor area of approximately 4.5 million square feet to be used primarily for the medical services and related uses that are described in Master Plan 2000.

The approved PUD included "Addition A," a hospital and parking expansion building with a gross floor area 50,000 square feet for parking use within the SP-1 zone and 197,600 square feet for hospital use within the SP-2 zone. In describing "Addition A," no specific reference was made to the inclusion of an electrical substation, an accessory use to these occupancies.

Pursuant to 11 DCMR § 3028, Zoning Commission Order No. 02-43 became final and effective upon publication in the D.C. Register on July 18, 2003.

By letter dated June 1, 2004, counsel for the Applicant filed a request to place a minor modification to Zoning Commission Order No. 02-43 on the Commission's Consent Calendar pursuant to § 3030 of the D.C. Zoning Regulations. The letter requested the Zoning Commission

to approve a minor modification to allow the construction of an electrical substation facility within "Addition A" of the approved PUD and map amendment order. The electrical facility will initially be constructed as a free-standing structure rising 5 to 13 feet above finished grade. However, that structure will be completely contained within the "Addition A" parking structure when it is built. Consequently, the electrical facility will only be visible to the public until the new parking structure is completed. In turn, the parking structure will be slightly reconfigured internally from that shown in the approved plan to recapture parking spaces that will be lost to the electrical facility. There will be no change in either the gross floor area or in the external appearance of "Addition A." The site area for "Addition A" is presently used as a surface parking lot.

The Applicant indicated that the new electrical facility is needed to address, on an emergency basis, shortfalls in MedStar's electrical capacity to power recent improvements to existing medical equipment and to equipment that will be incorporated within "Addition A" when it becomes operational.

By letter dated September 21, 2005, counsel for the Applicant filed a request to grant a minor modification to Zoning Commission Order Nos. 02-43 and 04-17 on the Commission's Consent Calendar pursuant to § 3030 of the D.C. Zoning Regulations. The minor modification would further modify Order Nos. 02-43 and 04-17 to relocate the electrical substation facility that was approved in Order No. 04-17 to a location that will be immediately to the south of the existing "E" Wing of the main hospital building as shown on Attachment A. The substation will be constructed as a below-grade structure in the existing "E" Wing of the main hospital and will later be enclosed within Additions "A" and "B" of the hospital. This new location for the electrical substation facility will not alter the external appearance of Additions "A" or "B" or of the "E" Wing of the hospital.

The Applicant is also requesting approval for the construction and use of a one-story infill structure within an existing closed courtyard. The one-story infill structure will be constructed in an existing courtyard located between Buildings "F" and "D" as depicted on Attachment B. The Applicant represents that the one-story infill structure will not be visible from the outside of the hospital building, because each of the surrounding buildings are now at least five stories in height. The existing courtyard is currently being used as a relaxation area for the staff and patients of the hospital. This activity will be relocated to an existing courtyard between the "D" Wing and the Cancer Suite.

The gross square footage of the proposed structures is included within the overall gross square footage and FAR limits previously approved by the Commission. At 5,700 square feet, the electrical substation facility will be included within the 2,500,000-square-foot cap on all "new below grade non-FAR-countable" space, as approved in Order No. 02-43. The courtyard infill will count 17,200 square feet toward the maximum available gross floor area of the 2,845,749 gross square feet.

By memorandum dated October 7, 2005, the D.C. Office of Planning recommended approval of this minor modification subject to the Applicant providing additional information regarding the impact, if any, on the overall square footage and FAR that is permitted by the PUD, recognition

by the Applicant that the gross square footage of the proposed structures is included within the overall gross square footage and FAR limits previously approved by the Commission, a designation of a specific place for the relocation of the existing relaxation area and a statement that the addition of the one-story courtyard will be conformance with 11 DCMR § 536.3. By letter dated October 13, 2005, the Applicant submitted the information requested by the Office of Planning.

MedStar presented evidence that is has duly served a full copy of its request for a minor modification on Advisory Neighborhood Commission 5C and the District Department of Transportation. No comments were received from either of these organizations.

On October 17, 2005, at its regular monthly meeting, on the recommendation of the Director of the Office of Zoning, the Zoning Commission placed MedStar's request for a minor modification on the Commission's Consent Agenda. Consideration of the matter was continued for the Applicant to provide a draft order. The Commission approved the minor modification at a special public meeting held October 24, 2005.

## CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Zoning Commission concludes that MedStar's proposed modification is minor and consistent with the intent of Zoning Commission Order No. 02-43. The Zoning Commission concludes that the proposed modification is in the best interest of the District of Columbia, is not inconsistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The approval of the modification is not inconsistent with the Comprehensive Plan. Further, the requested minor modification will not affect any of the other conditions to the approved PUD. The modification is of such a minor nature that its consideration as a consent calendar item without public hearing is appropriate.

As this proposed minor modification will not change the exterior appearance of Additions "A," "B," "D," "E" or the Cancer Suite as approved, the Zoning Commission determined that it is unnecessary to refer this request to the National Capital Planning Commission for review and comments.

## DECISION

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the following minor modification:

1. The Applicant may relocate the electrical substation facility that was approved in Order No. 04-17 to a location that will be immediately to the south of the existing "E" Wing of the main hospital building as shown on Attachment A to Applicant's counsel's September 21, 2005 letter. The substation shall be constructed as a below-grade structure in the existing "E" Wing of the main hospital, but may later be enclosed within Additions "A" and "B" of the hospital, provided that it remains below-grade. The facility's gross

floor area shall not exceed 5,700 square feet nor alter the external appearance of Additions "A" or "B" or of the "E" Wing of the hospital.

2. The Applicant shall be permitted to construct a one-story infill structure within an existing closed court between Buildings "F" and "D" of the Development Plan that was approved in PUD Order No. 02-43. The structure shall not be visible from the outside of the hospital building and its gross floor area shall not exceed 17,200 square feet. The current functions of the courtyard, as a relaxation area for the staff and patients of the hospital, may be relocated to an existing courtyard between the "D" Wing and the Cancer Suite.

The above-described construction shall be consistent with the plans submitted to the Zoning Commission record by MedStar on September 21, 2005. All other provisions and conditions of Zoning Commission Order No. 02-43 remain in effect.

Pursuant to the intent of 11 DCMR § 2409.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs ("DCRA") for the minor PUD modification until the Applicant has recorded a "Notice of Modification" of Zoning Commission Order No. 02-43 with the land records of the District of Columbia. That Notice of Modification shall include true copies of Zoning Commission Order No. 02-43 and this Order, which the Director of Zoning has certified. The recordation of the Notice of Certification shall bind MedStar and any successors in title to construct on and use this site in accordance with this Order and any amendments thereof.

After recordation of the Notice of Modification, MedStar shall promptly file a certified copy of that notice of Modification with the Office of Zoning.

The minor PUD modification approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in §§ 2409.2 and 2409.3 of the Zoning Regulations. Construction shall start within three (3) years of the effective date of this Order.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

This application was approved by the Zoning Commission at its public meeting on October 24, 2005, by a vote of 4-0-1 (Carol J. Mitten, Kevin L. Hildebrand, and Anthony J. Hood to approve; John G. Parsons to approve by absentee ballot; Gregory N. Jeffries not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the D.C. Register; that is, on MAY - 5 2006.

Carol J. Mitten

**CAROL J. MITTEN**
**CHAIRMAN**
**ZONING COMMISSION**

Jerrily R. Kress

**JERRILY R. KRESS, FAIA**
**DIRECTOR**
**OFFICE OF ZONING**