



Stanton Park Neighborhood Association

P O Box 75085, National Capitol Station, Washington D C 20013-5085

July 31, 2006

Sharon Schellin, Acting Secretary
District of Columbia Zoning Commission
District of Columbia Office of Zoning
441 Fourth St , NW, Suite 210 South
Washington, DC 20001

Re Case No 05-34
Map Amendment to
Square 895, Lot 76

RECEIVED
DC OFFICE OF ZONING
JUL 31 2006

Dear Ms Schellin

I enclose for filing an original and 6 copies of the Comments of Stanton Park Neighborhood Association.

Copies are being hand-delivered to the Office of Planning and MedLINK's attorney at MedLINK's office at 708 Massachusetts Avenue, NE The other copied recipients are being provided copies by email

Sincerely,


Monte Edwards, Co-Chair
SPNA Land Use Committee

Enclosures

Cc. Stephen Mordfin, Office of Planning
Donald Hartman, Esq Atty for MedLINK
ANC 6C06 Commissioner Mike Sherman
ANC 6C07 Commissioner Bill Sisolak
ANC 6A03, Commissioner Cody Rice
Father Downing, St James Episcopal Church
Janet Quigley, CHCSD
Dick Wolf, CHRS
Barry Pershkov, Union Square Townhome Homeowners

ZONING COMMISSION
District of Columbia

CASE NO. 05-34
ZONING COMMISSION
District of Columbia
EXHIBIT NO. 69
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**BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA**

ANC 6-C Zoning }
Map Amendment }
Square 895, Lot 76}

Case No 05-34

**COMMENTS OF
STANTON PARK NEIGHBORHOOD ASSOCIATION**

Stanton Park Neighborhood Association (SPNA) respectfully submits these comments in support of the Zoning Commission's proposal to adopt a Zoning Map amendment that would rezone Square 895, Lot 76 from R-5-D to R-5-B¹. SPNA is a civic association that works for improvement of the Stanton Park neighborhood by representing the interests of the north Capitol Hill community in the area bounded by East Capitol Street, 10th Street NE, H Street NE, and 2nd Street NE. The property that is the subject of the proposed rezoning, known as the MedLINK property, is located in the approximate center of the SPNA membership area at 708 Massachusetts Avenue, NE.

PROCEDURAL HISTORY

This proceeding began November 6, 2005, when ANC 6C filed a Map Amendment Petition pointing out that the present R-5-D zoning of the MedLINK property is inconsistent with the surrounding neighborhood and should be brought into compliance with the Comprehensive Plan by being rezoned as Moderate Density Residential.² ANC 6C's petition recommended the zoning should be changed to R-4.

¹ The Zoning Commission's Notice of Proposed Rulemaking was adopted at the May 8, 2006 Zoning Commission meeting and was published in the June 30, 2006 DC Register at page 5820.

² Prior to this Zoning Commission proceeding there was widespread awareness of the need to rezone this property which was documented at least as early as May 19, 2004, the date of the letter from ANC 6A to the Office of Planning, recommending that the proposal of the Capitol Hill Restoration Society to rezone this property from R-5-D to R-5-B be submitted to the Zoning Commission (Exh 50).

At the initial Set-Down Hearing on December 19, 2005, the Commission required a Supplemental Report from the Office of Planning to analyze the impacts of rezoning, address split zoning, and address nonconformities that would result from rezoning (12/19/05, Tr. 16-17 & 20-21)³ The Commission also solicited input about the positions of various community groups about rezoning this property (12/19/04, Tr 18-20) At a second Set-Down Hearing on January 9, 2006, the Office of Planning's Supplemental Report again recommended rezoning to R-5-B (Exhs 19 and 23) and it became apparent that there was overwhelming community support for rezoning of the property as well as concern about MedLINK's sixth iteration of its proposed redevelopment of the property (Exhs 12-18, 20-22, and 26-36) ⁴

At a hearing on March 23, 2006, the Zoning Commission received extensive testimony from the Office of Planning, two Advisory Neighborhood Commissions, community organizations, and individuals Additionally, Councilmember Ambrose submitted a letter advocating the property be rezoned to Moderate Density Residential (Exh 38). Except for MedLINK, the parties to this proceeding have advocated that the property be rezoned from High Density Residential to Moderate Density Residential, including 561 residents living within two blocks of the property who signed a petition to that effect (Exh 41)

- The Office of Planning recommended R-5-B (Exh 31)
- ANC 6C recommended R-4 (Tr 11)
- Capitol Hill Restoration Society supported R-5-B (Tr 40)
- ANC 6A recommended R-5-B (Tr 67)⁵
- St James Church recommended either R-4, R-5A or R5B (Tr 69)
- Union Square Townhome Homeowners Association recommended R-4, with R-5A as an alternative (Tr 72)
- Capitol Hill Coalition for Sensible Development recommended R-4 (Tr 75)
- SPNA recommended R-5A (Tr 78)

³ The Zoning Commission addressed Set Down of this proceeding at meetings held on December 19, 2005, and January 9, 2006, held a hearing on March 23, 2006, and addressed its decision at meetings held on April 20 and May 8, 2006 The transcripts of all of those proceedings begin with page 1, thus for the non-hearing meetings, the transcript reference is preceded by the date of the meeting in the citations in these Comments References to the transcript of the March 23rd hearing do not include a date

⁴ The letter from the Capitol Hill Restoration Society (CHRS) referenced the 2004 request of ANC 6A, ANC 6C and CHRS to rezone the property from R-5-D to R-5-B (Exh 16).

⁵ The ANC 6A presentation began with Mr Rice affirming the position expressed in the ANC's May 2004 letter to the Office of Planning, recommending that the property be rezoned to R-5-B (Tr. 64)

In its March 6, 2006 Final Report (Exh 31), the Office of Planning explained its recommendation that the property be rezoned from High Density Residential to Moderate Density Residential. In commenting on ANC 6C's request for R-4 zoning and its own recommendation for R-5-B zoning, the Office of Planning stated

Both R-4 and R-5-B are moderate density residential zone districts. As moderate density residential zone districts they are consistent with the provisions of the Comprehensive Plan. However, rezoning of the subject property to the R-4 Zone District will result in significant nonconformities to the site due to the existing improvements. Therefore, based on the existing conditions of the site and the potential for nonconformities, the Office of Planning recommends the Commission amend the zoning map amendment to change the zoning on Square 875, Lot 76, from the R-5-D Zone District to the R-5-B

Office of Planning Report at 8

At the March 23rd hearing, Mr. Mordfin of the Office of Planning further explained that rezoning the property to Moderate Density Residential "will bring the zoning ... into conformance with the Comprehensive Plan and the generalized land use plan" (Tr. 59). He also pointed to other benefits from rezoning the property, namely, that "development will be consistent with neighborhood [and] city objectives, that the general level of existing Ward 6 residential uses, density and heights will be maintained and that new development will be consistent with the moderate density residential character of Ward 6" (Tr. 60).

On May 25, 2006, the National Capitol Planning Commission notified the Zoning Commission that "the Proposed Map Amendment to rezone Lot 76, Square 895, from R-5-D to R-5-B District Zone would not be inconsistent with the Comprehensive Plan for the National Capitol, nor would it have an adverse impact on any federal interest. The R-5-B zone designation is appropriate by eliminating the potential for non-conformance issues." (Exh.61, p. 2)

R-5-B IS THE APPROPRIATE ZONING FOR THIS PROPERTY

Since 1999, SPNA and the other parties to this proceeding have attempted to work with the property owner to achieve a development or reuse of the southern portion of the property, which has been vacant for many years. Throughout that process, SPNA has advocated two basic points:

Height Limitation St. James, the primary contributing historic structure on this square, and the historically contributing 1928 hospital building are the reference points for the height limitation and other design parameters for any new or replacement structures on this

property. Therefore, SPNA supports a zoning classification limiting new structures on the property to a height of 50-60 feet⁶

Adequate Parking. The 14 years of ongoing parking violations by MedLINK's Hospital and Intensive Care Nursing facility have imposed an inordinate burden on the surrounding community (Tr 80). Further, MedLINK's transfer of its Certificate of Need to operate a medical facility to a new entity (Specialty Hospitals of America) with a 10 year lease of the tower structure and an option to renew for an additional 5 years means that parking by more than 300 employees of the hospital/nursing facilities will continue to be a concern for the next 10 to 15 years (Exh 45). For this reason, and also because the developers have indicated that market forces require a high ratio of off-street parking, SPNA supports a zoning classification requiring any new or replacement development on this property to provide a parking ratio that exceeds the one parking space per three residential units required under R-5-D.

To achieve consistency with the Comprehensive Plan and to address community concerns requires a zoning reclassification that will limit the height of any new or replacement buildings to 50-60 feet. Absent rezoning, the owner could attempt to redevelop the property at a height of 90 feet, which would completely overshadow St James and the 1928 structure and create a massing and density incompatible with the surrounding R-4, C-2 neighborhood. Further, any development of this property that provides less than one parking place per residential unit (and one parking place per hospital bed) imposes an unreasonable burden on the surrounding community.

THE PRESENT ZONING IS AN EXTRAORDINARY EXCEPTION THAT WAS GRANTED FOR A LIMITED PURPOSE

At the March 23, 2006 hearing the Commission heard that the currently proposed rezoning is a continuation of a process that began 35 years ago, when Rogers Memorial Hospital (previously known as Casualty Hospital and later referred to as the Capitol Hill Hospital) sought to expand and modernize its operations as a community hospital. While there was broad support in 1972 for a hospital that would serve the community, there was also clear recognition that the

⁶ SPNA supports a zoning classification of R-5-B, which has a maximum height limit of 50 feet. However, SPNA also recognizes that the existing 1928 building on the south part of the property is 54 feet tall and some of the prior redevelopment proposals had heights of between 50 and 60 feet. These heights were considered to be sufficiently in-scale with St James that they were generally acceptable to the community (the Holladay Plan of 2001) and resulted in a compromise agreement (Tr 74,78) to which all of the community groups agreed, but from which MedLINK eventually withdrew its support (Tr 87). Thus, presuming the continued validity of the maximum height limitation of that 2001 compromise, at least from the community perspective, SPNA is willing to accept a height of somewhat over 50 feet for future development purposes.

zoning change to accommodate the expansion was an “extraordinary exception” and an “aberration” to the residential, low-rise character of the community⁷

The hospital recognized the responsibilities that accompanied that extraordinary exception, and in 1992, when the hospital was “no longer able to provide such services to the community,” it prepared a Declaration of Restrictions recorded in the land records for the protection of the community (Exh 40, Item 12) That Declaration seeks to ensure “that any future use of the Premises be compatible with the residential character of the surrounding Capitol Hill Community” (the continuing validity of that Declaration has been confirmed. Tr. 20). The Declaration of Restrictions bars 12 specified uses that might otherwise operate under the current zoning classification for this property (but does not prohibit the operation of a hospital, nursing care or private medical facility) It specifically grants to three of the organizations participating in these proceedings -- the ANC, the Capitol Hill Restoration Society, and SPNA -- the right to enforce those restrictions By extending enforcement of the restrictions to any property owner living within 800 feet of the facility, the Declaration also applies to the individual participants and two entities that did not exist at that time, the Capitol Hill Coalition for Sensible Development and the Union Square Townhome Homeowners⁸ Although the Declaration deals with community organizations’ and neighbors’ concerns about uses for the property, it does not address the other current and relevant issues that the current rezoning will resolve – height and parking⁹

⁷ The Capitol Hill Restoration Society, in its 1973 letter to the Zoning Commission (Exh. 40, Item 6), explained “We believe the Commission is aware of the Society’s strong feeling that the zoning map for the Capitol Hill area should be maintained to retain the low-rise character of the community We support the height increase requested by Rogers Memorial Hospital as an extraordinary exception in the interest of providing the community with better medical services” The March 23rd hearing benefited from the testimony of Mr. Richard Wolf, who, as the last Chairman of the Board of Directors of the Capital Hill Hospital (before it was sold to MedLINK), was personally involved in the community concerns at the time of the 1973 rezoning, participated in the preparation of the Declaration of Restrictions, and as the current President of the Capitol Hill Restoration Society has participated in the current concerns involving MedLINK (Tr 39-40) Mr Wolf explained the 1973 rezoning “that upzoning was recognized by all concerned as an aberration of the existing patterns of planning and zoning for the area, but needed for important public policy reasons” (Tr 45)

⁸ The reason for the deed restrictions, as explained by Mr Wolf, was concern about future use of the hospital property in order to protect the surrounding residential community ”Those deed restriction were put in before the sale and there was a lot of controversy about it because obviously, it put a deed restriction and you’ve lowered the value of the property, you’ve constrained the uses it might be [put] to” (Tr 47)

⁹ The Declaration of Restrictions was apparently based on the assumption that some medical use of the existing facilities would be the future use of the property The possibilities of new construction (at a possibly greater height) and conversion to residential use (with its associated

THERE IS NO JUSTIFICATION TO RETAIN THE R-5-D ZONING

In these proceedings, MedLINK has attempted to assert the claim that it bought the property in reliance on the high density, R-5-D zoning, and to now rezone the property works an economic injustice (Exhs 12 and 37) This issue was the subject of an exchange between Commissioner Hood and ANC-6C Commissioner Sisolak during the March 23rd hearing, when Mr. Sisolak explained that MedLINK should not be allowed to profit on the bare value of the zoning classification because that zoning was for the sole purpose of a community hospital (Tr. 51-52).¹⁰ Mr Adelstein, a nearby neighbor of MedLINK, further explained that a buyer goes into a real estate transaction knowing the history of the property (Tr 124) “I think that this property owner went in knowing that there was a zoning change and knowing why there was a zoning change, for use as a hospital He knew there was concern of the neighborhood because there was a deed restriction He went into the property knowing that the neighbors were concerned about the possible current, and more importantly, the possible future use. As an investor, he knew there were neighborhood concerns” (Tr 124-125)

An alternate MedLINK argument for why the zoning should not be changed was a tortured interpretation of the “concept approval” of MedLINK’s proposed redevelopment plan by the Historic Preservation Review Board MedLINK presented the curious argument that in some way the “concept approval” amounted to an endorsement of the appropriateness of the project in terms of neighborhood compatibility (Tr 100) Ms Steingasser of the Office of Planning conclusively refuted this assertion in explaining that the “preservation reports make it very clear that it’s not an endorsement of any zone They are just looking at architectural compatibility.” (Tr 62)

A final attempt to justify the R-5-D zoning on the property was offered by Steven Sher, Director of Zoning for Holland and Knight, counsel for MedLINK (Tr 107) Mr Sher offered a 7 page Report (Exh. 52), pages 6 and 7 of which listed examples of properties with higher zoning classifications than the zoning specified in the Land Use Map¹¹ However, Exhibit 52 discloses that none of the zoning examples had a zoning classification difference as large as MedLINK’s

parking requirement) were not specifically addressed. The fact that MedLINK has proposed new construction and a change to residential use brings both of those concerns to the forefront

¹⁰ On this same point, Ms Kregel further explained at Tr 89 “ the reasons why the zoning was changed in 1973 and the concession was made in good faith, never intended to produce what it has now become, which is a windfall profit to the value of the hospital’s real estate ”

¹¹ The examples contained in Section VI. B of Exhibit 52 are

- 1 An R-5-D property in a predominantly R-5-B area
- 2 An R-5-D property in a predominantly R-5-B area
3. An R-5-E property in “an area with a variety of zone categories ”
4. An R-3 property in a predominantly R-1-B area

anomalous zoning of R-5-D (with a maximum height of 90 feet), located in an R-4, C-2 community (with typical heights of 30 feet) The examples in Exhibit 52 support rezoning of the MedLINK property to R-5-B, rather than retention of the R-5-D zoning

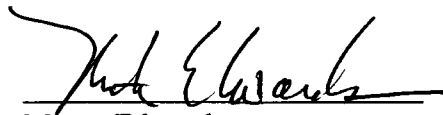
CONCLUSION

SPNA respectfully asks the Commission to give effect to the clear intent, expressed when this property was first rezoned to its present high density classification, as an “extraordinary exception” to accommodate a community hospital, and the reaffirmation of that intent, expressed when the community hospital could no longer operate, “to insure that any future reuse of the property be compatible with the residential character of the surrounding Capitol Hill Community.” To “insure” that result, rezoning to Moderate Density Residential is necessary. Rezoning the property to R-5-B would accomplish that result

SPNA fully supports the Zoning Commission’s adoption of the Proposed Rule to rezone this property from R-5-D to R-5-B as (1) fully supported by the record evidence of the zoning history and the unique nature of this property, and (2) consistent with the Comprehensive Plan and generalized land use plan That rezoning will result in development that is consistent with neighborhood and city objectives and maintain density and heights that are consistent with the moderate density residential character of the surrounding neighborhood and Ward 6 in general.

Respectfully submitted,

STANTON PARK
NEIGHBORHOOD ASSOCIATION

A handwritten signature in black ink, appearing to read "Monte Edwards", written over a horizontal line.

Monte Edwards
Co-Chair, Land Use Committee

July 31, 2006