

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. S-274-D**

**PETITION OF SUBURBAN HOSPITAL**

**OPINION OF THE BOARD**

(Opinion Adopted October 20, 2010)

(Effective Date of Opinion: December 9, 2010)

Case No. S-274-D is an application by Suburban Hospital to modify its existing, hospital special exception. The subject property consists of Lots 15, 1A, 2-5, 6A, 7A, 8A, 9A, 10-13, Block 15, and Lots 7, Part Lot 20, 21, 27, 32, Block 8, Huntington Terrace Subdivision, located at 8600 Old Georgetown Road, Bethesda, Maryland, 20814, in the R-60 Zone. The elements of the original modification request are:

- 1) A four-story addition with approximately 235,597 gross square feet of floor area, including two floors of private patient rooms, each containing 54 rooms. The first floor will house 15 operating rooms. The second floor will house the medical offices.
- 2) An increase of 66 in the number of patient beds, to 294 beds.
- 3) Construction of a multi-level parking structure containing approximately 1,196 parking spaces, with two levels below grade, one level partially below grade and seven stories above grade, at the northeast end of the Campus. Modifications to existing surface parking facilities to provide a total of 1,465 parking spaces on Campus. Reduction of the number of surface parking spaces from 462 spaces to 269 spaces.
- 4) Demolition of the existing three-story, 268-space parking structure, 23 residential structures and the approximately 17,000-gross-square-foot Lambert building.
- 5) Development of an improved pedestrian and vehicular circulation system, including a new main entrance that will separate the pedestrian and private vehicle entrance from the helipad and emergency vehicle entrance.

- 6) Incorporation of approximately 36,126 square feet of the right-of-way of Lincoln Street between Grant Street and Old Georgetown Road, based upon a request for the abandonment of the portion of Lincoln Street between Old Georgetown Road and Grant Street.
- 7) An increase of 260 full-time equivalent employees.<sup>1</sup>

On September 15, 2008, the Technical Staff of the Maryland National Capital Park and Planning Commission recommended approval of Suburban Hospital's petition with six conditions. On September 25, 2008, the Planning Board also recommended approval with three additional conditions.

In response to recommendations by Maryland National Capital Park and Planning Commission (MNCPPC) staff, and the Planning Board, Suburban Hospital made revisions to their original modification request, proposing the following:

- 1) Alternate Garage configurations, to be located on the site of the existing garage and the Lambert Building, either 46.8 feet high, with seven floors and a total of 1244 parking spaces, or 35.3 feet high, with 1176 spaces.
- 2) Dedication of a 10-foot right of way along McKinley Street, which includes an additional westbound right turn access lane and an improved crosswalk on McKinley Street.
- 3) Retention of additional large and specimen trees above and beyond those originally proposed to be preserved.
- 4) Widening of the pedestrian and bike path connectors to 8-feet from the Grant and Lincoln Street intersection to the proposed north/south pedestrian/bike path.
- 5) Additional bike and pedestrian linkages and softer turning radii for the bike paths and wider sidewalks along all perimeters and interior spaces.
- 6) A wider pedestrian refuge and a re-aligned crosswalk on Old Georgetown Road (across from the employee entrance of NIH).
- 7) A handicap ramp across Grant Street at Lincoln Street.

The Hearing Examiner for Montgomery County held thirty-four days of public hearings on the application, from November, 2008 through July of 2009.<sup>2</sup>

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<sup>1</sup> The Hospital currently has 1,682 total employees, including 1,400 full time/regular part-time employees. [HE Report and Recommendation, pages 34-35.]

<sup>2</sup> Hearings were conducted on the following days:

On June 18, 2010, the Hearing Examiner issued a Report and Recommendation to the Board recommending that the application be remanded to the Applicant for certain modifications which the Hearing Examiner believed were required in order to be consistent with the applicable Master Plan and to be compatible with the neighborhood.

The Board of Appeals received requests for Oral Argument from Suburban Hospital, from Huntington Terrace Citizens' Association (HTCA) and from David Mangurian. The Board heard Oral Argument from all three parties on September 15, 2010. The Board considered the Report and Recommendation, together with arguments made at Oral Argument, at a Worksession on October 20, 2010.

**Decision of the Board: Special Exception Modification Granted  
Subject to the Conditions Enumerated Below.**

The Board of Appeals has carefully considered the voluminous record in this case, the favorable recommendations of the Planning Board and its Technical Staff, the Hearing Examiner's Report and Recommendation, together with the Oral Arguments presented by the parties. The Board agrees in part and disagrees in part with the Hearing Examiner's findings and recommendation, as discussed below. The Board's findings as to the application's conformance with the standards in the Zoning Ordinance follow that discussion.

The Hearing Examiner found that the proposed modification and expansion failed to meet the requirement in Section 59-G-2.31, in that the use would adversely affect the present character or future development of the surrounding residential community, in four specific respects: the removal of 25 houses, the proximity of the addition and parking garage to the closest houses, the size of the garage and the inclusion of an employee entrance on Southwick Street. The substance of these findings was repeated by the Hearing Examiner in her analysis of this proposal under some of the General Standards in Section 59-G-1.21 and under Section 59-G-1.2.1. As further explained below, the Board adopts the Hearing Examiner's findings with respect to the adverse effects associated with the removal of 13 of these Hospital-owned homes along McKinley Street, Grant Street, and Southwick Street. The Board finds no adverse effects associated with the removal of eight (8) hospital-owned homes on Lincoln Street and the closing of that street, as explained below, or with the removal of the homes on lots 7 and 8 on Southwick Street, necessary for construction of the parking garage. The

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11-17-08	1-16-09	4-3-09	6-5-09
11-18-08	1-30-09	4-17-09	6-8-09
11-24-08	2-2-09	4-24-09	6-9-09
12-8-08	2-6-09	4-27-09	6-30-09
12-12-08	2-20-09	5-1-09	7-13-09
12-15-08	3-9-09	5-4-09	7-23-09
12-16-08	3-13-09	5-5-09	7-24-09
12-18-08	3-20-09	5-29-09	
1-12-09	3-23-09	6-1-09	

Board rejects the Hearing Examiner's findings regarding the proximity of the addition and garage to the closest homes, the size of the garage, and the employee entrance on Southwick Street.

### Removal of the houses

With the exception of the eight (8) houses abutting only Lincoln Street and lots 7 and 8 on Southwick Street, the Board concurs with the Hearing Examiner's finding that removing existing residential houses and their mature landscaping would impermissibly adversely affect the residential character of the community surrounding the Hospital, whereas retaining those houses and their landscaping provides buffering more residential in character for the community adjacent to the hospital. Indeed, the Hearing Examiner notes in her analysis, citing the testimony of Mr. Doggett, that

"[t]he character of Grant Street would be totally different—and fundamentally less residential—with houses on one side and institutional buildings and their gardens on the other, compared to houses on both sides, mature trees and institutional buildings behind the houses on one side. The evidence was overwhelming that currently, the houses that back up to the Hospital serve as an effective visual and noise buffer for the rest of the neighborhood, sharply reducing the Hospital's impacts. That leaves the buffer houses themselves unprotected, as Mr. Hagerty pointed out, but their situation is different because they are owned by Suburban. It is Suburban that will feel any long-term impact on the property value. ... The current relationship between buildings is a successful buffer for most of the neighborhood. ... In addition to their buffering value, testimony from residents of Grant and Southwick Streets indicates that the houses Suburban proposed to tear down add to the human fabric of the neighborhood. As Mr. Doggett and residents stated, losing those houses means losing the opportunity for human connections. Much testimony from Huntington Terrace residents supports the conclusion that it is a community that prizes human connections and would suffer a distinct detriment from losing 23 houses' worth of them."

As discussed in Part III.C. [of the Hearing Examiner's Report and Recommendation] above, in the Hearing Examiner's view any plan to expand Suburban compatibly with the neighborhood must limit the removal of homes to those that front only on Lincoln Street, and therefore do not directly affect the character of other residential streets." [Hearing Examiner Report and Recommendation, page 131].

In reaching its finding, the Board also adopts the Hearing Examiner's conclusion that the 8 hospital-owned homes that abut only Lincoln Street can be removed for the expansion because they face only each other, and thus their removal would not affect the character of any remaining residential street or the effectiveness of the buffering role of the houses. [Hearing Examiner Report and Recommendation, pages 66-67]. With respect to the homes on lots 7 and 8 along Southwick Street, the Board finds that the removal of these Hospital-owned homes is necessary to accommodate the shorter alternate garage recommended for approval by the Hearing Examiner and this Board. The Board notes in this regard that it adopts the findings of Technical Staff and the Hearing Examiner that parking commensurate with the size of the staff and number of patients is an inherent adverse effect of this use. Thus the Board has conditioned its

grant of this special exception on the retention of 13<sup>3</sup> of the hospital-owned homes that border the perimeter of the two-block area defined by Old Georgetown Road, McKinley Street, Grant Street and Southwick Street to serve as a buffer, in lieu of the gardens proposed by the Hospital. The Board further finds that because the Hospital owns these peripheral properties, any economic impact on the values of these homes resulting from the expansion of the hospital would be borne by the Hospital.<sup>4</sup>

### Proximity of the addition and garage

The Board disagrees with the Hearing Examiner's finding that given their size, the proposed addition and garage are too close to nearby homes. The Board notes that the requirement of Section 59-G-2.31(3) is that hospital buildings be set back a distance equal to the height of the portion of any building adjacent to single family residential uses, or not less than 50 feet from a lot line. One portion of the addition is 50.7 feet high and one portion is 20.7 feet high. As originally proposed by the Hospital, the modification would have been 200.5' and 230.5', and 55.89' from its proposed lot line along Grant Street confronting residential properties.<sup>5</sup> [Exhibit 236(b)]. The Board's imposition of a condition requiring retention of the hospital-owned houses on Grant Street may reduce these distances and thus necessitate variances to meet this standard, although that is not clear and will depend on the configuration of any resubdivision sought by the Hospital after issuance of this Opinion. The Board observes in looking at the lot lines called out on Exhibit 175 [Hearing Examiner Report and Recommendation, page 10], the footprint of the proposed addition and garage as shown

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<sup>3</sup> This number assumes that the two hospital-owned houses that are located on the East side of Grant Street at the corner of Lincoln Street, which currently have access on Lincoln Street, can obtain access on Grant Street.

<sup>4</sup> The Board notes here the Hearing Examiner's observation that one of the reasons the Hospital proposed to remove 23 houses was to be able to add the building square footage for the Hospital addition and the parking garage without exceeding the applicable building coverage cap. [See HE Report and Recommendation, pages 142-143.] The Hearing Examiner's Report recounts that the parties discussed the feasibility for the Hospital to gain approval for a higher building coverage by seeking a zoning text amendment or a variance, and that HTCA had offered to support such a request. The Hearing Examiner noted that in another recent hospital special exception modification, Holy Cross Hospital received approval of a variance allowing it to exceed the building coverage limit by some 17 percent. The Hearing Examiner in that case found that the first prong of the variance test under the Zoning Ordinance, often called the "uniqueness" requirement, may be satisfied not only by unusual physical characteristics such as shape or topography, but by "other extraordinary situations or conditions peculiar to a specific parcel of property." Hearing Examiner's Report and Recommendation dated June 22, 2009 in Case No. S-420-H at 51, quoting Code § 59-G-3.1. The Hearing Examiner in that case concluded that the Holy Cross site satisfied the uniqueness test because of extraordinary situations comprised of its location, hemmed in between I-495 and Sligo Creek Park, and master plan recommendations that limited any expansion of the hospital to its existing site boundaries and suggested specific height limitations on certain parts of the site. The Board of Appeals adopted the Hearing Examiner's report and granted the modification. See BOA Opinion effective September 18, 2009. The Hearing Examiner observed that while each case is decided on its own merits, this recent Holy Cross decision suggests that a variance from the building coverage limit might be granted to Suburban based on the physical and master plan constraints it faces. The Board notes in this regard that the need for Suburban to buffer its use with houses instead of landscaped gardens so as to be compatible with the surrounding neighborhood, thereby effectively denying the Hospital use of nearly a third of the land it owns for the purpose of meeting the applicable development standards, is indeed an extraordinary situation or condition unique to the Suburban property.

<sup>5</sup> The Hospital's acquisition of Lot 19 on Grant Street will change the third measurement.

on Exhibit 263(b) [Hearing Examiner Report and Recommendation, page 30],<sup>6</sup> and the distance between the proposed addition and lot 19, as shown on Exhibit 263(b) (55.89 feet), that it appears that the proposed addition and garage will be set back from the rear lot lines of the adjoining Hospital-owned properties at least as far as is required by Section 59-G-2.31(3), and that setback variances may not be necessary. The Board finds that the addition as proposed will be 76.5 feet, and 76.10 feet from its lot line along Southwick Street contiguous to residential properties, thus meeting the required setbacks. Finally, as noted in the paragraph below, the Board finds that the garage will be set back more than 50 feet.

The Board adopts the findings of the Hearing Examiner, and of Technical Staff of MNCPPC, that a large, high-bulk physical plant with some visual and noise impacts on its surroundings, and related parking, commensurate with size, are inherent adverse effects of hospital special exceptions. The Board finds that because the proposed addition and garage meet or exceed required development standards and because their size and bulk are inherent characteristics of the hospital, they are compatible and will not adversely affect the present character or future development of the neighborhood. The Board disagrees with and does not adopt the Hearing Examiner's reference to the setback standard in the Planned Development Zone or her conclusion that a 100-foot setback is more appropriate in this instance. The setback for hospitals in Section 59-G-2.31(3) was legislatively established by the County Council, and the Board finds that that is the setback that should be applied.

#### Size and proximity of garage

The proposed Alternate Garage approved by the Board will be no more than 36 feet high. It will be 64.28 feet from its shared lot line with Lot 30 on Southwick Street and 55.8' and 58.05' away from its lot line along Southwick Street. It is set back 50.1' from Old Georgetown Road. [Exhibit 236(b)]. Thus the Board finds that the garage meets the setbacks in Section 59-G-2.31(3). In addition to its finding that a large physical plant is inherent to hospitals, the Board adopts the findings of the Hearing Examiner and of Technical Staff that a significant amount of traffic and parking commensurate with the size of the staff and number of patients of the hospital are inherent adverse characteristics of a hospital use. The Board notes that the standards for parking garages in Section 59-E of the Zoning Ordinance have less stringent setbacks than the requirement in Section 59-G-2.31 for hospitals, and that the proposed Alternate Garage complies with these more stringent standards.

#### Employee entrance on Southwick Street

The Board disagrees with the Hearing Examiner that traffic impacts associated with the proposed employee entrance on Southwick Street would rise to the level of non-inherent adverse effects, provided that employee use of the entrance is restricted

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<sup>6</sup> Although Exhibit 263(b) depicts the 45.9 foot garage, the record indicates that the 36 foot garage would be constructed in the same location as this garage, but would have more below ground parking. See HE Report and Recommendation, page 43.

between 8 pm and 6 am, as has been provided for by the Board in its conditions. As noted below, the Board adopts the Hearing Examiner's finding that the anticipated increases in traffic will not have an incompatible adverse effect on the general neighborhood. [Hearing Examiner Report and Recommendation, page 134]. The Board finds that the Hospital currently has a driveway on Southwick Street and that turns in and out of the proposed Southwick Street driveway would be directed towards Old Georgetown Road. See Hearing Examiner Report and Recommendation, page 84, pages 85-86: "The Southwick Street entrance is proposed for employee use only, limited to 6:00 a.m. to 8:00 p.m., to provide access to the new parking garage without driving through the main entrance area. Drivers would be limited by signage and the driveway design to left turns in and right turns out, to discourage the use of neighborhood streets to reach this access point. Mr. Wells testified that the curb radii would make it very difficult if not impossible to turn left on exiting or to turn right to enter. See Transcript 12-18-08 at 128." Thus, any adverse effects from relocating the driveway entrance will primarily affect the first three properties on the north side of Southwick Street beginning at Old Georgetown Road, all three of which are owned by Suburban.

The Board concurs in the Hearing Examiner's acknowledgement of the hospital's "urgent need to separate its many streams of traffic" [Hearing Examiner Report, page 135], and finds that the Southwick entrance is necessary to facilitate that. The Board notes that the hospital currently has six entrances, and is reducing that number to four with the modification. In light of the foregoing, the Board finds that the hospital entrance on Southwick is necessary and, as conditioned to limit its hours of operation and to orient Hospital traffic away from the neighborhood and towards Old Georgetown Road, will not have an adverse impact on the neighborhood.

### Closing of Lincoln Street

The Board adopts the Hearing Examiner's finding "that ...the Hospital has met its burden of demonstrating that neither the closing of the first block of Lincoln Street nor the anticipated increases in traffic from the proposed expansion would have incompatible adverse effects on the general neighborhood," and agrees with her statement that "The people making 500 trips a day on that block [of Lincoln Street] by car would be very slightly inconvenienced by having to use a different street"; but that "...the harm from losing this block of Lincoln Street does not rise above the level of an inconvenience, which is not an adverse effect sufficient to warrant denying a special exception modification." [Hearing Examiner Report and Recommendation, page 134].

The preponderance of the evidence indicates that the specific standards for this special exception use will be satisfied in this case, as outlined below.

### Specific Standards

#### **Sec. 59-G-2.31. Hospitals**

*A hospital or sanitarium building may be allowed, upon a finding by the board that such use will not constitute a nuisance because of traffic, noise or number of patients or persons being cared for; that such use will not affect adversely the present character or future development of the surrounding residential community; and if the lot, parcel or tract of land on which the buildings to be used by such institution are located conforms to the following minimum requirements; except, that in the C-2 and C-O zones, the minimum area and frontage requirements shall not apply:*

The Board adopts the Hearing Examiner's finding that the proposed modification and expansion would not constitute a nuisance due to traffic, noise or number of patients or persons being care for.

As discussed above, the Board concurs with the Hearing Examiner insofar as she found that demolition of the single family homes, other than those that front only on Lincoln Street between Old Georgetown Road and Grant Street and the two located on Lots 7 and 8 on the south side of Southwick Street, would have unacceptable adverse impacts on the character of the surrounding residential community. The Board requires a condition to retain all but two of the houses on the perimeter of the two block special exception site as part of the modification.

In addition, despite its finding under Section 59-G-1.2.1(a)(5), below, that the Hospital's expansion will not be detrimental to the economic value or development of surrounding properties, in order to stem fears that the Hospital will continue to add to the properties it owns and thus to eliminate any impact that such fears might have on the future development of surrounding properties, the Board has conditioned the grant of this modification on the establishment of a two-block expansion limit, constrained by Old Georgetown Road, McKinley Street, Grant Street and Southwick Street, unless modified by an approved and adopted sector or master plan. In support of this condition, the Board notes the conclusion of the Hearing Examiner that:

"Testimony from Mr. Doggett and a number of local residents supports the conclusion that the uncertainty attached to Suburban's current and potential future expansion plans has adverse effects for all the houses close to the Hospital. ... While there was building improvement activity in the neighborhood even with all the discussion of expansion, a number of homeowners testified or wrote that they sold their house close to the Hospital, or they want to sell it, or they held off putting on an addition because they are afraid of how the expansion proposed now or some future expansion will affect them. For these reasons, the Hearing Examiner shares Technical Staff's view that if an expansion plan is approved, it should include a condition specifying that the two-block area identified in this application as the Hospital campus will be the permanent expansion limit. That certainly would do a great deal to mitigate and balance the inevitable adverse consequences of a hospital expansion." [Hearing Examiner Report and Recommendation, pages 131-132].

The Board finds that with these conditions, the proposed modification will not adversely affect the present character of the surrounding residential community, and that the specter of any effect on future development (real or imagined) is minimized and mitigated so as to not adversely affect such development.

**(1) *Minimum area. Total area, 5 acres.***

The hospital occupies approximately ten acres on the west side of Old Georgetown Road, approximately 7.1 acres (known as Lot 15, Block 15, Huntington Terrace Subdivision) south of Lincoln Street and approximately 2.9 acres (known as Lot 32, Block 8, Huntington Terrace Subdivision) north of Lincoln Street (Hearing Examiner Report and Recommendation, p. 4). The Hospital owns approximately five additional acres contiguous to the special exception site, which contain single family homes currently used as rental properties. The original modification proposal included plans to demolish these houses and assemble the lots into a single lot. The Board's approval of the modification is conditioned upon retention of a majority of these houses so the Hospital's plans to re-subdivide the property, and the actual size of the resultant special exception area, may change. Nevertheless, the area currently occupied by the Hospital, and to be occupied by the Hospital with this modification, more than satisfies the 5-acre minimum.

**(2) *Minimum frontage. Frontage, 200 feet.***

The Board adopts the Hearing Examiner's conclusion that the subject site has 900 feet of frontage on Old Georgetown Road.

**(3) *Setback. No portion of a building shall be nearer to the lot line than a distance equal to the height of that portion of the building, where the adjoining or nearest adjacent land is zoned single-family detached residential or is used solely for single-family detached residences, and in all other cases not less than 50 feet from a lot line.***

The Board adopts the Hearing Examiner's conclusion that the proposed Alternate Garage satisfies these standards. A recitation of the setbacks for the garage is included under the heading "Size and proximity of garage," above.

As a condition of its approval of the modification, the Board requires the hospital to retain thirteen of the single family homes adjacent to the hospital property which the hospital had requested to demolish in order to re-subdivide its property and assemble the lots into one larger lot. The Board recognizes that retaining the houses may prevent the creation of this larger lot, raises questions about the configuration of the hospital's property, and may create a need for variances related to setbacks and lot coverage for the proposed addition. The setbacks of the proposed addition are discussed under the heading "Proximity of the addition and garage," above. While it appears from Exhibits 175 and 263(b) that the addition may not require the grant of any variances from the setbacks required by this section, the Board cannot be certain of that until a revised site plan is submitted. Accordingly, the Board's approval of this modification is conditioned on the Hospital's obtaining any variances necessary to satisfy this setback standard and other applicable development standards.

**(4) *Off-street parking. Off-street parking shall be located so as to achieve a maximum of coordination between the proposed development and the***

*surrounding uses and a maximum of safety, convenience and amenity for the residents of neighboring areas. Parking shall be limited to a minimum in the front yard. Subject to prior board approval, a hospital may charge a reasonable fee for the use of off-street parking. Green area shall be located so as to maximize landscaping features, screening for the residents of neighboring areas and to achieve a general effect of openness.*

The Board adopts the Hearing Examiner's conclusion that off-street parking is proposed in locations that would assist in coordination between the proposed hospital expansion and surrounding uses by improving the internal and external circulation pattern, effectively eliminating any need for hospital traffic to park on residential streets, and reducing the amount of hospital traffic driving on local streets in the immediate neighborhood. The Board agrees with the Hearing Examiner's conclusion that site constraints do not allow Suburban to limit front-yard parking, and that in this case, the area between the Hospital and Old Georgetown Road is the best place for parking, because it will least impact the closest residential areas, and will confront large institutional buildings at NIH. The Board has already authorized the Hospital to charge a reasonable fee for off-street parking. The evidence supports a finding that the proposed street trees and landscaping along Old Georgetown Road would enhance this road as a Green Corridor, per the Master Plan. (Hearing Examiner Report and Recommendation, p. 61). The Board agrees with the Hearing Examiner that the proposed green areas would provide some screening for nearby residents, but (as previously noted) also concludes that the screening offered by the landscaping would be inferior to what is currently available from some of the rental houses that Suburban proposes to remove.

- (5) *Commission recommendation. The board or the applicant shall request a recommendation from the commission with respect to a site plan, submitted by the applicant, achieving and conforming to the objectives and requirements of this subsection for off-street parking and green area.*

Suburban will be required to submit a site plan to the Planning Board for approval.

- (6) *Building height limit. Building height limit, 145 feet.*

The Board adopts the Hearing Examiner's conclusion that neither of the proposed structures would approach this height limit.

- (7) *Prerequisite. A resolution by the health services planning board approving the establishment of the hospital shall be filed with the petition for a special exception.*

Not applicable.

**General Standards**

The Board finds that the preponderance of the evidence indicates that the general standards will be satisfied in this case, as outlined below.

***Sec. 59-G-1.2. Conditions for granting a special exception.***

***59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.***

MNCPPC Technical Staff identified the following characteristics as inherent characteristics of a hospital:

- 1) a large, high-bulk physical plant, with some visual and noise impact on its surroundings;
- 2) hospital operations running around the clock, seven days per week;
- 3) a large staff;
- 4) a large number of patients and visitors;
- 5) physician's offices affiliated with the hospital;
- 6) a significant amount of traffic and parking commensurate with the size of the staff and number of patients;
- 7) a certain amount of operational noise from generators, air conditioning systems, emergency vehicles, and helicopters;
- 8) a large amount of bio-medical and other waste disposal;
- 9) a significant amount of external lighting for surface parking and safety reasons;
- 10) an optimally located landing site for emergency helicopters.

The Hearing Examiner adopted this list of inherent characteristics, excepting the physician's offices. The Board adopts the Hearing Examiner's findings with respect to the nine inherent characteristics, but does not adopt the Hearing Examiner's findings with respect to the physician office space. The Board finds that physician's offices are an inherent characteristic of a modern hospital, based on the testimony of Mr. Corapi and Dr. Westerbrand, cited below, and thus agrees with and adopts all ten of the inherent characteristics on the Technical Staff list. This is consistent with the Board's previous decisions in Case No. S-420-E, Petition of Holy Cross Hospital and Case No. CBA-2521, Petition of Montgomery General Hospital. With respect to the physician

office space, the hospital proposes to devote 38,000 gross square feet of the 235,597 square-foot addition to physician office space. The Board finds persuasive the testimony of Mr. Corapi that Suburban Hospital is the only hospital in Montgomery County without on site physician office space and that not having physicians on site "critically impacts emergency and trauma" [Transcript, 11/17/08, p. 116]. The Board also finds persuasive the testimony of Dr. Westerbrand, Director of Trauma Services at Suburban, who spoke both to the benefit of physicians on site [Transcript 12/15/08, p.45] and to the less effective alternative of having physicians located in the Bethesda Central Business District [Transcript 12/15/08, p. 47].

#### **59-G-1.21. General Standards**

*(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

The Board adopts the Hearing Examiner's conclusion that a hospital is a permitted use in the R-60 Zone.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

As noted above, the Board finds that the proposed modification, as conditioned, complies with the standards and requirements set forth in Division 59-G-2.

*(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny a special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board agrees with the conclusion of the Technical Staff for the Planning Board that the proposed modification is consistent with the 1990 approved and adopted Bethesda/Chevy Chase Master Plan, and so finds, for the reasons cited in the Technical Staff report. [Technical Staff Report, pages 7-8]. The Board finds that the Land Use and Zoning Plan of the Master Plan supports large land users, and, in its description of Community Land Use Objectives, specifically excepts community serving uses, of which a hospital is certainly one, from its recommendation against special exceptions along Old Georgetown Road. The Master Plan recognizes that some

existing special exceptions along Old Georgetown Road may need to be modified and recommends that any building addition not be more than 50% of the existing building, and the proposed expansion is not. The Master Plan guidelines for special exceptions support special exceptions that contribute to the service and health objectives of the Plan, which the hospital clearly does. Also, Suburban Hospital proposes to make improvements to the sidewalks and pedestrian cross-walks along Old Georgetown Road which are consistent with recommendations of the Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

The Board adopts the Hearing Examiner's definition of the general neighborhood for the purposes of special exception review [Hearing Examiner Report and Recommendation, pp. 15-17].

The Board finds that the people and activities associated with the hospital modification are transient and related to hospital services, so the hospital modification will not affect population density. The Board further finds that the design, scale and bulk of the proposed hospital addition and alternate garage are well within the parameters of the MNCPPC Technical Staff's finding, adopted by the Board, that a large, high-bulk physical plant is an inherent characteristic of a hospital. The existing hospital has a maximum height of 87.1 feet, the proposed addition has a maximum building height of 62.7 feet and the alternate garage approved by the Board has a maximum height of 36 feet - all well below the maximum permitted height of 145 feet. The addition is designed so that the rear portion of the building which is closest to residential homes is lower than 62.7 feet high. The Board finds that, as noted in Technical Staff's report to the Planning Board, "[t]he scale of the proposed addition is designed so that the rear portion of the building is lower in height in areas closest to the residential homes and higher towards Old Georgetown Road. Additionally, the hospital related activities, with the exception of the loading area which would remain unchanged, are oriented away from the residential area, towards other health-related uses." [Technical Staff Report, p. 15].

The Board finds that the character of activity associated with the hospital will not significantly change as a result of the modification. The addition of physician office space does somewhat change activity on the special exception site, but as explained above, the Board finds that this is an inherent characteristic of the hospital.

The Board further finds that retention of 13 hospital-owned houses which are contiguous to hospital property along McKinley, Grant and Southwick Streets and their existing, mature landscaping and trees harmonizes the modification with the general character of the neighborhood by providing screening that is residential in scale and character between the hospital and confronting properties.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

As is discussed above, the Board finds that the impact on the surrounding neighborhood of the proposed hospital addition, including closure of the first block of Lincoln Street and the Alternate Garage, is softened by the buffering afforded by retention of 13 of Suburban's residential properties and their mature vegetation. In addition to the buffering effect of these homes, the Board finds that retaining these homes would preserve the character of these peripheral streets by maintaining the connectivity that results from having similar houses on both sides of these streets, and would preserve the opportunity for human interaction, as testified to by Mr. Doggett. [Hearing Examiner Report and Recommendation, page 119]. See the foregoing discussion under the heading "Removal of the houses," above. The Board notes its previous findings that a large, high-bulk physical plant and commensurate parking are inherent adverse effects of a hospital special exception. Taken as a whole, the Board thus finds that Suburban's expansion, as conditioned herein on the retention of these Hospital-owned homes, will not be detrimental to the use or peaceful enjoyment of surrounding properties. The Board further finds that the report on Real Estate Market Conditions [Exhibit No. 28] submitted for Suburban by its expert witness Ryland Mitchell of Lipman Frizzell & Mitchell, LLC is substantial evidence that the hospital's presence and modification plans are not detrimental to the economic value or development of surrounding properties. The Board notes that although Huntington Terrace Citizens' Association offered testimony critical of the methodology of Suburban's Real Estate Report, HTCA offered no countervailing factual or opinion testimony that refutes the conclusions of the report.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board adopts the Hearing Examiner's finding that the proposed modification and expansion will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, or glare at the subject site beyond what can be expected for a hospital. Noise, lights and possibly dust related to emergency ambulances and helicopters are inherent parts of the use that must be expected. The Hospital has pledged that if the modification is approved, it will instruct ambulance services to turn off their sirens when they turn onto McKinley Street, to reduce noise impacts on residences. The Hearing Examiner found that the proposed Southwick Street employee entrance would cause objectionable physical activity, but, as discussed above under the heading "Employee entrance on Southwick," the Board disagrees and finds that the Southwick Street entrance will be compatible with the neighborhood with the condition that it not be used between 8 p.m. and 6 a.m. except in emergencies.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

The Board adopts the Hearing Examiner's finding that the proposed modification will not increase the number of special exceptions in the area. The Board further finds that the impacts of the modification fall within the parameters of the inherent characteristics of a hospital and do not alter the intensity or scope of the use to the extent of altering the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board agrees with the reasoning and conclusions of MNCPPC Technical Staff and the Planning Board that the proposed hospital modification will enhance the hospital's ability to provide healthcare services and that the planned pedestrian and traffic circulation system would improve the safety and security of residents, visitors and workers at the site by reducing the number of access points into and from the hospital, virtually eliminating vehicle/pedestrian conflicts, and so finds. The Board further finds that these are positive effects on the health, safety, security and general welfare of residents and visitors to the site. The Board notes that this is consistent with the conclusion of the Hearing Examiner, which the Board also adopts, who stated that "As a threshold matter, the proposed modification must be reviewed in comparison with existing conditions, and it is beyond question that the proposed access and circulation plan would be a vast improvement, in terms of both efficiency and safety, over the existing mishmash of vehicles and pedestrians that converge on the combined emergency room entrance/main entrance. Moreover, Mr. Wells offered his expert opinion that the proposed access and circulation plan would be safe and efficient ... Mr. Wells stated that the proposed plan would separate and distribute traffic and reduce, if not eliminate, conflicts at the main driveway." [Hearing Examiner Report and Recommendation, pages 88-89]. Finally, the Board reiterates its finding that the proposed modification, as conditioned below, including the retention of 13 peripheral residential properties owned by Suburban, is compatible with the surrounding neighborhood, and thus the Board finds that it will not adversely affect the general welfare of residents.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

The Board adopts the Hearing Examiner's finding that the subject property is and will continue to be served by adequate public facilities. Having carefully examined all of the traffic-related evidence as summarized in Part III.D of her report, the Hearing Examiner concludes and the Board concurs that the proposed modification and expansion would not have a material adverse effect on the local road network. It would have beneficial impacts in the form of roadway improvements on Old Georgetown Road and McKinley Street and dramatic improvements to on-site circulation and parking, which would reduce spillover traffic and parking on local streets. It would result in traffic increases on some local streets and decreases on others, given that some drivers will take residential streets and some will stick to larger streets.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

The Hospital must apply for subdivision approval, and the adequacy of public facilities will be definitively assessed at that time.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

The Board agrees with the Hearing Examiner that the preponderance of the evidence supports a conclusion that the proposed modification would increase the safety of vehicular and pedestrian traffic on and around the subject site by greatly improving circulation patterns and ease of access and reducing incentives and opportunity to use local streets for hospital trips, and so finds.

- (b) *Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.*

No finding necessary.

- (c) *The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.*

The Board finds that the record substantiates that Suburban Hospital has met its burden of proof and persuasion with respect to the modifications proposed to its physical plant (including the physician office space) and parking facility, and although the Board is requiring that the Hospital substitute the buffering provided by retention of the existing peripheral homes for the landscaped buffering proposed by the Hospital, which will necessarily occasion changes to the site plan and may require the grant of variances, the Board finds that these changes are secondary to the primary objectives of this modification, namely the expansion of the hospital facility itself and related parking, which the Board herein approves. The Board expects that these secondary,

Board-imposed changes, which center on the nature rather than the location of the screening made necessary by the uniqueness of this site due to its relationship to and the character of the surrounding neighborhood, will be addressed to the Board's satisfaction in the context of a revised site plan and any variance proceedings, on which this grant is conditioned.

### **59-G-1.23 General Development Standards**

*Pursuant to Section 59-G-1.23, each special exception must comply with the development standards of the applicable zone where the special exception is located, applicable parking requirements under Article 59-E, forest conservation requirements under Chapter 22A, and sign regulations under Article 59-F; must incorporate glare and spill light control devices to minimize glare and light trespass; and may not have lighting levels along the side and rear lot lines exceeding 0.1 foot candles. Furthermore, under Section 59-G-1.23(g), any structure constructed under a special exception in a residential zone "must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing." Under Section 59-G-1.26, a structure constructed pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted, and must have suitable landscaping, streetscaping, pedestrian circulation and screening.*

The Board adopts the Hearing Examiner's finding that the modification as originally proposed by the Hospital would satisfy all development standards applicable under the general development standards and under the specific standards for the hospital use. The Board further finds that the modification as conditioned by the Board (i.e. to require the retention of the peripheral houses) may require the Hospital to seek and obtain variances in order to satisfy these development standards, particularly the lot coverage limitation, and thus the Board has conditioned the grant of this modification on the submission and approval of a revised site plan, and on the Hospital's procuring any necessary variances. The Board finds that the proposed modification would more than satisfy the parking requirements under Chapter 59-E, as indicated by the Table 2 in the Technical Staff report (indicating that 953 parking spaces will be required) and the testimony of Mr. Wells that the shorter, alternate garage on its own (exclusive of any surface parking) would provide 1,176 spaces. [Technical Staff Report, p. 10, Hearing Examiner Report and Recommendation, p. 97]. As noted in Part III.H of the Hearing Examiner's Report and Recommendation, the proposed modification would satisfy forest conservation and stormwater management requirements, and the Board so finds. The Hospital will be obligated to obtain a sign variance if any of its proposed signage exceeds what the Sign Ordinance permits. The Board further finds that as discussed in Part III.H of the Hearing Examiner's Report and Recommendation, the proposed lighting would satisfy the applicable requirements. Finally, the Board concurs with the Hearing Examiner's conclusion that it is not practical for large institutional buildings to be residential in appearance, and thus the Board finds that it would not be appropriate to impose such a requirement here.

The Board finds that the new structures proposed in this petition will relate well to the surrounding area in terms of size, bulk and location, for the reasons set forth under Section 59-G-1.21(a)(4) and (5), and for the reasons that follow. The size and bulk of the addition and garage are inherent characteristics of this special exception use. The proposed surgical and office addition fronts toward Old Georgetown Road. The addition is designed so that the lowest part of the building is adjacent to the neighboring single family homes, and the highest part of the building is closest to Old Georgetown Road. The rear side of the addition is off-set so that the building mass is broken in two. Retention of the 13 single family homes adjoining the perimeter of Hospital property and owned by the Hospital will further buffer the hospital facility from surrounding residential properties.

As discussed above, the proposed Alternate Garage will be no more than 36 feet high. It will be 64.28 feet from its shared lot line with Lot 30 on Southwick Street and 55.8' and 58.05' away from its lot line along Southwick Street. It is set back 50.1' from Old Georgetown Road. [Exhibit 236(b)]. The Board reiterates its finding that the standards for parking garages in Section 59-E of the Zoning Ordinance are less stringent than the requirement in Section 59-G-2.31, for hospitals, and that the proposed Alternate Garage complies with these more stringent standards.

## MOTIONS

Vice-Chair David K. Perdue, seconded by Catherine G. Titus, Chair, moved to approve the modification as proposed, with Suburban Hospital's proposed conditions of approval found in Exhibit 446(a). Board members Perdue and Titus disagreed with the Hearing Examiner's finding that removal of the 23 houses, other than those located on Lincoln Street, rendered the proposal fatally incompatible. They found that whenever a special exception use is located in a residential zone it will either confront or adjoin residential uses and to some extent, displace residential uses in residential zones. Board members Perdue and Titus found that the Maryland Courts in *Schultz v. Pritts* (291 Md. 1; 432 A.2d 1319 (1981)) and *People's Counsel for Baltimore County v. Loyola College* (406 Md. 54; 956 A.2d 166 (2008)) have said that effects that inevitably arise in connection with special exceptions are contemplated by the legislature and presumed compatible with surrounding uses. If the Board were to find that special exceptions which adjoin residential property can be approved, but those which confront residential property cannot, it would limit the number of special exceptions that can be approved. They further found that the landscaping and buffering proposed by Suburban Hospital, maintaining a distance of 200 feet between any hospital building and any remaining residence, constitutes significant buffering. Board members Carolyn J. Shawaker, Walter S. Booth and Stanley B. Boyd opposed this motion.

Vice-Chair David K. Perdue, seconded by Stanley B. Boyd, moved approval of the modification proposed by Suburban Hospital, with conditions which are enumerated below, and with the additional condition that all of the single family houses owned by Suburban except those fronting on Lincoln Street between Old Georgetown Road and Grant Street (if the abandonment of Lincoln Street between Old Georgetown Road and Grant Street is approved by the County Council), and except Lots 7 and 8 on Southwick

Street adjacent to the proposed Alternate Garage, be retained. Board members Shawaker, Booth and Board Chair Titus voted in agreement.

## **CONDITIONS**

1. All of the single family houses owned by Suburban Hospital, except those on the eight lots abutting only Lincoln Street between Old Georgetown Road and Grant Street (if the abandonment of Lincoln Street between Old Georgetown Road and Grant Street is approved by the County Council), and except Lots 7 and 8 on Southwick Street adjacent to the proposed Alternate Garage must be retained.
2. Suburban Hospital must apply for and obtain any variances required to meet the development standards.<sup>7</sup>
3. The two-block area bordered by McKinley Street, Grant Street, Southwick Street and Old Georgetown Road represents the Hospital's maximum expansion limit, unless modified in an approved and adopted master or sector plan.
4. The on-site physician office space will not include space for Family Practice Physicians, Primary Care General Medical Physicians and Primary Care Pediatricians.
5. Only physicians who have privileges to practice at Suburban Hospital may occupy the physician office space approved in this modification.
6. The Applicant shall incorporate the noise mitigation measures recommended by Scott Harvey listed in the conclusion paragraph of Exhibit 216 (letter dated January 28, 2009 from Scott Harvey to Gene Corapi) into the design of the Alternate Garage.
7. The interim parking lot will be removed within 6 months of issuance of the occupancy permit for the Alternate Garage, but no later than 36 months after commencement of construction of the garage structure. Commencement of construction does not include site preparation work.
8. All landscaping must be maintained by the Hospital in accordance with established standards in the horticulture industry for landscaping of the type provided. If requested by Technical Staff at the time of site plan review, the substitution of landscape plantings will be allowed provided the replacement plantings possess equivalent screening characteristics.
9. In addition to the measures outlined in the Hospital's Traffic Mitigation Measures Report [Exhibit 144(b)], Suburban may elect to charge employees a reasonable fee for parking.
10. The applicant shall install emergency pull stations or "panic boxes" and add supplemental security cameras at locations determined in conjunction with local police along the trail systems.

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<sup>7</sup> This condition was adopted on a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Catherine G. Titus, Chair, Walter S. Booth and Stanley B. Boyd in agreement.

11. The on-site gardens and trail system, to the extent that such system can be constructed in light of the requirement for retaining the peripheral houses, shall be open to the public subject to reasonable rules and policies of the applicant for their use.

12. A system shall be implemented by the applicant to allow patients and family members access to any garden areas.

13. The Southwick Street hospital staff entrance and the northern staff entrance to the garage shall be closed between the hours of 8 p.m. and 6 a.m. daily except in the event of an emergency or where life safety issues necessitate its use.

14. The Amended Alternate Garage shall be no more than 36 feet in height. The applicant may extend the parking area at the lowest level by excavating the full floor area. The resulting garage shall not exceed 1,176 spaces.

15. Applicant shall construct a 6-foot wooden fence along its shared property line with the east side of Lot 30.

16. Applicant shall place a Public Improvement Easement ("PIE") along its property line with Old Georgetown Road at a constant 60 feet from the centerline of Old Georgetown Road. As the right-of-way for Old Georgetown Road varies along the Hospital's property line, from approximately 100 to 103 feet (or approximately 50 to 53 feet from the centerline), the PIE varies from 7 to 10 feet in width. The center refuge island of Old Georgetown Road will also be widened to 6 feet, and a crosswalk repainted to provide a perpendicular crossing. Lanes will be repainted to clearly demarcate the through and right turn lanes provided, as shown on Exhibit 73(ppp), subject to final engineering.

17. As shown on Exhibit 73(rrr), applicant shall dedicate an additional 10 feet of right-of-way along the northern side of McKinley Street, between Old Georgetown Road and Grant Street. Between Old Georgetown Road and the hospital entrance, the applicant shall provide widened pavement and an additional right turn lane for traffic entering the hospital. Between the hospital entrance and Grant Street, pavement shall be widened to 26 feet and an island will be installed to direct exiting traffic towards Old Georgetown Road.

18. Applicant shall improve West Cedar Lane as shown on Exhibit 73(tt), subject to final engineering. However, in the event that improvements to this intersection are constructed by the State Highway Administration (SHA) or others for BRAC, the applicant may elect to participate in the future funding of the improvements to this intersection based on a pro-rata share of its traffic impact, such election to be made at the time of Preliminary Plan approval.

19. The applicant shall not directly, or through an agent, purchase any lot in the Huntington Terrace Subdivision beyond the boundaries of the Hospital's maximum expansion limits as established in Condition (3), unless this boundary is modified in an approved or adopted master plan or sector plan. In the future, the Hospital shall retain

any single family dwelling it purchases within the boundaries of the hospital's maximum expansion limits<sup>8</sup>

20. The Community Liaison Committee (CLC) shall continue to meet a minimum of at least four times a year. Invitations shall be extended to homeowners and residents on Lincoln Street, Grant Street, McKinley Street, and Southwick Street adjacent to or opposite the Hospital and a representative of the Bradmoor, Huntington Parkway, Sonoma and Edgewood/Glenwood communities. If the Office of the People's Counsel resumes activity, the People's Counsel will serve as an *ex officio* member. The CLC is intended to provide a means and mechanism for communication and interaction between the Hospital and its neighbors. A contact person from Suburban Hospital and a contact person from Huntington Terrace Citizens' Association shall be designated to set the dates for the meetings. Minutes shall be taken at each CLC meeting, and the CLC shall prepare an annual report for submission to the Board of Appeals along with copies of the CLC minutes.

21. To the extent that the service drive running from McKinley Street around the west side of the existing hospital, as shown on Exhibit 227, is constructed and includes the paved area located at the terminus of the service drive directly west of the Addition and east of Grant Street, there shall be no vehicular parking on the west side of the paved area. [Service drive configuration may change in light of condition 1].

22. To the extent that the service drive referenced in the preceding condition is constructed, the brick wall along that service drive running parallel to Grant Street as shown on Exhibit 227, to the extent constructed, shall be 6 feet in height, as measured from grade, along the entire north/south length of the service drive. [This wall may not be installed in light of condition 1].

23. Trees required to be installed as part of any approved landscaping plan shall be substantially similar in size and height to the size and installation heights of trees shown on Exhibit 224(a).

24. Incoming vehicles shall not be allowed access to the top level of the garage between the hours of 8 p.m. and 6 a.m., except in the event of emergency or where life safety issues necessitate.

25. The construction contract between the applicant and its general contractor for construction of the Modification will include a provision requiring the contractor to comply with Section 31B-6 of the County Code during construction.

26. The applicant shall direct trucks connected with the construction of the Modification to on-site areas to prevent said trucks from standing and idling on McKinley Street, Grant Street, and Southwick Street to await construction duties.

27. The applicant shall designate a contact or contacts to receive and promptly respond to community questions and concerns regarding noise issues. The contact information shall include applicable phone numbers and e-mail addresses and be

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<sup>8</sup> This condition was modified from its original form on a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Catherine G. Titus, Chair, Walter S. Booth and Stanley B. Boyd in agreement.

provided to the community through the CLC and through a direct mailing by the applicant to all persons required to receive notice of these proceedings prior to commencement of construction of the Modification.

28. The CLC shall act as a forum to seek input to assist the applicant in finalizing a new Transportation Management Plan (TMP), incorporating those measures outlined in Exhibit 144(b), with input from the Maryland-National Capital Park and Planning Commission (M-NCPPC) Staff, to be submitted to the Board of Appeals prior to release of building permits for the proposed hospital and/or any other on-site building, including the garage. The applicant, the M-NCPPC, and the Department of Transportation shall each be a signatory to the TMP. During construction of the Modification, the applicant shall also use the CLC as a forum to discuss issues relating to construction activities.

29. The applicant shall post signs prohibiting vehicles from exiting west at the McKinley Street and Southwick Street access points in conformance with Exhibit 46(ww), and shall construct its exits onto McKinley Street and Southwick Street, as shown on Exhibits 225 and 226, respectively, to restrict westbound turns onto these residential streets.

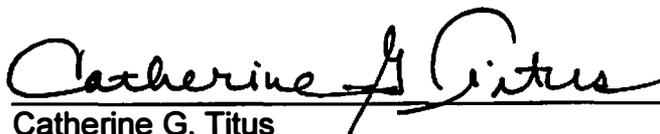
30. The applicant shall be limited to the one point of vehicular access from Southwick Street shown on the site plan.

31. Except as incorporated in this Resolution, previous existing Conditions of Approval for the special exception, as summarized in attachment A to Exhibit 442, are terminated. Conditions listed on attachment B to Exhibit 442 continue in effect except to the extent that they are deleted or modified by conditions set forth in this Opinion.<sup>9</sup>

32. Petitioner shall maintain the lots, trees, fences and shrubs of the houses it owns along McKinley, Grant and Southwick Streets in good condition.

34. Petitioner shall submit to the Board revised site and landscape plans consistent with this Opinion prior applying for building permits.

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
Catherine G. Titus  
Chair, Montgomery County Board of Appeals

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<sup>9</sup> This condition was adopted on a motion by David K. Perdue, Vice-Chair, seconded by Catherine G. Titus, Chair, with Carolyn J. Shawaker, Walter S. Booth and Stanley B. Boyd in agreement.

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 9<sup>th</sup> day of December, 2010.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in black ink and is positioned above a horizontal line.

Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.