

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case Nos. A-6364 thru A-6377

PETITIONS OF SUBURBAN HOSPITAL

(Hearings held March 21, March 28, and April 4, 2012)

OPINION OF THE BOARD

(Effective date of Opinion: July 23, 2012)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.328 and 59-E-2.83(b). The petitioner, Suburban Hospital (the "Hospital"), proposes: the construction of a hospital addition; a garage; and a drive aisle. The requested variances are listed below.

The petitioner was represented by Barbara Sears, Esquire, and Erin Girard, Esquire. The petitioner's witnesses were: Frank Bossong, civil engineer; Jacqueline Schultz, executive vice president/chief operating officer; Adrian Hagerty, health care architect; and Douglas Wrenn, land use consultant.

Huntington Terrace Citizens Association appeared in opposition to the variance requests and was represented by Norman Knopf, Esquire. The opposition witnesses were: Ann Dorough, who resides at 8604 Grant Street; Bob Deans, who resides at 5607 Lincoln Street; Jeff Barron, who resides at 5513 McKinley Street; Nancy Choy, who resides at 5520 Southwick Street; Howard Sokolove, who resides at 5600 Lincoln Street; and Amy Royden-Bloom, who resides at 5514 Southwick Street.

Please Note: Case Nos. A-6364, A-6365, A-6366, A-6367, A-6368, A-6369, A-6370, A-6371, A-6372, A-6373, A-6374, A-6375, A-6376, and A-6377 were heard together because much of the testimony and other evidence applied to several of the individual variance cases. All of the requested variances were necessitated by conditions included by the Board in its December 9, 2010, grant of a major modification to Suburban Hospital to allow expansion of the Hospital.

The subject properties are: (1) Lots 1-A, 2-3, 8-A and 15, Block 15, and Lots 7, Part of Lot 8, 13-17 and 32, Block 8, and a 32,126 square foot portion of the abandoned Lincoln Street right-of-way between Grant Street and Old Georgetown Road, Huntington Terrace Subdivision, located at 8600 Old Georgetown Road, Bethesda, Maryland, 20814, in the R-60 Zone (Tax Account No. 515226); (2) the subject property is Lot 13, Block 15, Huntington Terrace Subdivision, located at 5421 McKinley Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.515523); (3) the subject property is Lot 12, Block 15, Huntington Terrace Subdivision, located at 5423 McKinley Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.515181); (4) the

subject property is Lot 11, Block 15, Huntington Terrace Subdivision, located at 5425 McKinley Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.515250); (5) the subject property is Lot 10, Block 15, Huntington Terrace Subdivision, located at 8603 Grant Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.514040); (6) the subject property is Lot 9A, Block 15, Huntington Terrace Subdivision, located at 8609 Grant Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.515170); (7) the subject property is Lot 7A, Block 15, Huntington Terrace Subdivision, located at 8611 Grant Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.515168); (8) the subject property is Lot 6A, Block 15, Huntington Terrace Subdivision, located at 8613 Grant Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.515157); (9) the subject property is Lot 5, Block 15, Huntington Terrace Subdivision, located at 8615 Grant Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.515204); (10) the subject property is Lot 4, Block 15, Huntington Terrace Subdivision, located at 8617 Grant Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.515215); (11) the subject property is Lot 12, Block 8, Huntington Terrace Subdivision, located at 5431 Lincoln Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.514222); (12) the subject property is Lot 20, Block 8, Huntington Terrace Subdivision, located at 8707 Grant Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.514882); (13) the subject property is Lot 21, Block 8, Huntington Terrace Subdivision, located at 8709 Grant Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.513125); (14) the subject property is Lot 27, Block 8, Huntington Terrace Subdivision, located at 5516 Southwick Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No.513934).

Decision of the Board: Requested variances **granted with conditions.**

As a preliminary matter, Chair Titus addressed the renewed request by the Huntington Terrace Citizens' Association (HTCA) that she recuse herself from the proceeding. Ms. Titus declined to do so, citing the reasons given in her November 5, 2008 and June 30, 2010 replies to earlier requests by HTCA for her recusal, together with the June 30, 2011 ruling by the Circuit Court for Montgomery County on the appeal from the special exception modification, which upheld her decision not to recuse herself.

EVIDENCE PRESENTED TO THE BOARD

Testimony presented March 21, 2012

1. The requested variances are a result of the Board's requiring the retention of thirteen (13) single-family homes on the special exception hospital site, as that site was modified by the Board in its December 9, 2010, Opinion. The Hospital seeks sixty-one (61) variances, for the hospital itself and the parking garage, a drive aisle and thirteen existing homes. See Exhibit Nos. 4(a) [DPS stamped site plan], 4(b) [variance site plan], 7 [required variances plan], 9 [aerial photo/existing conditions].

Case No. A-6364, for Lots 1-A, 2-3, 8-A and 15, Block 15, and Lots 7, Part of Lot 8, 13-17 and 32, Block 8, requires a variance for the proposed construction of the hospital addition and garage as they

exceed the maximum lot coverage by 6.1%, and a variance of twenty [20] feet from the drive aisle.

Case No. A-6365, for Lot 13, Block 15, requires variances for the existing house of 34.30 feet from the front lot line, 35.60 feet from the side lot line, 43.00 feet from the side lot line, and a variance for the drive aisle of twenty [20] feet from the rear lot line.

Case No. A-6366, for Lot 12, Block 15, requires variances for the existing house of 29.80 feet from the front lot line, 43.20 feet from the side lot line, 35.60 feet from the side lot line, and 11.90 feet from the rear lot line, and a variance for the drive aisle of twenty [20] feet from the rear lot line.

Case No. A-6367, for Lot 11, Block 15, requires variances for the existing house of 29.70 feet from the front lot line, 42.70 from the side lot line, and 30.40 feet from the side lot line.

Case No. A-6368, for Lot 10, Block 15, requires variances for the existing house of 18.40 feet from the front lot line, 41.00 feet from the side lot line, 43.10 feet from the side lot line, and 25.00 feet from the rear lot line, and a variance for the drive aisle of twenty [20] feet from the rear lot line.

Case No. A-6369, for Lot 9A, Block 15, requires variances for the existing house of 18.70 feet from the front lot line, 41.60 feet from the side lot line, 34.50 feet from the side lot line, and 1.70 feet from the rear lot line, and a variance from the drive aisle of twenty [20] feet.

Case No. A-6370, for Lot 7A, Block 15, requires variances for the existing house of 23.80 feet from the front lot line, 36.10 feet from the side lot line, 42.30 feet from the side lot line, and 1.70 feet from the rear lot line, and a variance from the drive aisle of twenty [20] feet.

Case No. A-6371, for Lot 6A, Block 15, requires variances for the existing house of 24.50 feet from the front lot line, 7.10 feet from the side lot line, 43.30 feet from the side lot line, and 0.40 feet from the rear lot line, and a variance for the drive aisle of twenty [20] feet.

Case No. A-6372, for Lot 5, Block 15, requires variances for the existing house of 24.60 feet from the front lot line, 38.10 feet from the side lot line, 42.60 feet from the side lot line, and 31.40 feet from the rear lot line, and a variance for the drive aisle of twenty [20] feet.

Case No. A-6373, for Lot 4, Block 15, requires variances for the existing house of 24.80 feet from the front lot line, 29.70 feet from the side lot

line, 21.40 feet from the side lot line, and 34.80 feet from the rear lot line.

Case No. A-6374, for Lot 12, Block 8, requires variances for the existing house of 22.70 feet from the front lot line, 27.70 feet from the side lot line, 0.50 feet from the side lot line and 34.40 feet from the rear lot line; the existing accessory structure requires variances of 47.80 feet from the side lot line and 42.20 feet from the rear lot line.

Case No. A-6375, for Lot 20, Block 8, requires variances for the existing house of 25.00 feet from the front lot line, 43.20 feet from the side lot line, and forty-two (42) feet from the side lot line.

Case No. A-6376, for Lot 21, Block 8, requires variances for the existing house of 22.80 feet from the front lot line, 44.40 feet from the side lot line, 37.30 feet from the side lot line, and 15.90 feet from the side lot line; the existing accessory structure requires a variance of 46.60 feet from the side lot line.

Case No. A-6377, for Lot 27, Block 8, requires variances for the existing house of 18.40 feet from the front lot line, 39.00 feet from the side lot line, and 42.30 feet from the side lot line; the existing accessory structures requires variances of 45.40 feet from the side lot line and 9.70 feet from the side lot line.

2. Mr. Frank Bossong was accepted as an expert in civil engineering, and testified on behalf of the Hospital. Mr. Bossong testified that he has been involved in the hospital's expansion and modification project for six years, and that as originally proposed, the special exception modification would have erased the internal lot lines of the special exception property, from which many of the requested variances are needed. He testified that the special exception modification as granted by the Board, however, with its retention of 13 peripheral houses, resulted in a new hospital site plan which had internal lot lines. Mr. Bossong testified that as originally proposed, the area covered by the modified special exception would have been 15.2 acres, including the Lincoln Street abandonment and the proposed McKinley Street dedication; if the McKinley Street dedication were excluded, the total area would have been 15 acres. As granted, Mr. Bossong testified that the retention of the peripheral homes reduces the usable net area by 2.1 acres, resulting in a total area of 12.9 acres for the actual hospital and parking garage. See Exhibit 27.

Mr. Bossong testified that Lincoln Street, which bisects the Suburban Hospital campus, has been abandoned and that the special exception modification permitted the Hospital to have its main entrance on Old

Georgetown Road. This entrance will also serve as the entrance for the parking garage and for some surface parking. Mr. Bossong testified that the entrance for emergency vehicles will be off of McKinley Street, and that the access off of Southwick Street will be gated and will be used by staff only. The special exception restricts use of the Southwick Street entrance between 8 p.m. and 6 a.m. See Exhibit Nos. 4(a) [DPS stamped site plan], 4(b) [variance site plan], 4(c) [illustrative site plan] and 28 [Suburban Hospital campus/required variances], 27 [special exception property with internal lot lines], and 28 [Suburban Hospital campus/required variances].

Mr. Bossong testified that thirteen houses were required to be retained as a result of the special exception modification and that all thirteen houses require variances. He explained that condition 1 of the modification grant instructs the Hospital to “retain” the houses, and condition 32 instructs the hospital to “maintain” the lots. He stated that DPS considered these existing houses to be part of the “hospital” use based on the special exception boundary, which in turn subjected them to the 50 foot setbacks for hospital buildings. Mr. Bossong testified that 61 variances resulted from the special exception modification, and that the variances fell into three general categories:

1. relief from the 50-foot setback for “hospital” buildings (i.e. for the existing houses (and accessory structures) that the Hospital was required to retain);
2. relief from the 20’ parking/loading setback (from the retained internal lot lines, necessary to construct the drive aisle); and
3. relief from the 35% lot coverage limitation (due to the reduced size of the lot on which the actual hospital and garage are to be located, which resulted from the Board-imposed requirement that the peripheral homes be retained).

Mr. Bossong testified that the proposed construction of the hospital addition and the parking garage does not require any setback variances, but does require variances from the lot coverage limitation and for the drive aisle. See Exhibit Nos. 7 [required variances] 27 [special exception property with internal lot lines], and 28 [Suburban Hospital campus/required variances] He testified that if the Hospital had not been required to retain the peripheral homes, neither the setback variances nor the lot coverage variance would have been needed.

Mr. Bossong testified that the special exception site has some peculiar situations that are unique to the site. He testified that the subject property is surrounded on three sides by smaller residential lots; that the hospital needs to retain thirteen residential houses as a part of the

special exception site to be used as a buffer between the actual hospital facility and the neighborhood, and that the special exception modification requires that the lots along the perimeter be maintained, which limits the ability of the Hospital to expand on its own property. He testified that the retention of the thirteen homes on the special exception site reduces the useable special exception area for lot coverage purposes by 2.1 acres. Mr. Bossong testified that those homes were generally built between 1935 and 1950, to a lesser development standard than applies in the R-60 zone today. He testified that the special exception site is limited to the boundaries of Grant Avenue, McKinley Street, Southwick Street, and Old Georgetown Road and that the Hospital is prohibited from purchasing lots outside of those boundaries. He noted that this constrains expansion in a unique manner. Mr. Bossong testified that if the variances are not granted the Hospital would be unable to undertake the expansion previously approved by the Board, which is necessary to meet the healthcare needs of the community and to cure existing hospital deficiencies.

Mr. Bossong testified that with the special exception modification one of the most important factors of the hospital expansion is to correct or improve the circulation pattern on the special exception site. He testified that the modification separates the service drive (located on McKinley Street) and the main entrance to the hospital (located on Old Georgetown Road). Emergency vehicles have a separate entrance off of McKinley Street. He testified that there were no alternate locations for the service drive aisle. He testified that the service area is staying in its current location, and that the Hospital did not want service vehicles using the main or emergency entrances, which would cause conflicts. He testified that access via Southwick was limited by the terms of the special exception. He testified about the traffic problems and dangerous situation caused by the current on-site circulation, in which emergency vehicles, patients, visitors, doctors and service vehicles all use the same entrance. He stated that the circulation design that was approved in connection with the modification tries to reduce conflicts and promote safety.

Mr. Bossong testified that the hospital addition and the garage could not be located elsewhere on the special exception site. He testified that the design of the garage was restricted to a maximum height of three and half floors or 36 feet in height for compatibility and buffering for the adjacent neighborhood. He testified that the lowest level of the garage was restricted by the water table, which the Hospital sought to stay above. He stated that the garage will be three and half floors above ground and three and half floors below grade to keep the lowest level of the garage above the water table. See Exhibit Nos. 29 [Suburban Hospital campus-lot coverage], 30(a) [resubdivision of parts of blocks 1,

5 & 8] 30(b) [plat of Lot 32, Block 8]. He stated that the width of the facility was based on County Code requirements, and that the length took into account ADA slope requirements and other factors. Mr. Bossong testified that instead of using standard pre-cast T-beam construction, this garage would be poured in place to minimize its height while still allowing for the necessary parking. He concluded that the dimensions of the approved garage are the minimum reasonably necessary to accomplish the purposes of the Hospital's expansion.

Mr. Bossong testified that the variances requested were the minimum necessary to allow the Hospital to implement the special exception modification approved by the Board. He testified that there were no alternate locations for siting the hospital addition or parking garage which would mitigate or remove the need for the lot coverage variance. He testified that the requested variances could be granted in accordance with the intent and purpose of the Zoning Ordinance, indicating that their grant would further the Board's intent in approving the special exception modification that the peripheral houses be retained to serve as buffers for the adjoining properties. He testified that from a civil engineering standpoint, the grant of these variances would not disturb the public safety or welfare, and would not be detrimental to the use and enjoyment of the adjoining or neighboring properties. He stated that the grant of the variances would allow for implementation of the modification as conditioned by the Board, thereby benefiting the neighborhood and the community as a whole by providing a residential buffer of the hospital for the neighborhood, as well as improved healthcare.

On cross examination, Mr. Bossong testified that the area added to the hospital's property through the abandonment of Lincoln Street was approximately 40,000 square feet, and that the footprint of the hospital addition was 80,593.8 square feet. He testified that the maximum allowable height for a hospital was 145 feet, and that the height of the proposed addition ranges from approximately 45 feet to approximately 70 feet.

On cross examination, when asked why this Property is unique and confronted solely with the choice of exceptional narrowness, shallowness, shape, topographical conditions, Mr. Bossong testified that the shape of the subject Property was unique and irregular because of the need to maintain the existing 13 residential lots. When asked if he was primarily relying on the language in Section 59-G-3.1(a) of the Zoning Ordinance which refers to "other extraordinary situations or conditions peculiar to a specific parcel of property" to support the grant of the requested variances, Mr. Bossong testified that he was, citing the residences on three sides of this Property, the need for the Hospital to

buffer itself with houses and the resultant lot lines internal to its own site, and the fact that without these variances, the existing residential houses that the Board ordered the Hospital to retain would be in violation of the hospital building setback and parking setback. He stated that the special exception proceedings did not address the criteria for a variance because the modification proposed by the Hospital did not require any variances.

Mr. Bossong agreed on cross examination that if a garage were constructed completely underground, it would not impact lot coverage. He stated that the approved garage can hold 1,159 cars. He testified that it would be fairly unique in Montgomery County to construct a garage below the water table, but that it has been done. He also agreed with counsel for HTCA that the four and one-half story addition to the hospital was not 145 feet tall. When asked by counsel for HTCA whether, in light of his previous responses, the Hospital could attain the same square footage with a smaller footprint, Mr. Bossong replied that 34 days of special exception hearings had been devoted to this, looking at connectivity, usage, operating rooms, hospital codes issues, HVAC, and many other issues. Mr. Bossong concluded that he could not agree with the suggestion that the Hospital should simply have built a taller building. He testified that he was not aware of a 2001 plan drawn up by the citizens to expand the hospital. Mr. Bossong testified that he understood that the retained houses were to be used for hospital purposes, and that the special exception modification did not restrict their use to residential purposes. He testified that the approved drive aisle overlaps the rear lot line of lots 13, 12, 10, 9A, 7A, 6A, and 5.

Mr. Bossong, still on cross examination, testified that the majority of the HVAC for the addition will be underground. He stated that there is also a cooling tower, which he acknowledged admits noise. He stated that he was aware of the testimony concerning HVAC noise that was given during the modification hearing when he testified that granting the variances would not impact the use and enjoyment of neighboring properties. He testified that while he was not a noise consultant, it was his understanding that the noise would meet the requirements of the County noise Ordinance.

3. Ms. Jacky Schultz, Executive Vice President and Chief Operating Officer of Suburban Hospital, testified on behalf of the Hospital. Ms. Schultz testified that she is responsible for all the clinical and non-clinical operations. She testified that prior to her current role, she was Chief Nurse and was involved with other members of the team in the planning process and in identifying the needed improvements. Ms. Schultz testified that Suburban Hospital has been operating under a special exception in its current location since 1955. She testified that the last

major hospital expansion was in 1979, and that the needs and requirements for patient care have changed dramatically since that time, particularly as pertains to technology. She testified that many advancements, innovations and techniques have driven the need to make improvements on the hospital's campus. She testified that by today's standards the current building is about 250,000 square feet undersized and is deficient in a number of ways:

- the operating rooms are undersized and outdated;
- the operating rooms are not appropriately shaped to accommodate new technology and are not ideally located;
- only 50% of the rooms in the hospital are private rooms, which have become the standard of care in hospitals;
- ambulances, helicopters, visitors and patients all arrive at the hospital in one area;
- there is a severe parking shortage; and
- there is a need for physician's office space, particularly for critical specialties which need to be close to the hospital for instances when time is of the essence.

Ms. Schultz testified that the hospital is the level II trauma center in Montgomery County. She stated that the hospital's programs, including a stroke program, a heart program, and a trauma program, underscore the aging of the community. Ms. Schultz testified that the Board's approval of the special exception modification required the retention of 13 homes and lots along the perimeter of the Hospital property, to provide a buffer for the neighborhood. She testified that the modification approval restricted the developable land and created practical difficulties for the Hospital. She testified that the approved modification is not a desired expansion, but rather an urgently needed one. Ms. Schultz testified that the expansion meets the needs of and the obligation that the hospital has to the community. She testified that the approved hospital addition footprint is driven by the need to accommodate operating rooms, and is the minimum reasonably necessary. Ms. Schultz testified that the location of sterile quarters is critical, that the pre- and post-op areas have to be appropriately adjacent, and, that there has to be access to other critical services like the emergency room and diagnostic testing. She testified that redesigning the plan or the demolition of the existing facilities would not be feasible for all the reasons that were reviewed during the [special exception] proceedings. She testified that the footprint is driven by the operating rooms and is the minimum reasonably necessary to accommodate those rooms; she noted that this was discussed at length during the special exception modification proceedings. She testified that the addition was placed on the property to connect with the existing hospital. She testified that the loading dock and service drive could not be relocated or demolished

without detrimentally impacting operations. She explained that expanding the hospital vertically, so as to reduce the footprint, would necessitate a change in design which would eliminate the square and proximate block of operating rooms, causing them instead to be located on different floors. She explained that this would result in the separation of experts who may be needed with little or no warning in situations where time is critical, would create inefficiencies (duplication of facilities, equipment, and services), and would present a challenge to safe operations. She stated that in the operative suite, there is a variety of clinical expertise present, explaining that even operative nurses have different areas of expertise. There is also equipment for use in emergencies, which would have to be duplicated on each floor if the operating rooms were separated from each other instead of being centrally located in the proposed operating suite. She testified that the reasons for the approved design, and the reasons that a more vertical design would not work, had been addressed at length during the special exception proceeding. See Exhibit 31. Ms. Schultz testified that if the variances were denied the hospital would not be able to expand in the way that's needed to cure the current deficiencies and to meet the community's needs for healthcare.

Ms. Schultz testified that the variances allow the hospital addition, as approved by the Board, to proceed. She testified that the houses along the periphery of the hospital Property have been there for years, and that the variances sought in connection with those houses are of the amount necessary to meet the Zoning Ordinance requirements now that the houses are considered part of the special exception. She testified that the variances sought to meet the parking and loading setbacks are also the minimum necessary, and referenced testimony in both the variance and special exception modification proceedings which explained why the drive aisle and service area/loading dock cannot be relocated. She testified that the variances are the minimum reasonably necessary to overcome the unique issues pertaining to the Property, including the retention of the existing houses, the footprint of the hospital addition (necessary to accommodate the operating room design), and the location of the loading dock and drive aisle (necessary to cure current circulation deficiencies by separating streams of traffic).

Ms. Schultz testified that she is at the hospital every day, and that based on her knowledge of the project, the operations of the hospital, and the neighborhood, the variances will not be detrimental to the use and enjoyment of neighboring properties. She stated in this regard that the grant of these variances will allow the Hospital to implement the approved special exception modification, in which the retention of the houses was found to be the appropriate buffer for the adjacent community. She testified that the variances preserve that buffer,

preserve the residential nature of the neighborhood, and thus preserve the use and enjoyment of the neighborhood. She stated that strict compliance with the development standards (i.e. the failure to grant these variances) would unreasonably prevent the Hospital from using its Property for the needs it has, which will cause the Hospital problems by creating practical difficulties in delivering care and in correcting the deficiencies that currently exist with the hospital.

Ms. Schultz testified that the addition will not add any new operating rooms, but that it does create additional bed space by allowing the hospital to decant current semi-private rooms into private rooms. No net new bed space will be added. She testified that the addition would also include physician office space, which will ensure the immediate availability of physicians that are critically necessary for trauma and neurosurgery, where a delay in their arrival can result in detriment to the patient.

She testified that private rooms are needed to accommodate a desire for privacy on the part of patients and families, now that family participation has become very integral to hospital care, and from an infection control prospective. She testified that about 50% of the hospital's current rooms are private rooms, and that with the addition, that percentage would increase to about 80% private rooms. She stated that the proposed addition is not principally about creating space for growth, but rather it's about correcting deficiencies. She testified regarding parking that the hospital had looked at the number of spaces currently available, taking into consideration the number of patients, visitors, employees and had found that the current parking was undersized. To mitigate this, in the interim, the hospital has moved people off-site, using a shuttle service. She testified that even with the new parking approved in the special exception modification, the hospital will still have less parking than other Montgomery County hospitals. She concluded that the hospital addition meets the needs that the hospital is not able to meet right now and accommodates deficiencies identified in current operations.

Ms. Schultz testified that the hospital is licensed for 239 beds. She testified that in Maryland hospitals are re-licensed every year based on 140 percent of their average daily census. The total licensed beds for this year is 294.

On cross-examination, Ms. Schultz testified that the only instance she knew of where it may be common for hospitals to not have all of their operating rooms on one floor was where a hospital had an obstetrics unit. She testified that in addition to operating rooms and private rooms, the proposed hospital addition also included about 38,000 square feet of

physician's office space. She testified that during her six and a half years at the hospital, she was aware that some of the peripheral houses owned by the hospital had been used by doctors, nurses and physician's assistants. She agreed with opposing counsel that the current garage at the hospital has about 268 parking spaces, and that the garage approved in connection with the special exception modification has over 1,100 spaces.

Ms. Schultz testified on redirect that the hospital does not have obstetrical services, and has not since the mid-1970's. She testified that the hospital does a variety of surgeries: neurosurgery, orthopedic surgery, spine surgery, general surgery, trauma surgery, urological surgery, etc.¹ Ms. Schultz testified that the proposed operating rooms have been designed with technology needs in mind, such as the need for robotics, the need for the addition of particular diagnostic modalities that now are commonly used in operating rooms, including CAT scans, magnetic resonance imaging, and also what are called hybrid operating rooms where you have the capability of imaging right alongside operative capabilities.

4. Mr. Adrian Hagerty testified on behalf of the Hospital, as he had during the special exception modification proceedings, and was accepted as an expert in healthcare architecture. Mr. Hagerty testified that he has been engaged in this hospital project since 2006, and is the project architect. He testified that as the project architect, his job was to develop a plan that would address the identified deficiencies at the hospital and meet the building and State healthcare codes. Mr. Hagerty testified that the plan he developed was ultimately approved by the Board when it granted the special exception modification. He testified that in developing the plan, he had considered other locations and options to solve the hospital's problems, noting that architects were basically problem solvers. He testified that every option considered fell short in one way or another of fulfilling the needs of the hospital and/or meeting the various Code requirements (building, healthcare, etc.). He testified that when all of these considerations were factored in, each of the alternatives looked at became too restrictive and did not allow for the solution of the hospital's deficiencies in a way that would meet the applicable Codes and the needs of the hospital. He testified that a number of these options were discussed at the special exception hearing.

Mr. Hagerty testified that he was familiar with the variances requested, and that the original plan that he had submitted did not require these variances. He testified that the unique aspect of the subject property is

¹ On re-cross, Ms. Schultz confirmed that the hospital currently does all of these types of surgery, and that they take place in operating rooms which are all on the same floor, but not in the same wing.

the imposition by the Board of Appeals of a condition requiring the Hospital to keep the existing houses on the site as a buffer. He testified that the original hospital modification plan had a green space as a buffer and that the green space and the houses are, in fact, a different means of achieving the same thing, namely to buffer neighboring residential uses from an institutional use. He testified that the buffering is intended to improve compatibility, which is a central point of the special exception. He testified that the need to retain the houses is probably the single most important aspect of understanding why these variances are needed and why this property is unique. He stated that it was his understanding that the houses were retained to enhance compatibility and to provide a buffer of residential character which provides for residential structures to address the surrounding neighborhood. See Exhibit No. 9 [aerial photo/existing conditions].

Mr. Hagerty testified that a different plan was originally proposed and that the original plan did not require variances. He testified that there is one and only one way to improve/modify the hospital site. He testified that the current (approved) plan restricts the amount of building area that can be built on as compared to the originally proposed hospital modification plan. He agreed that the retention of the houses improves the hospital's ability to exist within a residential district and be compatible, but noted that this was not the only way to achieve compatibility, and that the original plan also had a buffer, just a different type of buffer (landscape buffer/green space). He noted that the Hospital's needs did not change as a result of the imposition of this condition, and testified that he did not know of any other properties that were required to be buffered by houses.

Mr. Hagerty testified that the design criteria which must be employed to design any healthcare facility are contained in the Guidelines for Design and Construction of Healthcare Facilities. He testified that Maryland has adopted these Guidelines, and that construction of healthcare facilities is regulated by the State and must comply with this. See COMAR 10.07.01.03. He testified that architects view this as a minimum standard, and that the Guidelines encourage application of other industry standards. He testified that one of the central elements for the Suburban Hospital design was the need for connectivity to the emergency room, which is essential because Suburban is the only trauma center in Montgomery County. He testified that the approved modification has the operating rooms and pre- and post-operative areas on the same floor as the emergency room. He noted that the Guidelines require a direct connection from the operating rooms to the pre- and post-operative rooms. He testified that currently, the hospital is using a very difficult route, using a 'trauma-vator' that goes up five floors from the emergency room to the surgical suites. Mr. Hagerty explained the

various adjacencies that are required by the Guidelines, and how these were met by the approved modification design. He testified that a direct connection is required from an infection control protocol standpoint. He acknowledged that the modification did not include a sterile processing unit on the same floor as the operating rooms. He testified that the movement of sterile instruments from the processing unit to the operating rooms would be accomplished by means of a direct-connecting lift. He testified that if the sterile processing unit had been contained on the first floor of the addition, the footprint would have been larger. As it stands now, Mr. Hagerty testified that the floorplate of the approved addition is about 65,000 square feet. He testified that four of the new operating rooms will be slightly larger than the minimum size set forth in the Guidelines in order to accommodate the new hybrid technology (diagnostic imaging equipment, etc.), and that the remaining operating rooms were built to the recommended specifications set forth in the Guidelines.

Mr. Hagerty testified that he would never recommend splitting up operating rooms, for reasons related primarily to safety and secondarily to efficiency. As an architect, he testified that he would think twice about taking on a job for a client who wanted to split up operating rooms because he is under an obligation to protect the safety and welfare of his clients and the people who visit the buildings he designs. He testified that the proposed modification would provide the standard of care for surgical facilities today. He testified that healthcare providers today are being encouraged to do whatever surgeries they can in outpatient facilities. He testified that the surgeries that occur in hospitals like Suburban, especially because of its trauma designation and because of the nature of the orthopedics program, the heart program, and the neurology program, have a much higher percentage of high risk and higher acuity type of procedures. He testified that with the increased acuity level usually comes more equipment and more people involved in each operation.

Mr. Hagerty testified that an analysis of the hospital's deficiencies was done that concentrated primarily on the surgery performed at the hospital because that was the driver for the footprint of the addition, and consequently, the reason the hospital needs a variance from the 35% lot coverage restriction. See Exhibit 114 (SE record), with special attention to slide 12. Mr. Hagerty testified that the analysis also looked at the parking, infrastructure, and the lack of physician space. He testified that Suburban Hospital is the only Montgomery County hospital that does not have physician space on the campus and that the hospital is in a very small majority throughout the country. He testified that the analysis shows the difference between the operating room size at Suburban now, which is below code, and the current industry standard. He testified that

healthcare facilities cannot simply be designed like hotel rooms because there is a lot of support/nursing space which makes the rooms wider than the typical space.

Mr. Hagerty testified that the garage was designed in the most efficient way possible to get the needed number of cars on the site, while working within certain limitations, including the 36 foot maximum height limitation, the lower height being constricted by the water table, the need to construct horizontally in modules of 60 feet, and the regulation of the length by the slope and available space. He testified that the design is the most effective parking garage that can fit on the site and still provide all the other elements of access, and that it has the minimum footprint necessary to accommodate the necessary number of parking spaces.

Mr. Hagerty testified that only one area of the existing hospital structure is designed for vertical expansion, and that that area—a “surface” parking lot with mechanical space below—is already being utilized. He testified that the rest of the existing hospital is not designed for a vertical expansion from both a structural and an adjacency standpoint. He explained that in addition to the lack of structural compatibility, vertical construction on any other of the existing hospital components would block functions that would put those rooms out of Code compliance, adding that a number of blocked rooms would be patient rooms. Mr. Hagerty testified that his firm had studied the possibility of demolishing parts of the existing hospital in connection with the modification/addition at great length, and that they could not develop a plan that kept the hospital in operation and fulfilled the operational requirements of the hospital by demolishing any portions of the building. He later reiterated that it was not reasonable to suggest that the Hospital should demolish part or all of its existing facility in order to build an addition, based on his understanding of the operations of the hospital and its obligation to serve the community and provide healthcare, and that the hospital could not function as a hospital and serve the community if such demolition were undertaken. He testified that the hospital is efficiently utilizing its existing space, and that no space is not currently being utilized.

Mr. Hagerty testified that there is no other location on the hospital property to locate the proposed modifications that would avoid the need for or limit the extent of the requested lot coverage variance. He testified that this is because the site owned by the Hospital is 15 acres, but its usage is reduced to 12.9 acres for purposes of lot coverage. See Exhibit No. 32 [citations to portions of testimony and exhibits provided by Adrian Hagerty].

Mr. Hagerty testified from his standpoint as an architect that the proposed modification will not be detrimental to the usage of adjoining

and neighboring properties. He testified that the condition that the Hospital retain the peripheral houses on its property created a win-win situation for the surrounding neighborhood wherein the residential character and nature of the surrounding properties is maintained. He testified that the modification plan also includes a number of safety enhancements such as restricting traffic flow through the neighborhood, which is another enhancement for the neighborhood. He testified that the safety and welfare of the neighborhood will also be improved by having better healthcare facilities. He testified that the drive aisle on Exhibit 7A is the same drive aisle approved by the Board in the modification. He testified that the drive aisle could not be moved to eliminate the need for the variances related to it without creating additional traffic through the neighborhood. He testified that the loading dock will be modified, but will not be moved from its current location.

Mr. Hagerty testified on cross-examination that the majority of the heating and cooling systems would be below grade, and thus any noise would be well-mitigated by the massing of the building and the louver system. He testified that the cooling towers would be at grade, to the left of proposed addition. Mr. Hagerty testified that the cooling towers will have a built in noise mitigation system as well as a wall surrounding them which limits the noise. He testified that the chillers are an indoor component of the cooling system. He testified the noise generated by the hospital will meet the laws of the noise ordinance. See Exhibit Nos. 33 [letter from Russ Cramer dated 6/1/2007/noise from Suburban Hospital HVAC units], 34(b) [required variances reduced plan/notated with maintained, existing noise measurement locations], 38 [MC regulations on: procedures governing the measurement of noise levels]. Mr. Hagerty testified that the air handling systems were all underground, located on the level below the surgical area. He explained that the air handlers would exhaust the "relief air" on the front of the building to the east. He testified that the system was intentionally designed so that most of the noise is mitigated because the facilities are underground and exhaust through louvers that are on the front (Old Georgetown Road) side of the building, away from the residences.

Mr. Hagerty testified on cross-examination that the design of the addition was the best possible solution under the given constraints. He denied that the need for the variances was self-imposed, testifying that the need was triggered by the Board-imposed requirement that the Hospital retain the 13 peripheral houses and their lots, which had the effect of reducing the amount of usable property. He noted that the modification had been designed to meet all of the applicable zoning criteria, and that when the Board decided that to approve the proposed modification with the condition that the houses be retained for compatibility reasons as a buffer, this created a situation in which the

Hospital had to apply for variances for coverage and to setbacks. He testified that the plan before the Board in the variance cases was the same plan originally proposed by the Hospital, with the addition of the retained houses. He testified that he did not believe it would be reasonable to redesign the modification plan to take into account the Board's requirement that the houses be retained.

When asked if it was possible to lower the garage or to expand the underground parking to reduce the footprint, Mr. Hagerty testified that the garage had been reduced to the extent that is reasonable, adding that it is not advisable to go below the water table and explaining that such action would trigger additional energy costs for fans and pumping water. He concluded that building below the water table goes against every sustainable design principle that you'd want to apply, especially where alternatives are available, such as the proposed (approved) garage design.

Mr. Hagerty testified, still on cross-examination, that while the majority of the heating and cooling systems would be below grade, and thus well-mitigated by the massing of the building and the louver system, the cooling towers would be to the left of proposed addition. Mr. Hagerty testified that the cooling towers will have a built-in noise mitigation system as well as a wall surrounding them which limits the noise. He stated that they are at grade, and clarified that the chillers are indoors, at the lowest level of the building. He testified that the air handling systems were all underground, located on the level below the surgical area. He explained that the air handlers would exhaust the "relief air" on the front of the building or to the east. He testified that the system was intentionally designed so that most of the noise is mitigated because the facilities are underground and exhaust through louvers that are on the front (Old Georgetown Road) side of the building, away from the residences.

5. Mr. Wrenn testified on behalf of the Hospital as an expert in land planning. He testified that he has been associated with the hospital for eight years as a land planner on the team of consultants for Suburban with reference to the proposed expansion. He testified that as a land planner, the team initially looked at the context and characteristics of the site to understand what opportunities and constraints might be related to the expansion proposal. He testified they began to talk about the interaction with the broader community, share information, and get input on ideas. He testified that he was involved with architects, the engineers, and other consultants to formulate the expansion plan proposal. He testified that part of what they bring to the process is an evaluation of the conformance of the proposal with the Master Plan. He testified that the Master Plan for the Suburban area is the

Bethesda/Chevy Chase Master Plan. [See Exhibit No. 13, provisions of Bethesda-Chevy Chase Master Plan]. He testified that he was familiar with this Master Plan, and that he had been involved with, and was familiar with, the variance requests.

Mr. Wrenn testified that he was familiar with the Zoning Ordinance criteria for the grant of a variance, and that he had reviewed the particulars of this Property against those criteria. He testified that there were extraordinary conditions peculiar to the Hospital's Property which cause the strict application of the standards in the Zoning Ordinance to result in practical difficulty to the Hospital. Mr. Wrenn testified that the first factor that makes this property unique is that the hospital is a 15.2 acre institutional campus located in an established neighborhood comprised mainly of single-family home on three sides [Southwick, Grant, McKinley], but he testified that it is more than that. He testified that in addition to the buildings and the streets themselves, what impressed him was the residential character of the setting as a whole, which he described as going beyond the houses and streets to include the landscaping, the mature tree canopy, and the narrowness of the residential streets. He testified that taken together, the scale, texture and composition of this neighborhood creates a remarkable character that you don't see in every residential area. See Exhibit 29B. He testified that because of the combination of these conditions the Board required that the Hospital should buffer, restore, and retain this residential character by retaining the houses on the campus. He testified that it is unique for a campus to have to buffer itself by utilizing residential structures, and that this is a characteristic not shared by the other properties that surround it or by the other hospitals in the R-60 Zone, i.e. Holy Cross [Silver Spring], Montgomery General [Olney]. He testified that the need to retain the residential houses and their lots on the hospital campus for buffering purposes constitutes a practical restriction to the use of the Hospital's property.

Mr. Wrenn testified that a second factor peculiar to the Property which causes practical difficulties in complying with the Zoning Ordinance is its size and shape. He used Exhibit 27 to show the outer limits of the hospital campus as originally proposed, and contrasted that with the irregular perimeter remaining when the houses are retained. He testified that the retention of the houses on the Suburban site results in an irregular configuration of the property, that it removes 2.1 acres from the 15.2 acre campus, and that it greatly reduces the useable area.

Mr. Wrenn testified that the third extraordinary or peculiar condition which poses practical difficulties for the Hospital is that one of the conditions imposed by the Board on the grant of the Hospital's modification (i.e. the retention of the houses) creates what is essentially

a regulatory constraint on the expansion and development of the hospital.

Mr. Wrenn testified that the fourth factor that makes this site unique is the Master Plan recommendations. In this regard, he stated that Section 2.11 of the Master Plan establishes a general goal to perpetuate and enhance the high quality of life which exists in the Bethesda/Chevy Chase plan area,' which he testified not only relates to the need to maintain the residential character of the area, but also to the need for an accessible and high quality healthcare facility in the planning area. He testified that Section 2.12 of the Master Plan sets out a land use goal 'to protect the high quality residential communities throughout the planning area as well as the services and environmental qualities that enhance the area,' and explained that this objective mandates the balancing of the provisions of healthcare services with the protection of residential communities. He testified that the Master Plan recognizes Suburban Hospital as one of the 12 large land users in the planning area, and acknowledges that it may expand in the future. He testified that the Master Plan states that such an expansion should be reviewed in the context of the impact it will have on the adjacent communities and that the Board found that the Master Plan objectives were best achieved through approval of the proposed expansion with the retention of the 13 hospital owned homes and maintenance of their lots as a buffer instead of the landscaped open space that had been originally proposed. He noted that the focus on preserving the residential character is further emphasized in the Master Plan recommendations regarding the Old Georgetown Road corridor.

Mr. Wrenn testified that there is a constant emphasis in the Master Plan on community-serving uses, and testified that special exception uses contribute to the services and health objectives of the Master Plan. He testified that the Master Plan repeatedly recognizes health services as a fundamental component of a well planned area. He noted that Section 3.11 of the Master Plan establishes a Green Corridors policy for Old Georgetown Road, creating an additional requirement for the Hospital Property.

Mr. Wrenn testified that these four factors create a unique and peculiar circumstance that impacts the Hospital Property disproportionately when compared to other properties in the immediate area. He testified that these circumstances relate only and uniquely to the Hospital's Property.

Mr. Wrenn read into the record the last sentence of footnote 4 in the Board's Opinion granting the Hospital's modification:

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.

[Case No. S-274-D, page 5, footnote 4]. Mr. Wrenn testified that this sentence is consistent with his testimony. He testified that the Master Plan started with the premise of protecting the residential neighborhoods, and that it was determined that the best way to protect the neighborhood that adjoins Suburban Hospital was the retention of the 13 homes on its site. He testified that the Hospital is requesting these variances to accommodate the adjustment made to its original plan by the Board, namely to accommodate the retention of the buffering houses, and that this adjustment creates practical difficulties for the Hospital by significantly limiting the flexibility that is available to meet the development standards and to implement the approved special exception modification. He testified that the original special exception application proposed to create one lot which met all of the zoning development standards, utilizing the entire 15.2 acres. He testified that losing the 2.1 acres of usable area significantly restricts the ability to expand the Hospital while meeting all of the zoning requirements, and that this is a practical difficulty. He testified that when the Hospital applies the required zoning standards to its Property in connection with implementing the approved modification, it is unreasonably prevented from using the property for the permitted purpose. He testified that the Hospital's ability to implement the proposed improvements requires the requested variances.

Mr. Wrenn testified that the variances can be granted without undermining the purpose or intent of the Zoning Ordinance or the zoning standards from which the variances are sought. He testified that the properties that comprise the Hospital campus are owned and managed by the Hospital, and that the implementation of the approved modification to the hospital, which necessitates these variances, would not have any impact on the surrounding neighborhood. Mr. Wrenn testified that the variances are internal to the hospital's needs for expansion and for creation of the required buffer for the residential properties. He testified that there are not any alternative locations for the Hospital's facilities and improvements which would avoid the need for these variances while still meeting the healthcare needs of the community and creating the buffer the Board determined was necessary to preserve the residential character of the neighborhood. He testified

that the variances requested are the minimum reasonably necessary to meet the needs of the hospital and comply with the zoning standards.

Mr. Wrenn testified that he believed that the variances can be granted without substantial impairment to the intent, purposes, and integrity of the general plan and the adopted area Master Plan. He reiterated his earlier testimony that the Master Plan establishes a number of goals and objectives, and that the special exception modification approved by the Board achieves those goals by requiring the residential buffer (which in turn necessitates the variances).

Mr. Wrenn testified that the requested variances will not be detrimental to the use and enjoyment of adjoining and neighboring properties. He testified that granting the variances would allow the retention of the buffering residential properties, their landscaping and their lots, which will maintain the use and enjoyment of the adjoining neighboring properties.

On cross-examination, Mr. Wrenn contrasted the smaller residential lots surrounding the hospital and in the Huntington Terrace neighborhood with the larger lot which contains the hospital use itself, characterizing it as an institutional campus located within a neighborhood of small single family lots. He testified that across Old Georgetown Road is another institutional use, NIH, and noted that NIH does not have residential lots on their campus to create a buffer with the surrounding neighborhood, since it is a federal facility. When asked if Holy Cross Hospital is also zoned R-60 on three sides or has residences on at least three sides, Mr. Wrenn testified that Holy Cross backs up to the beltway, and while it may have residential houses on two or three sides, Holy Cross did not have to retain houses on its campus alongside the hospital, the parking, and its other facilities.

In response to a question asking how having a drive aisle on a single family property was consistent with the Master Plan goal of protecting the residential character of the neighborhood, Mr. Wrenn testified that the drive aisle was internal to the hospital site, and thus did not diminish the residential character experienced on Grant Street, McKinley Street and Southwick Street. He testified that it was not uncommon where there's shared ownership of property to utilize or straddle a property in order to provide a drive aisle or other facility. He testified that in the context of the proposed modification and the hospital campus, the location of this drive aisle is consistent with the protection of the residential neighborhood. Mr. Wrenn then testified that what is proposed is the best plan to meet the healthcare needs and expansion requirements of the hospital, and the best proposal to preserve the residential character of the neighborhood. In response to a Board

question, Mr. Wrenn testified that the service drive aisle is presently accessed off of Lincoln Street, and that under the special exception as modified, it would be accessed from McKinley Street, but would serve a loading area that is not being moved, and thus that the noise attendant to the loading area would be essentially unchanged. He also testified that the drive aisle would be bounded by a 6-foot masonry wall.

When asked on cross-examination if noise could make a property uninhabitable, Mr. Wrenn testified that that would depend on the origin of the noise and its relationship to the residential property. Mr. Wrenn then testified that he is not a noise expert, but that he believes that noise exists at present from the hospital operations, and that there will be similar operations, and thus presumably similar noise, following the implementation of the approved modification. He testified that the Hospital will conform to the requirements of the law as it pertains to noise.

Mr. Wrenn agreed with Ms. Sears, in response to a Board question, that the garage entrance on Southwick Street will be restricted to use by employees only, between the hours of 6 a.m. and 8 p.m., He agreed that employees could only access the garage by making a left turn in, and a right turn when exiting, to preserve the residential character of the neighborhood and prevent cut-thru traffic. This stands in contrast with the current use of McKinley Street, which already handles shuttle buses and other activity.

Mr. Wrenn testified that Southwick Street is not a full movement, four signal light intersection, which means it can only be entered with a right-hand turn onto Southwick from Old Georgetown Road, and can only be exited with a right out; there is no median break. He testified that McKinley Street has both a median break and a signalized intersection, which makes it better for service traffic. He testified that the originally proposed modification included a buffer of gardens, landscaping, seeding areas, and a whole sequence of spaces that were meant to be open and inviting for both people at the hospital and the surrounding neighborhood. He testified that the approved modification uses what currently exists as a buffer, replacing the gardens with the existing residential houses and lots. He testified that if the drive aisle were modified, it would require a new modification and approval by the Board.

Testimony presented March 27, 2012

6. Mr. Knopf's opening statement discussed the specific variance standards from Section 59-G-3.1 of the Montgomery County Code. He cited Circuit Court cases about variances, including Cromwell v. Ward,

102 Maryland App. 691, Umberly v. People's Counsel, 108 Md. App. 497, Salisbury v. Bounds, 240 Md. 547, Norris v. St. Mary's County, 99 Md. App. 502 and Montgomery County MD v. Rotwein, 906 A.2d 919, 9. Mr. Knopf opined that the modification approved by the Board is a design of convenience because it protrudes 500 feet back from Old Georgetown Road into the community, and leaves 250 feet in front of the hospital for flowers and a grand entrance, and that it does not appear that the hospital made it a priority to look for ways to meet its needs while minimizing adverse impact on the neighborhood. Mr. Knopf stated that the variances threaten the community with greater noise which could be mitigated by imposing a condition that noise level measurement testing, as required by the Board's December 13, 2007 Resolution in Case No. S-274-C, continue to be taken at the same location (behind the homes on Grant Street) as before those thirteen (13) homes were incorporated into the Hospital site.

Mr. Knopf stated that a big reason for opposition to the variance request is the interpretation that the Hospital can move the sound testing across the street, and that this will result in adverse, increased noise impacts both to the Grant Street houses retained as part of the special exception, and to those across the street. He further stated that this noise disturbance creates an impermissible inconsistency with the Master Plan.

The Board recognized Ms. Sears, who stated that retaining the Grant Street houses as part of the special exception changed its boundaries, and that the noise impact of the hospital on adjoining and surrounding properties outside the special exception boundaries would not violate the Noise Ordinance.

Mr. Knopf posited that the hospital could have located the improvements closer to Old Georgetown Road, and that the community would have agreed to a variance from the required 50-foot setback for hospital buildings. He stated that this would have been fewer variances than are requested, so the request is not the minimum reasonably necessary.

7. Ms. Ann Dorough and her husband Greg Eckman moved in at 8604 Grant Street in August of 1999. As a resident who lives in close proximity to the hospital, she supports "a condition to maintain[ing] the noise measurement location where it is now". She testified that there is a constant low grade mechanical noise from the hospital that is a "combination between a hum and a whish" that is always noticeable all around the outside of her home, and inside her home if the windows are open. Ms. Dorough expressed her appreciation that the Board required the retention of the thirteen houses to absorb and deflect the hospital sounds, but expected that the noise would be measured from the same

place as it had been. She testified that if the noise measurement location remains the same with the retained homes, it would be acceptable to her. She expressed her concern that the installation of a new cooling tower closer to Grant Street might increase the noise level. In response to Board questions, Ms. Dorough stated that if the noise measurement location is moved, the [Noise Ordinance] 55 decibel limit will be moved from 140 feet away to 25 feet from her house, which she finds intolerable and unacceptable. Finally, Ms. Dorough stated that even though the hospital currently meets the County noise standards, it still disturbs her use and enjoyment of her property. Ms. Dorough testified that her understanding is that where the noise will be measured is now different from what the neighbors understood would be the case. She testified that she had understood that the noise would be measured from the same place that it is currently and that it's significantly different from her original understanding.

In response to a Board question about why the testing location is being moved, Ms. Sears stated that there is a false premise here. The variance does not change anything approved by the Board in terms of the conditions applicable to noise. The Board made a finding in the modification case, based on evidence presented by a noise expert, that the noise level was acceptable and that it did not cause a detrimental impact to the surrounding community. She stated that there is no issue in the variance requests about changing the testing points, but rather that the opposition would like to modify the special exception approval through the variance requests by requiring a different point of measurement. The point of measurement the opposition proposes is within the special exception property boundary, to the back or the rear of the lots that now are a part of the special exception. Ms. Sears stated that the opposition is trying to unilaterally modify the special exception to a noise standard which is lower than what the law requires. She suggested that to go further to test at certain points within your special exception is not the right application of the law.

In response to a Board question, Mr. Knopf stated that the evidence that the noise emitted by the hospital will exceed allowed limits is that the Hospital will not agree to a condition to continue the noise testing at the rear property lines lot the retained Grant Street houses.

7. Bob Deans of 5607 Lincoln Street testified that he has been in the neighborhood for 20 years and that he has resided at his present location for 15 years. Mr. Deans testified that he is member of the board of the Huntington Terrace Citizens Association. He thanked the Board for saving the 13 homes on the Hospital campus and asked that the variances be conditioned upon a provision that the Hospital be required to maintain noise levels defined by the County Noise Ordinance as

measured from the rear property lines of the receiving residential properties that have been preserved. He testified that with the variance request the hospital would be able to move its noise measurements 150 feet further away from the noise than is now the case. He testified that the hospital would be able to increase dramatically the noise imposed on the community, but that the measurement would be taken from so far away that the needle would still show compliance when you to measure it. He testified that that's not the intention of the Master Plan or the zoning laws. He pointed out that the Master Plan makes reference to Suburban Hospital and states, "any change in use of these properties, including any expansion proposal, should be reviewed in the context of the impact it will have on the adjacent communities.'

In response to a Board question, Mr. Deans said that properties along Grant, Southwick and McKinley should be protected more strictly from noise than the noise ordinance itself requires, because even if noise measurements show compliance, the community will be experiencing substantially more noise. He said he did not know whether they will they be experiencing greater noise than the noise ordinance allows, but his issue is where it is being measured.

Mr. Deans testified that there was a little bit of ambiguity in where the noise would be measured and that it was the community's understanding that by preserving the homes, you were preserving the point of measurement of the noise. He stated, "It matters a lot to us where we measure these noise levels."

In response to a question from Mr. Knopf, Mr. Deans stated, referring to an appendix to the Hearing Examiner's Report and Recommendation in the modification case, Exhibit 449, regarding noise impacts, that the houses along Grant street would experience noise impacts below 55 decibels, but that if noise testing is moved across the street from them they could experience noise impacts of 55 decibels, a change from the current circumstance.

8. Jeff and Kate Baron of 5513 McKinley Street have lived in their home for almost 25 years, about a block from the hospital. Mr. Baron testified that prior to moving in he was required to sign a paper that he understood that there would helicopter flights over his home and that the noise from helicopters would be a factor in deciding to purchase his home. He testified that he never expected that a Board decision would extend the noise from the hospital into the neighborhood. He testified that the noise from the hospital is noise pollution. He testified that the streets by the hospital are pretty and lovely, but really noisy and that the Board's decision has the possibility of projecting noise into the neighborhood. He testified that it seems like common sense that if you

change the place of measurement, you are going to change the ambient noise level. He testified that this is unexpected and unanticipated and that Board should consider the interest of the residential neighborhood in making its decision.

Mr. Baron stated that the hospital itself is unlikely to decide to mitigate the noise going into the neighborhood so the question of where you measure it becomes extremely important.

In response to a question from Mr. Knopf regarding the hospital's noise study appended to the Hearing Examiner's decision in the modification case, Mr. Baron stated his understanding is that changing the location of noise testing could allow noise impact to the houses on Grant Street to increase to 55 decibels. Upon cross examination Mr. Baron conceded that he that he did not know whether the exhibit [Exhibit 216D, p. 31] shows measuring points for noise testing, but that "irrespective" of that, "if there are new property lines, that I will have more noise in my neighborhood" [Transcript, March 27, 2012, p. 104].

9. Nancy Choy lives at 5520 Southwick Street. She testified that she understood the importance of Suburban's need for modernization of its facilities, but believed the expansion should minimize its adverse impact on residents and the neighborhood. She testified that the variances should not decrease the setback between the new hospital structures and the residences. She testified that if the variances are allowed, Suburban should be subject to conditions that would require the hospital to address the impact of increased noise that will result from the granting of the variances.

In response to Board questions Ms. Choy stated that she does not believe that the noise testing point will change for her property, but that everybody in the neighborhood is affected.

She testified that noise levels would impact the value of her home and that she was not sure she wanted to invest money in the home, but could not afford to move elsewhere. She testified that it does not matter whether her property is specifically involved because the surrounding properties are going to hear more noise and it will impact the community.

10. Howard Sokolove of 5600 Lincoln Street, testified that he has been a resident of the neighborhood for 27 years. He testified that his property does not receive alot of noise, but that he can still hear it. Referring to Exhibit No. 175, Mr. Sokolove testified that as a result of the special exception modification process the boundaries of the hospital site have been changed to a two-block area, Grant Street to the west, Southwick

Street to the north, Old Georgetown Road to the east, and McKinley Street to the south. He testified that nothing about the existing residential properties has changed. He testified that the noise should be measured as it is required in the Noise Ordinance, to the nearest residential receiving property line. He testified that he views the 13 homes retained on the hospital site as a visual buffer and a noise buffer

Mr. Sokolove expressed concern about potential noise impacts to homes on Southwick Street and the 8700 block of Grant Street. In response, Ms. Sears offered Exhibit 216 from Case No. S-274-D which consists of modeling of the noise impacts of the approved (but unbuilt) modification, and which shows compliance with the Noise Ordinance.

In response to questions from Mr. Knopf, Mr. Sokolove stated that the variance provision against detrimental impact on adjoining and neighboring houses is separate from the Noise Ordinance and does not have a quantitative decibel level attached to it. He stated that previous noise testing has been done primarily from the rear property line of the houses on Grant Street and from the front property lines of the houses on the north side of Lincoln Street. Mr. Knopf quoted the Hearing Examiner's report and recommendation in Case No. S-274-D, "Mr. Harvey acknowledged that if the 23 houses are torn down as proposed, the hospital will have more flexibility about placing noise producing equipment closer to Grant Street, because the noise will be measured from the closest residential property line;" and asked Mr. Sokolove his understanding of the implication of this statement if the houses are not torn down, to which Mr. Sokolove replied that implicit in the statement is that if the houses are not torn down the noise measurement will remain in the same place. In further response to Mr. Knopf, Mr. Sokolove stated that Exhibit 216 in Case No. S-274-D, page 31, shows no levels of 55 decibels or greater on hospital owned property, and that Mr. Harvey's testimony during the modification hearing was that there would be no projected noise above 55 decibels on any adjoining properties. Mr. Sokolove stated that if the noise measurements were taken from the property line on the west side of Grant Street, the houses on McKinley and Grant Street would experience a higher level of noise.

In response to questions from Ms. Sears, Mr. Sokolove stated that nothing about the variances increases the noise. He stated that Exhibit 216B at page 31 does not show the 13 houses on Grant Street retained as part of the approved modification or their lot lines. He stated that he is not aware of what noise mitigation elements were included in the special exception modification.

In response to further questions from Mr. Knopf, Mr. Sokolove stated that the reason Exhibit No. 216B does not show the 13 houses on Grant

Street retained as part of the approved modification is that the houses were proposed to be removed in the original modification request, and that the exhibit shows no noise levels above 55 decibels in the area occupied by the houses and their lots.

Mr. Knopf reiterated the opposition's position that granting the variances should be conditioned on a requirement that noise from the hospital will not exceed 55 dba at the rear property line (of the retained houses).

Ms. Titus pointed out that the County Noise Ordinance allows 65 dba during the day and 55 dba at night.

11. Amy Royden-Bloom of 5516 Southwick Street testified that she has lived in the neighborhood since 2004. She testified that the County's Noise Ordinance finds that excessive noise harms public health and welfare and impairs the enjoyment of property. She quoted the definition of receiving property in the noise ordinance and stated that her reading is a property is a receiving property, regardless of ownership, as long as someone is living or working there. She testified that for the Board to condition the variance request on measuring noise from where it used to be is eminently reasonable. She testified that the Board should protect the ears of the people who live and work on the hospital-owned properties and that it is entirely consistent with its opinion and direction to maintain the 13 retained house on the hospital site. She testified that if the noise measurement is changed, it would allow more noise, and that according to the variance requirements, there should be no detrimental impact on adjoining properties.

Ms. Sears' Closing Remarks:

12. Ms. Sears requested admission into the record of certain documents from Case No. S-274-D pertinent to lot coverage, the size and location of the operating room suite, and whether the variances requested are the minimum reasonably necessary. They were Exhibit No. 432(a), a letter from Adrian Hagerty responding to a letter from Amy Shiman dated 6/12/2009; Exhibit No. 32 [Mr. Hagerty's summary of those portions of the record which support his testimony regarding sizing]; Exhibit No. 446 Suburban's memorandum in response to Huntington Terrace Citizens' Association's closing argument, especially pages 55-67, 62-63, 72-73, pages 71 through 106, pages 110-116;

Ms. Sears also offered three letters from agencies in the County; one is from Fire and Rescue, saying that they are not going to allow an underground operating room; the other two are from the Department of

Transportation and the Department of Permitting Services. All show why the various alternatives suggested in place of the approved modifications are not feasible and could not be done in accordance with the law.

Ms. Sears also offered an exhibit containing evidentiary citations to the garage size dimensions in the record, the need for parking spaces, and the number of spaces Suburban has requested.

And finally, she offered Exhibit No. 11-I [Wells and Associates Parking Demand Analysis], Exhibit No. 36, Exhibit No. 431(d) [Letter from Brian Grangnolati], Exhibit Nos. 431(d)(2) [Letter from HTCA], and 431(d)(3) [Letter from HTCA], Exhibit No.111.

Ms. Sears stated Section 59-A-4.127 says that a special exception or variance must be implemented in accord with the terms and conditions approved by the Board's opinion. She noted that one of those conditions was to get the variances that were necessary to implement the plan. She reiterated that her client was trying to get the variances necessary to retain these houses as a buffer for the benefit of the neighborhood.

Ms. Sears recalled that the Board found that the special exception site was unique in its modification Opinion dated December 9, 2010, because of its location and proximity on three sides to the residential community and on the fourth to Old Georgetown Road. See pages 5 and 17 of the December 9, 2010, special exception modification (Case No. S-274-C). The special exception modification requires that the Hospital maintain and retain 13 residential homes on the special exception site. The homes are required as a buffer for the surrounding residential community. Ms. Sears stated that the requirement to maintain and retain those homes is a restriction placed on the ground as a direct result of the special exception conditions because of the hospital's proximity and location in the neighborhood. Ms. Sears stated that the recommendations of the Master Plan further restrict the use and development of the property. She pointed out that the hospital also has functional needs and has physical barriers to growth and expansion. The hospital site is limited to a 2 block area. The Hospital's homes within the 2 block area must be retained and maintained as residential property, while also being a part of the special exception site. The conditions attached to the grant of the special exception modification require variances in order to implement the modification.

Ms. Sears described the two-step analysis required to grant a variance. The first step is a finding that a property is unique and unusual in a manner different from the nature of the surrounding properties. She

submitted that this property is unique and different in conjunction with the surrounding properties. She noted that the setback regulations, coverage regulations, and drive aisle standards are going to apply differently to small R-60 lots than they are going to apply to the larger hospital property, as seen by the need for the variances.

Ms. Sears noted that the second part of the analysis is a finding of practical difficulty or unreasonable hardship, and that practical difficulty is the appropriate finding for area variances such as these. She stated that the strict application of the applicable standards would unreasonably prevent the hospital from using the property for its permitted purpose, posing a practical difficulty for the hospital. The special exception modification condition required by the Board to retain the 13 homes can not be met or implemented on the hospital site without the requested variances. The retention of the homes on the special exception site further restricts the use of the site's buildable area.

Ms. Sears stated that the grant of these variances would do substantial justice to the applicant as well as to the property owners in the district. Retaining these houses is what the community wanted. They wanted those houses to be a buffer to absorb whatever activities were on the site. Ms. Sears stated that granting the variances would allow the Hospital to implement its approved modification and would give the community the buffer that it sought. Ms. Sears stated her belief that the evidence shows that the variances can be granted so that the spirit of the Zoning Ordinance is observed, and public safety and welfare are secured.

Ms. Sears stated further that the conditions imposed by the special exception modification are not a self-created hardship, but are urgent and of substantial need for the efficient and safe of operation of the hospital and in the interest of the public welfare. She said that the Salisbury case cited by HTCA, a Maryland Appellate Court case, is about a traditional self-created hardship where the applicant sought variances after they had built the structure. She said that in the instant case, the existing facilities are not the sole reason the Hospital is seeking the variances. Ms. Sears reminded the Board that the Hospital submitted a plan that needed no variances and could have been implemented in accordance with the law. She said it was the Board-imposed condition to preserve the houses based on the uniqueness of the site that required the Hospital to seek the variances. Ms. Sears cited Stansbury v. Jones, at 372 Md. 192, for the proposition that when a government permits and encourages an owner or owners to take certain action in order to be able to utilize property, that action cannot be characterized as self-created.

Citing Becker v. Anne Arundel County, Ms. Sears stated that the requested variances are the minimum reasonably necessary for the hospital to address functional deficiencies within the area available, given retention of the hospital owned houses on Grant Street.

Ms. Sears referred to Mr. Wrenn's testimony in support of Master Plan compliance.

Ms. Sears stated that the evidence in the special exception modification record is that the Hospital has and will comply with the Montgomery County Noise Ordinance, stating that "There is no evidence whatsoever that allowing the special exception to continue as it was approved where it was found that noise was not detrimental is somehow affected by this variance and should be changed [March 27 Transcript at p. 189]. She urged the Board not to impose conditions beyond what the law requires.

Ms. Sears compared the instant variance applications to those in Case Nos. S-420-H and A-6279, Petition of Holy Cross Hospital, for height and lot coverage variances, and stated, "What we're asking for here, what we're asking for here is entirely driven by retaining the houses. Retaining the houses reduces the size of the main lot by 2.1 acres. It creates a coverage issue of about 6.1 percent. So we're asking for 41.1 percent [lot coverage]." She stated that they were also asking for setback variances because once the houses became part of the special exception, they became subject to the 50-foot setback for hospital buildings. She added that the drive aisle also needed minimal setback variances to allow implementation of the improved circulation pattern approved by the Board.

Ms. Sears reiterated the hospital's request that the variances be given a two year validity period, consistent with the special exception modification, and in light of the fact that the modification is on appeal.

Mr. Knopf's Closing Remarks:

13. Mr. Knopf stated that he wanted to impress upon the Board the outrage of the community. He stated that in the special exception modification case the Board relied upon evidence that no noise beyond 65 decibels would go beyond the boundaries of the hospital as compared to the hospital houses. He stated that moving the noise testing location 150 feet is a major change. The 13 retained homes will be subject to nonresidential, non-community noises, which will undermine the purpose of the 13 homes as a noise barrier for the community. He indicated that the hospital might have to put up some more baffling, and stated that HTCA was asking the Hospital, when they build their air

conditioning system, to make sure they build it in a way that meets what they promised to begin with. [March 27 Transcript at p. 199]

Mr. Knopf argued that the variance law requires that the Board can not grant a variance that causes deleterious effects on adjoining properties in a neighborhood, and that there is no decibel limit on this requirement. He said the hospital should adhere to what was promised to the community and keep the boundaries for measuring the noise where they were. The 13 homes that were retained on the special exception site are now unprotected. He suggested that the Board can condition the grant of the variance on where the noise measurement will be taken.

Mr. Knopf argued that the hospital could redesign the proposed addition and garage, and that because there are different ways to modify the hospital, "it is not clear that this is a unique situation" or that the requested variances are the minimum reasonably necessary. He stated that the need for the variances is based on design choices made by the hospital and are therefore self-created.

In response, Ms. Sears stated that the Hospital never represented that they were measuring noise at points internal to their property because their proposal did not include the houses or their lots. She referred to the testimony of Mr. Harvey, [Transcript 2/2/09, p. 162] who said that the results of his [noise testing] model showed an ample margin of safety well back from the property line. She stated that there was no justification to make the Hospital go above and beyond the standards in the Noise Ordinance.

In response to Board questions Ms. Sears stated that the houses on Grant Street retained in the special exception modification are now part of the special exception and are not receiving properties for the purposes of noise testing to determine the impacts of the special exception.

FINDINGS OF THE BOARD

Chair Titus stated that the Board, in deciding the Hospital's special exception modification request (S-274-D, Opinion dated December 9, 2010), responded to the unique circumstances of the Suburban Hospital site and to the neighborhood's need for additional buffering by approving the modification request with conditions, including conditions requiring that the Hospital retain 13 of the single family residences located on the periphery of the special exception Property. At that time, the Board stated that the improvements approved in the context of this modification appeared to meet the required setbacks, but noted that the requirement for the retention of houses as a buffer might trigger the need for setback and lot coverage variances:

As a condition of 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 for 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.

Petition of Suburban Hospital, Case No. S-274-D, December 9, 2010, at page 9. This excerpt makes two things clear. First, it is clear that the Board did not approve a theoretical addition to the Hospital's facility, it approved the modification that the Hospital proposed. Second, it is clear that the Board recognized that construction of the approved hospital modification might require the grant of setback and lot coverage variances necessitated by the Board's imposition of a condition that the peripheral houses be retained. The Board notes that it does not have jurisdiction in the current proceeding to modify its earlier grant of the special exception modification; the variance proceeding before the Board is solely for consideration of the variances necessitated by the requirement that the Hospital retain the 13 peripheral houses.

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board of Appeals' modification of the underlying special exception limited the site's boundaries as a condition of approval: ". . . in order to stem fears that the Hospital will continue to add to the properties it owns and thus 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". The Board also included a condition in its grant of the modification requiring the Hospital to retain all but two of the houses on the perimeter of the two block special exception site.

The Board finds that the conditions imposed by the Board of Appeals as part of the special exception modification constitute an *extraordinary situation or condition* peculiar to the special exception Property that differentiate it in a manner unique from the surrounding properties, since but for those conditions, the petitioner could have built the approved expansion to the hospital without needing any variances. The Board's condition requiring the petitioner to retain 13 homes on the hospital site decreases the buildable area available to the Hospital by 2.1 acres and necessitates the lot coverage variance. The conditions requiring the retention and maintenance of the 13 peripheral houses on the special exception Property has also rendered those houses "hospital buildings," and makes them subject to the 50-foot setbacks for such buildings instead of the lesser setbacks applicable to single family houses, necessitating variances for the required setbacks. These houses are not being moved or changed; the variances are necessary so that they can remain in their current locations and serve the buffering function envisioned by the Board in its grant of the special exception modification. The special exception conditions require the retention of houses adjacent to the approved drive aisles, thereby necessitating the variances for the parking setbacks. The Board also finds that the requirement that the Hospital retain and maintain the 13 peripheral lots and the houses thereon renders the shape of the larger special exception Property and of the combined parcels on which the hospital and garage are located irregular and unique, and in turn creates a practical difficulty for the Hospital in complying with the setbacks for the drive aisle. See Exhibit 7. In short, the Board finds that the conditions it imposed on this Property in granting the special exception modification for the hospital addition created an extraordinary circumstance peculiar to the Hospital site. Mr. Wrenn confirmed this when he testified that it is unique for a campus to have to buffer itself by utilizing residential structures, and that this is a characteristic not shared by the other properties that surround it or by the other hospitals in the R-60 Zone such as Holy Cross Hospital and Montgomery General.

The Board further finds that the strict application of the development standards in the Zoning Ordinance to this Property would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the Hospital. Without the variances, the Hospital will not be able to use its own Property for a use which is not only permitted in the Zone, but for a use which was approved by this Board in the context of its modification grant (S-274-D, December 9, 2010). In support of this, the Board notes that Mr. Wrenn testified that the Hospital is requesting these variances to accommodate the

adjustment made to its original plan by the Board (the retention of the buffering houses), and that this adjustment creates practical difficulties for the Hospital by significantly limiting the flexibility that is available to meet the development standards and to implement the approved special exception modification. He testified that the proposed special exception modification called for the creation of a single lot which met all of the zoning development standards, utilizing the entire 15.2 acres owned by the Hospital. He testified that the loss of the 2.1 acres of usable area, due to the required retention of the houses, significantly restricts the ability to expand the hospital while meeting all of the zoning requirements, and that this is a practical difficulty. He testified that when the Hospital applies the required zoning standards to its Property in connection with implementing the approved modification, it is unreasonably prevented from using the property for the permitted purpose. Finally, he testified that the Hospital's ability to implement the improvements approved by the Board in Case S-274-D (the special exception modification) requires the grant of the requested variances. The Board notes that Mr. Bossong offered similar testimony regarding the uniqueness of this Property.

For the foregoing reasons, the Board finds that the petitioner has met the burden required by this variance standard.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the requested variances are the minimum necessary to implement the special exception modification that the Board already approved. Indeed, Ms. Schultz testified that the variances allow the hospital addition, as approved and conditioned by the Board, to proceed. She testified that the houses along the periphery of the hospital Property have been there for years, and that the variances sought in connection with those houses are only for the amount necessary to meet the Zoning Ordinance requirements now that the houses are considered part of the special exception (and are thus subject to much larger setbacks). She testified that the variances sought to meet the parking and loading setbacks are also the minimum necessary, and cited testimony indicating why the drive aisle and service area/loading dock cannot be relocated. She testified that the variances are the minimum reasonably necessary to overcome the unique issues pertaining to the Property, including the retention of the existing houses, the footprint of the hospital addition (necessary to accommodate the operating room design), and the location of the loading dock and drive aisle (necessary to cure current circulation

deficiencies by separating streams of traffic). Mr. Bossong offered similar testimony, concluding that the lot coverage variance was the minimum necessary to allow the Hospital to implement the modification approved by the Board.

The Board notes that there was a lot of testimony and discussion during both the special exception modification proceedings and during these variance proceedings regarding whether the proposed changes to the hospital—both the addition to the hospital itself and the parking garage—were the minimum reasonably necessary to allow the Hospital to meet its needs in a way that was compatible with the surrounding neighborhood. The Board addressed that in connection with the special exception modification when it approved the proposed addition to the hospital, the proposed parking garage, and the drive aisle and on-site circulation pattern. The Board ensured compatibility by requiring the Hospital to retain the 13 residential houses. The Board is not revisiting its earlier approvals in this variance proceeding, but if it were to do so, there is ample evidence in the record to support a finding that the design of the hospital addition, the garage and the drive aisle are appropriate. See March 21 Tr. at pages 64-71 (Bossong testimony), at pages 118-124 (Schultz testimony), at pages 156-171 (Hagerty testimony), at pages 212-213 (Wrenn testimony); Exhibits 31 and 32.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that granting the variances will not impair the intent, purpose or integrity of the 1990 approved and adopted Bethesda/Chevy Chase Master Plan. The Board finds that granting the variances and allowing the approved modification to proceed is consistent with the Master Plan goal to perpetuate and enhance the high quality of life which exists in the Bethesda/Chevy Chase plan area, including the need for an accessible and high quality healthcare facility in the plan area. The Board finds that approval of the variances to allow the modification to proceed is consistent with the Master Plan emphasis on community-serving uses, and notes that the Master Plan recognizes Suburban Hospital as one of the large land users in the planning area and acknowledges that it may expand. The Board finds that approval of the variances to allow the 13 hospital-owned homes to remain as a buffer between the hospital and the neighborhood follows the Master Plan guidance to evaluate hospital expansion in the context of its impact on adjacent communities. The Board notes that its findings are corroborated by the testimony of Mr. Wrenn. See March 21 Tr. at pages 205-210.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that granting the requested variances will allow the retention of the 13 peripheral properties, which will, with their landscaping and their lots, buffer adjoining and neighboring properties from the hospital and will, therefore, be beneficial to the use and enjoyment of adjoining and neighboring properties.

There was much testimony regarding the perception of neighboring property owners that the approved special exception modification would cause an increase in the noise level at their houses, and thus would be detrimental to the use and enjoyment of their properties. It is the position of these neighbors that despite the incorporation of the 13 peripheral houses and lots into the special exception site, the Hospital should continue to be required to measure noise at the rear property lines of those lots, as it had before the special exception modification was granted, thus treating those lots as receiving properties and requiring noise testing at a location internal to the special exception property. The neighbors indicated that if the location of the measurement were moved closer to their properties, even if the noise levels complied with the Noise Ordinance, it would still be louder than the noise they currently experience. The Hospital countered that the Board had found, in granting the special exception modification, that the modification would not be detrimental to the use or peaceful enjoyment of neighboring properties, and would not cause any objectionable noise. See the December 9, 2010, Board Opinion in Case No. S-274-D, at pages 13-14. They testified that a noise model produced for the special exception modification hearing indicated that the noise produced by the expanded hospital would comply with the Noise Ordinance, and would not exceed 55 db (at the Property lines). See Exhibit 216 from Case S-274-D. They argued that while the internal lot lines created by the required retention of the 13 peripheral homes were not shown on Exhibit 216 (because the Hospital was not proposing to maintain those homes on its campus), the Exhibit appeared to show that any excessive noise near the rear of those lots would be minimal, and did not merit testing in that location. They argued that they should not be required to test for noise compliance in the middle of their Property.

In light of the concerns raised by the neighbors, the Board has included a condition requiring that noise be measured from the locations required prior to the December 9, 2010 grant of the modification in Case No. S-274-D. The Board has included this condition to ensure that the grant of the requested variances, which

are necessary to allow implementation of the special exception modification to proceed, will *not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The variances for each of the subject properties are:

(1) [A-6364] 6.1% as it exceeds the maximum lot coverage of 35% for the construction of an addition and a garage; and a variance of twenty (20) from the required twenty (20) foot rear lot line setback for the proposed construction of a drive aisle are granted.

(2) [A-6365] 34.30 feet from the required fifty (50) foot front lot line, 35.60 feet from the required fifty (50) foot side lot line setback, forty-three (43) from the required fifty (50) foot side lot line setback, for the existing house; and a variance of twenty (20) feet from the required twenty (20) foot rear lot line setback for the proposed construction of a drive aisle are granted.

(3) [A-6366] 29.80 feet from the required fifty (50) foot front lot line setback; 43.20 from the required fifty (50) foot side lot line setback; 35.60 feet from the required fifty (50) foot side lot line setback; 11.90 feet from the required fifty (50) rear lot line setback for the existing house; and a variance of twenty (20) feet from the required twenty (20) foot rear lot line setback for the proposed construction of a drive aisle are granted.

(4) [A-6367] 29.70 feet from the required fifty (50) foot front lot line setback; 42.70 feet from the required fifty (50) foot side lot line setback; 30.40 feet from the required fifty (50) foot side lot line setback for the existing house granted.

(5) [A-6368] 18.40 feet from the required fifty (50) foot front lot line setback; forty (41) feet from the required fifty (50) foot side lot line setback; 43.10 feet from the required side lot line setback; twenty-five (25) feet from the required fifty (50) foot rear lot line setback for the existing house; and a variance of twenty (20) feet from the required (20) foot rear lot line setback for the proposed construction of a drive aisle are granted.

(6) [A-6369] 18.70 feet from the required fifty (50) foot front lot line setback; 41.60 feet from the required fifty (50) foot side lot line setback; 34.50 feet from the required fifty (50) foot side lot line setback for the existing house; and a variance of twenty (20) feet from the required twenty (20) foot rear lot line setback for the proposed construction of a drive aisle are granted.

(7) [A-6370] 23.80 feet from the required fifty (50) foot front lot line setback; 36.10 feet from the required side lot line setback; 42.30 feet from the required side lot line setback; 1.70 from the required fifty (50) rear lot line setback for the existing house; and a variance of twenty (20) feet from the required twenty (20) foot rear lot line setback for the proposed construction of a drive aisle are granted.

(8) [A-6371] 24.50 feet from required fifty (50) foot front lot line setback; 42.90 feet from the required fifty (50) foot side lot line setback; 43.30 feet from the required fifty (50)

foot side lot line setback; 0.40 from the required fifty (50) foot rear line setback for the existing house; and a variance of twenty (20) feet from the required twenty (20) foot rear lot line setback for the proposed construction of a drive aisle are granted.

(9) [A-6372] 24.60 feet from the required fifty (50) foot front lot line setback; 38.10 feet from the required fifty (50) foot side lot line setback; 42.60 feet from the required fifty (50) foot side lot line setback; 31.40 feet from the required fifty (50) foot rear lot line setback for the existing house; and a variance of twenty (20) feet from the required twenty (20) foot rear lot line setback for the proposed construction of a drive aisle are granted.

(10) [A-6373] 24.80 feet from the required fifty (50) foot front lot line setback; 29.70 feet from the required fifty (50) foot side lot line setback; 21.40 feet from the required fifty (50) foot side lot line; 34.80 feet from the required fifty (50) foot rear lot line setback for the existing house are granted.

(11) [A-6374] 22.70 feet from the required fifty (50) foot front lot line setback; 27.70 feet from the required fifty (50) foot side lot line setback; 0.50 feet from the required fifty (50) foot side lot line setback for the existing house; and variances of 47.80 feet from the required fifty (50) foot side lot line setback and of 42.20 feet from the required fifty (50) rear lot line setback for the existing accessory structure are granted.

(12) [A-6375] twenty-five (25) from the required fifty (50) foot front lot line setback; 43.20 feet from the required fifty (50) foot side lot line setback; and forty-two (42) feet from the required fifty (50) foot side lot line setback for the existing house are granted.

(13) [A-6376] 22.80 feet from the required fifty (50) foot front lot line setback; 44.40 feet from the required fifty (50) foot side lot line setback; 37.30 feet from the required fifty (50) side lot line setback for the existing house; and variances of 15.90 feet from the required fifty (50) foot side lot line setback and 46.60 feet from the required fifty (50) foot side lot line setback for the existing accessory structure are granted.

(14) [A-6377] 18.40 from the required fifty (50) front lot line setback; thirty-nine (39) feet from the required fifty (50) side lot line setback; 42.30 feet from the required fifty (50) foot side lot line setback for the existing house; and variances of 45.40 feet from the required fifty (50) foot side lot line setback and 9.70 from the required fifty (50) foot side lot line setback for the existing accessory structure are granted.

Accordingly, the above variances are granted subject to the conditions listed below:

1. The petitioner shall be bound by all of the testimony and exhibits of the record, the testimony of its witnesses, and the representations of its attorney, to the extent that such evidence and representation are identified in the Board's Opinion granting the variances.
2. Construction must be completed according to plans entered in the record.
3. Noise level measurement testing will be taken at the locations at which it was done pursuant to the Board's December 13, 2007 Resolution in Case No. S-274-C and prior to the Board's grant of the modification in Case No. S-274-D.

On a motion by Stanley B. Boyd, seconded by Walter S. Booth, with Carolyn J. Shawaker in agreement, and with Catherine G. Titus, Chair, and David K. Perdue, in opposition, the Board adopted the foregoing Resolution.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 23rd day of July 2012.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four (24) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of 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.

Minority Statement of Catherine G. Titus, Chair, Board of Appeals

This is an elaboration on my minority vote in Cases A-6364 through A-6377 Variances sought by Suburban Hospital and decided by the Board of Appeals on April 4, 2012.

Suburban Hospital applied for a Modification of its Special Exception to expand the land area covered by the Special Exception so as to include certain areas that are improved by single-family, detached dwelling units. Because of the increased area approved by a Modification of the Special Exception Case S-274-D granted December 9, 2010, this Board was able to exercise jurisdiction over that area and directed that certain of the dwelling units be retained to better assure compatibility with the neighborhood.

While I support granting the requested Variances, I disagree with the condition that noise measurements be conducted from within the area covered by the Special Exception rather than on the perimeter as required by County law. It makes no sense to require retention of the houses to mitigate the impact of the Special Exception use, a condition imposed by this Board, and yet require that noise measurements be taken in such a manner as to give no benefit to the noise attenuation resulting from the retention of the houses in question.

Minority Statement of David K. Perdue, Vice-Chair, Board of Appeals

I support granting the variances applied for by the petitioner. I do not support the unnecessary and inappropriate condition regarding where to conduct noise testing. The County Council has adopted a noise ordinance and the Executive has adopted implementing regulations. Together these constitute a comprehensive statement of county policy on noise levels, and noise testing. The ordinance is enforced by the Department of Environmental Protection, over which the Board of Appeals has no jurisdiction and whose decisions are not subject to our review. I believe that decisions on where and how to test for noise, and all other questions arising under the noise ordinance are the business of the Department, and the Board should impose no conditions regarding those matters. I recognize that in a past resolution involving this Petitioner the Board instructed where to take noise measurements. Unlike this case, there was no dispute in that case as to where the test should be done. Here, the dispute should be referred to the agency with the authority and expertise to resolve it--the Department of Environmental Protection