

T&E COMMITTEE #1
July 11, 2011

M E M O R A N D U M

July 7, 2011

TO: Transportation, Infrastructure, Energy and Environment Committee
FROM: ^{GO} Glenn Orlin, Deputy Council Staff Director
SUBJECT: Resolution to approve the abandonment of a portion of Lincoln Street in Bethesda

The easternmost block of Lincoln Street, between Old Georgetown Road and Grant Street, has been proposed for abandonment by Suburban Hospital. The hospital requires the use of this right-of-way to construct its planned expansion. The expansion plan has been very controversial; the Council has received numerous pieces of correspondence on both sides of the matter.

The Council had postponed action on this abandonment until the substantive issues were decided upon by the Board of Appeals in Suburban's special exception application. In late 2010 the Board of Appeals approved the special exception, allowing the planned expansion with certain conditions. On February 3, 2011 the Executive forwarded his and his hearing examiner's recommendation to approve the subject abandonment. At the request of the Huntington Terrace Citizens Association (HTCA) the T&E Chair postponed the review of the abandonment until June, after the budget. In June the Chair entertained a further request from HTCA for a deferral, waiting for the Circuit Court to decide on an appeal of the Board's ruling. In late June the court denied HTCA's appeal from the bench. HTCA reportedly is considering further appealing this ruling.

For this worksession, Council staff has asked the Department of Transportation to give a brief summary of the Executive's conditional recommendation. Then HTCA, followed by Suburban, will each have 10 minutes to summarize their respective arguments regarding the abandonment. Council staff will then present its analysis, conclusions, and recommendation. Background can be found in the following attachments:

Location of proposed abandonment	©1-2
Suburban's October 10, 2008 supplement to its public hearing testimony	©3-18
Hearing Examiner's January 25, 2011 report and recommendations, and the Executive's January 27, 2011 concurrence	©19-65
HTCA's June 29, 2011 informational package	©66-76
HTCA counsel's June 29, 2011 informational package	©77-96
Suburban's July 6, 2011 information, including:	
letter from the petitioner	©97-106
Board of Appeals' 2010 Opinion on the special exception petition	©107-129
Illustrative site plan	©130
Judge Craven's June 30, 2011 order	©131-132
Draft adoption resolution for abandonment	©133-135

Analysis. For the Council to approve an abandonment it must make at least one of the two findings noted in Chapter 49-63(c) of the County Code:

- (c) A right-of-way may be abandoned or closed if the Council by resolution finds that:
 - (1) the right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future, or
 - (2) the abandonment or closing is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned or closed. In assessing health, safety, and welfare issues, the Council may consider:
 - (A) any adopted land use plan applicable to the neighborhood;
 - (B) safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives, in the immediate neighborhood, for local and through traffic; and
 - (C) changes in fact and circumstances since the original dedication of the right-of-way.

All of the impartial parties reviewing the special exception or abandonment petitions have made the first finding: that the right-of-way is no longer necessary for present public use or anticipated public use. Françoise Carrier, the hearing examiner for the special exception petition, who had recommended that Suburban's application be remanded for modifications to be consistent with the Master Plan and to be compatible with the neighborhood, nevertheless agreed the combination of the road abandonment and required improvements "would not have a material adverse effect on the local road network" and would have several beneficial impacts (©136). The Planning staff, the Planning Board, the Department of Transportation, and Diane Schwartz-Jones, the hearing examiner for the abandonment petition, all support the abandonment. All the other departments and utilities either support or do not oppose the abandonment, as long as there are easements protecting their current infrastructure.

The traffic studies show that about five-sixths of the motor vehicle traffic using this block of Lincoln Street is related to the hospital or NIH, and not the neighborhood. There are a sufficient number of alternative routes that can absorb the neighborhood-generated local motor vehicle traffic now using this one block of Lincoln Street, including McKinley Street, Southwick Street, and Greentree Road. The travel time impact and inconvenience for residents entering or leaving Huntington Terrace as a result of closing this block of Lincoln Street is almost inconsequential. In fact, eliminating this block of Lincoln Street as a through route for motor vehicles reduces the number of potential pedestrian/vehicle conflicts on the hospital's campus. Consequently, Council staff believes a credible case could be made for abandoning this block of Lincoln Street *even if the proposed expansion were not to cross the right-of-way*. As for bicyclists and pedestrians, one of the conditions is that Suburban build and maintain a sidewalk/bikeway network through the campus which will have a perpetual public access easement and appropriate lighting.

The objections raised by HTCA and its counsel have much more to do with the intensity and massing of the proposed expansion, and its compatibility with the surrounding Huntington Terrace single-family residential neighborhood, rather than the effect of closing the subject block of Lincoln Street. The petition easily meets the first or the two findings for an abandonment: that the right-of-way

is no longer necessary for present public use or anticipated public use in the foreseeable future. As for the second finding—that the abandonment is necessary to protect the health, safety and welfare of the residents near the right-of-way—Council staff agrees with the Executive and his hearing examiner that the neighbors have much more to gain by the improved medical care available at their doorstep, but it should be recognized that this is a qualitative judgment call.

Suburban has requested two changes to the conditions in the abandonment resolution (see ©104-105). The first is a technical correction to conform the abandonment resolution to the special exception approval. The draft abandonment resolution would require a record plat consolidating the parcels fronting this block of Lincoln Street. The special exception requires retaining the home on Lot 12, which technically fronts Lincoln Street, but its driveway is off Grant Street. Suburban requests amending Condition #4 to exclude Lot 12 from the record plat. The second change would clarify that the on-site sidewalk would be available for public use when the hospital's addition is substantially complete. Suburban plans to use the area of the path for interim parking. DOT staff has reviewed these two requests and has no problems with them.

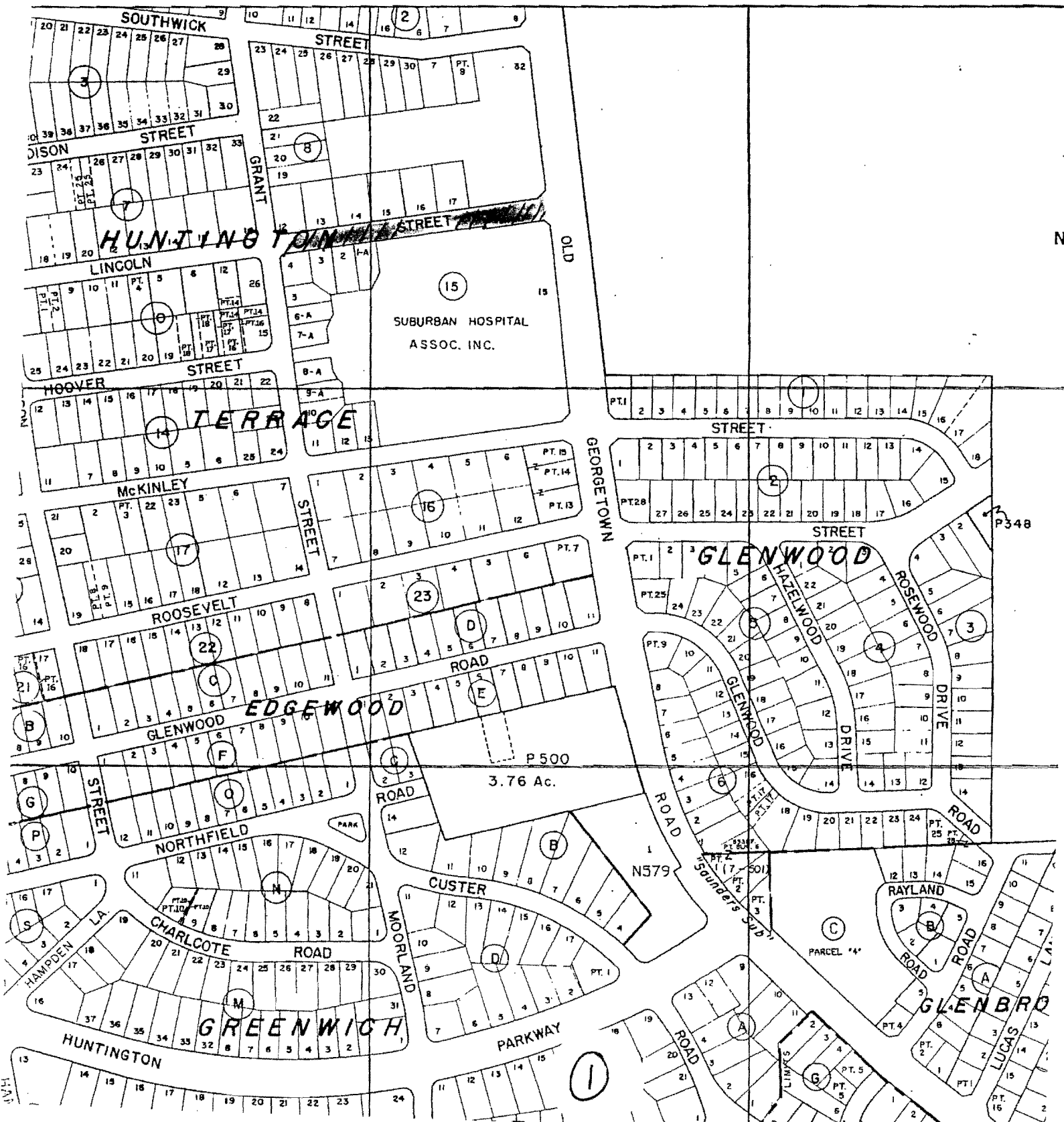
Council staff recommendation: Approve the resolution on ©133-135—the recommendation of the County Executive and his hearing examiner—with the following underlined revisions to Condition #4 in the Action section:

4. The proposed abandonment will become effective simultaneously with the complete record plat for the proposed Hospital preliminary plan that consolidates all parcels fronting Lincoln Street between Old Georgetown Road and Grant Street, with the exception of Lot 12 if it remains a separate recorded lot, and including a condition that the on-site sidewalk network must be available for public use when the Special Exception Addition is substantially complete.

Mr. Knopf correctly points out that the Council “may” approve the abandonment: it is not forced to do so. If it does disapprove the abandonment, though, it would be doing so not because it falls short of the criteria for an abandonment, but because it wishes to de facto vacate the Board of Appeals approval of the special exception.

Tax Map HN 13

H 1



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Re: Suburban Hospital, Inc.'s Petition for Abandonment of a Portion of Lincoln Street,
Bethesda, Maryland, Case No. AB 715 (the "Petition")

Dear Ms. Schwartz Jones:

On behalf of our client, Suburban Hospital, Inc. (the "Hospital" or "Suburban"), the purpose of this letter is to supplement and review the testimony presented to you at the August 26, 2008 hearing on the Petition, and to respond to testimony by Huntington Terrace Citizens' Association ("HTCA") in opposition to the Petition. As more fully explained below and in the attached materials, we believe the evidence of record unequivocally demonstrates that Suburban has satisfied both criteria of Section 49-63(c) of the Montgomery County Code (the "Code"), even though only one criterion need be satisfied for the granting of the Petition.¹ We also note the concurrence of the Planning Board at its September 25, 2008 hearing that the Petition should be granted. A.R. Ex. 73.² In summary, the evidence of record shows that (1) the area subject to the Petition is not necessary for present public use or anticipated public use in the foreseeable future, as only a small

¹ Under law, the scope of review in this case is limited to whether the Petition complies with the requirements of Section 49-63(c) of the Montgomery County Code. This scope of review does not include such issues as whether the proposed Special Exception modification will be compatible with the surrounding neighborhood, or how the Hospital's expansion compares with other hospital expansions, as has been recognized by the Hearing Examiner. *See* Hearing Examiner, Tr. 139 (stating that certain issues such as the demolition of the homes would be "way beyond the scope of anything that I [Hearing Examiner] would be [responsible for].")

² Generally, all citations to the Record of Case No. AB 715 will reference as "A.R. Ex. _" and references to the transcript of the August 26, 2008 proceedings will be referenced as "Testimony of [speaker]. Tr. ____"

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percentage of non-hospital related traffic currently utilizes or is projected to utilize the subject right-of-way, and numerous alternate routes are available to adequately accommodate any displaced traffic, and (2) the abandonment is necessary in order to permit the expansion of the Hospital, which expansion is required to protect the health, safety, and welfare of the residents near the neighborhood of the right-of-way to be abandoned, as well as the larger community.

Suburban, an independent non-profit hospital, governed by a volunteer Board of Trustees, filed the Petition in April 2008. The Petition proposes the abandonment of a one block portion of Lincoln Street (the "Abandonment"), between Old Georgetown Road and Grant Street, a distance of approximately 700 linear feet and total area of 36,126 square feet (the "Abandonment Area"). The Abandonment Area bisects Suburban's approximately 14 acre campus, located along Old Georgetown Road, a six lane major highway, and across from the National Institutes of Health. The campus is generally bordered by Grant Street, McKinley Street, Southwick Street, and Old Georgetown Road. A.R. Exs. 22, 38, 45. The Hospital's main building and a surface parking area are located on the south side of the Abandonment Area, and an administrative office building and structured parking facility are the principal hospital uses on the north side. *Id.* The Hospital owns all but one of the properties abutting the Abandonment Area, the exception being Lot 12, Block 8, which the Hospital has a contract to purchase. *See* A.R. Exs. 19, 20. The Abandonment therefore will not result in the denial of access to any property. A plan identifying the properties owned by the Hospital in the vicinity, including Lot 12, Block 8, is included in the record at A.R. Ex. 18.

As fully established by the testimony and evidence of record on the Petition, the Abandonment Area is not necessary for present public use or anticipated public use in the foreseeable future, as only a small percentage of vehicles currently using the Abandonment Area are non-hospital related and those vehicles have several safe and proximate east-west alternatives. In contrast, the Abandonment is necessary to accommodate properly sized, configured and located functional space required for the Hospital to continue to deliver quality medical services to the community in compliance with current healthcare standards. Written testimony of Gene Corapi, A.R. Ex. 24. In fact, as noted by Mr. Gene Corapi, Senior Vice President of Operations, to meet today's health care standards and current volumes, the existing Hospital's building would need to be sized approximately 250,000 square feet larger. *Id. See, for example,* A.R. Ex. 27, comparing current and industry

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standard patient and operating rooms. Specifically, the Abandonment Area will allow for the expansion of the Hospital through construction of an addition housing a new surgery suite, physician office space and private patient rooms (the "Addition"). A.R. Ex. 70, 71. The Addition will be four stories in height, contain approximately 235,597 square feet, and be connected to the existing hospital at levels 1, 2 and 3 to provide for needed adjacencies. *Id.* Additionally, the Addition must have a footprint of approximately 65,000 square feet to accommodate the first floor surgery suite of 15 operating rooms, which footprint is sized and configured to accommodate necessary space for these operating rooms and essential associated services pursuant to current healthcare standards and codes. As demonstrated by the evidence of record, the Addition cannot be accommodated elsewhere on the Hospital's property, due to its necessary size and configuration and, therefore, the Abandonment is required. Written Testimony of Gene Corapi, A.R. Ex. 24, p. 7-8, Testimony of Adrian Hagerty, Tr. 61-63, Written Testimony of Adrian Hagerty, A.R. Ex. 29, p. 3-4.

In addition to allowing the Hospital to continue to provide quality healthcare to the community it serves, the Abandonment will also serve to protect the health, safety and welfare of the neighborhood by greatly improving pedestrian and vehicular circulation patterns through and around the Hospital campus. Written Testimony of Gene Corapi, A.R. Ex. 24, 25. *See also* A.R. Exs. 51-52. The existing disjointed nature of the Hospital campus, with services on both sides of Lincoln Street, and the parking structure separated from the main hospital entrance by a right-of-way, presents a potential hazard to patients, physicians, staff and visitors. *See* A.R. Ex. 57. Currently, neighborhood pedestrian and vehicular traffic, Hospital pedestrian and vehicular traffic, and emergency vehicles all co-mingle at the Hospital's main entrance on Lincoln Street, creating numerous unsafe conflicts. Testimony of Gene Corapi, Tr. 37, Testimony of Adrian Hagerty, Tr. 44, Written Testimony of Adrian Hagerty, A.R. Ex. 29; p. 1. *See also* series of photographs at A.R. Ex. 57. The Abandonment will resolve these conflicts by separating out neighborhood traffic and allowing the existing easternmost portion of Lincoln Street to become the Hospital's main entrance, flowing into an on-site circulation system that appropriately separates pedestrians and vehicles, as well as separating emergency vehicles from non-emergency vehicles. A.R. Exs. 1, 15, 21. Neighborhood traffic displaced by the Abandonment will have safe and efficient alternatives, including alternative east/west routes (McKinley Street, Southwick Street and Greentree Road) immediately to the north and south of the Abandonment Area. Therefore, as more fully discussed below, the evidence of record clearly establishes that the Abandonment Area is no longer necessary for present or

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foreseeable public use and, to the contrary, is necessary to protect the health, safety and welfare of the residents in the neighborhood of the abandonment area both by reducing conflicts and improving neighborhood circulation, and by allowing the Hospital to continue to provide quality healthcare to its neighbors and service area.

1. The Petition should be granted because the Abandonment Area is “no longer necessary for present public use or anticipated public use in the foreseeable future”.

The evidence of record is clear that the Abandonment Area is no longer “necessary” for present or anticipated public use in the foreseeable future, a position supported by Transportation Planning Staff in its September 17, 2008 Report to the Planning Board, (“Abandonment Staff Report” at A.R. Ex. 73) in which they concluded that, “although retention of the Lincoln Street right-of-way might be desirable *it is not necessary.*” A.R. Ex. 73, Abandonment Staff Report p. 2. This distinction between desirability and necessity was recognized by the Maryland Court of Appeals in *South Easton Neighborhood Association v. Town of Easton*, 387 Md. 468, 876 A.2d 58 (2005) (a complete copy of which is included in the Record at A.R. Ex. 65), in which a non-profit community hospital much like Suburban petitioned for the abandonment of a roadway, the closure and conveyance of which was intended to allow for expansion of the hospital across the right-of-way. When addressing the issue of whether a right of way is “necessary for present public use”, the *Easton* Court rejected the neighbors’ claim that any roadway in use by the public is “necessary” under the law and cannot be abandoned. In doing so, the Court wrote, “recognizing an absolute no-use standard would permit one person to walk the length of Adkins Avenue, or any other public right of way, and thereby foreclose any conveyance of the roadbed, regardless of the Town Council’s legislative determinations.” *Id.* 495, 74. The *Easton* court therefore held that a right-of-way can be abandoned even if it is presently being used by the public, provided that such right-of-way is not “necessary.” In the instant case, the evidence of record clearly reflects that the Abandonment Area is not needed from a traffic or neighborhood circulation perspective.

Evidence presented at the hearing and in the administrative record demonstrates that on weekdays, 81 to 85 percent of the traffic along the Abandonment Area is hospital related, while only “10 to 15 percent is community related.” *See* Testimony of Marty Wells, Tr. 64, *See also* A.R. Exs. 34a and 36. The evidence of record also demonstrates that almost all of the pedestrian traffic along the Abandonment Area is hospital related. A.R. Ex. 34b.

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Moreover, for the 10-15% of community-related vehicle trips, the record shows that numerous alternate routes exist for ingress and egress to the neighborhood. A.R. Ex. 34a, 34b. On this point, Mr. Wells stated, “[n]eighborhood residents and commuters have multiple choices. They do not have to use this block of Lincoln, since Lincoln Street is not the sole means of access for any property not controlled by the hospital.” Testimony of Marty Wells, Tr. 68. *See also* A.R. Exs. 34a, 34b, Written Testimony of Douglas Wrenn, A.R. Ex. 55. This is due to the fact that the neighborhood is a connected network of streets, allowing neighbors to use parallel streets to access Old Georgetown Road. Therefore, “[t]here are connections so from any point A to any point B, there are a multiple of route choices.” *Id.* at 71.

The evidence of record also demonstrates that the Abandonment will not cause significant traffic on surrounding streets. Even HTCA conceded that the surrounding neighborhood streets have sufficient capacity to handle any traffic displaced by the Abandonment. *See* Testimony of Norman Knopf, Tr. 102. *See also* A.R. Exs. 39-42. Specifically, the Suburban Hospital Expansion Lincoln Street Abandonment Study states that, “all intersections in the study area are forecasted to operate within the congestion standard of 1,600.... The Grant Street intersections with Greentree Road, Southwick Street and McKinley Street would operate within 36 percent of the congestion standard.” A.R. Exs. 1, 34a. Transportation Planning Staff agreed, concluding that “[a]lternative routes provide both sufficient capacity and a more appropriate functional classification for motor vehicles not associated with the hospital.” A.R. Ex. 73, Abandonment Staff Report p. 2. Indeed, the evidence of record demonstrates that, with the Abandonment, the proposed redesign of the Hospital’s main entrance and turning restrictions on access points along Southwick and McKinley Streets, traffic on streets surrounding the Abandonment Area will generally decrease. A.R. Ex. 34b.³ On this point, the record demonstrates that the vast majority of traffic displaced by the Abandonment will be directed to the new Hospital entrance on Old Georgetown Road, and to Old Georgetown Road itself, not into the

³ The following areas will experience decreased traffic: McKinley Street west of its intersection with Grant Street; Grant Street between Hoover and Lincoln Streets; Lincoln Street west of its intersection with Grant Street, Grant Street between Lincoln and Madison Streets, Grant Street between Southwick Street and Greentree Road, Southwick Street west of its intersection with Grant Street, and Greentree Road near its intersection with Old Georgetown Road. A.R. Ex. 34b, Attachment pages 1-6.

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surrounding neighborhood. A.R. Ex. 54b.⁴ This result is further aided by the operational restrictions on Southwick Street, where the staff-only access to and from the site and the garage along Southwick Street has been designed to allow only left-in, right-out movements to discourage traffic circulation into the neighborhood beyond this driveway. A.R. Ex. 49, Written Testimony of Marty Wells, A.R. Ex. 43, p. 14. Further, the exit point from the campus onto McKinley Street will be restricted to left turns only, to prohibit traffic from entering the neighborhood from this exit. A.R. Ex. 47, Written Testimony of Marty Wells, A.R. Ex. 43, p. 14. What traffic is displaced to other neighborhood roads may be safely accommodated. *Id.*, A.R. Exs. 34a, 34b.

Contrary to HTCA's unsupported assertions, the redirection of ambulance traffic to a designated ambulance-only McKinley Street entrance will not just direct hospital traffic "onto another residential street of the community."⁵ Written Testimony of Norman Knopf, A.R. Ex. 59. The record shows that a primary objective of the Petition is to enhance safety by separating emergency traffic from the main entrance and providing improvements to McKinley to allow for a separate entrance lane. *See* Testimony of Gene Corapi, Tr. 37, Testimony of Adrian Hagerty, Tr. 44, A.R. Ex. 57, Written Testimony of Adrian Hagerty, A.R. Ex. 29, p. 1. As noted by Adrian Hagerty in his testimony, "Suburban Hospital is the only major hospital in the region where general visitors, patients, emergency room patients, ambulance drivers, and helicopters all enter a facility in the same area – with little to no separation between these disparate users." Written Testimony of Adrian Hagerty, A.R. Ex. 29. Therefore, with the proposed plans, a separate ambulance-only entrance will exist along McKinley Street, with all other ambulance circulation contained on-site, with egress onto Old Georgetown Road only. *See* A.R. Exs. 1, 34a, Testimony of Marty Wells, Tr. 81.

⁴ The record does show that the following areas are predicted to have modest increases in trips following the abandonment: McKinley Street between Old Georgetown Road and Grant Street, Southwick Street between Grant Street and the hospital entrance; and Old Georgetown Road. A.R. Ex. 34b, Attachment pages 1-6. However, the record also reflects that these areas have more than sufficient ability to handle the increases. Testimony of Marty Wells, Tr. 74.

⁵ Under the proposed plan, ambulances will ingress from a designated entrance along McKinley Street (which will be widened) after traveling a total of only 125 feet west of McKinley Street's intersection with Old Georgetown Road. A.R. Ex. 47. *See* A.R. Ex. 34a, Testimony of Marty Wells, Tr. 81.

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HTCA similarly attempted to argue that the Hospital's delivery traffic will cause additional congestion on McKinley Street, and again, this assertion lacks merit. The record shows that delivery traffic is mainly off-peak and will travel only approximately 375 feet along McKinley Street which, as noted, will be widened, before entering the Hospital campus. A.R. Ex. 47. As noted above, upon exiting, the curb design will prohibit delivery vehicles from turning right into the neighborhood and instead will direct them back to Old Georgetown Road. See A.R. Exs. 34b, 47. Additionally, the testimony of Anne Dorough on behalf of HTCA that fire and rescue vehicles will "exit onto Grant Street" is completely false. Testimony of Anne Dorough, Tr. 137. The Hospital has never proposed vehicular entrances or exits along Grant Street as clearly evidenced by the plans of record.

HTCA also asserted that the Abandonment would make the neighborhood streets less safe for pedestrians and children. These claims are wholly unsupported by the evidence of record. On the contrary, the evidence shows that the Hospital's proposed improvements will actually enhance pedestrian safety in the vicinity of the Hospital. See A.R. Ex. 34a. Sections regarding Accident Data. Additionally, as noted by the project engineer, Mr. Frank Bossong, Suburban has proposed improving the sidewalks on McKinley Street and Old Georgetown Road and constructing sidewalks along Grant and Southwick Streets where they currently do not exist. Testimony of Frank Bossong, Tr. 82-83; A.R. Exs. 51,52. The revised Hospital Campus will also include a designated pedestrian/bike path connecting Grant Street and Old Georgetown Road. *Id.* With the addition of these new perimeter sidewalks and the new pedestrian/bike path, neighbors will be able to walk and bike on the sidewalks and paths, reducing the number of neighbors who need to walk on the surrounding streets. Such improvements will undoubtedly make pedestrian circulation safer. On this point, Transportation Planning Staff concluded "The benefit of network connectivity is greatest for pedestrian circulation and this need can adequately be met by connecting the hospital's on-site sidewalk and pathway network to the adjacent street system..." A.R. Ex. 73, Abandonment Staff Report, p. 2. Moreover, the Abandonment will eliminate neighborhood cut-through trips by those who currently use Lincoln Street as a cut-through route to Old Georgetown Road. Testimony of Marty Wells, Tr. 72. Fewer cut-through drivers will lead to increased safety for pedestrians on the surrounding streets. Therefore, HTCA's claims that the Abandonment will impact the pedestrian safety of the neighborhood roads are wholly without bases and erroneous.

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Finally, neighboring residents testified regarding the “inconvenience” of having to use McKinley Street, Greentree Road, or Southwick Street to access Old Georgetown Road should the Abandonment occur. *See* Testimony of Norman Knopf, Tr. 100, stating “You are dealing with a community that is greatly inconvenienced . . . by the road closure.”⁶ This same issue was raised in *Easton* and was found by the court to lack merit. In *Easton*, the court rejected the neighbors’ argument that closure of the road would improperly inconvenience neighboring residents because using a parallel street would be “impractical . . . because of street congestion, pedestrian use, and a lack of off-street parking.” *Id.* at 480, 66. In so doing, *Easton* made clear the “convenience” of neighbors does not equal “necessity” and, therefore, the creation of an inconvenience for adjoining residents is not a valid reason to deny an abandonment.

2. The Petition should be granted because it is necessary to protect the health, safety and welfare of the residents near the neighborhood of the right-of-way to be abandoned.

A. **Suburban’s facilities must be expanded to meet current health care standards.**

As explained by Gene Corapi, Senior Vice President of Operations for Suburban, “Due to age and design constraints, Suburban’s existing facilities do not provide the necessary flexibility for accommodating advances in healthcare . . . [and indeed] the current facility is inadequately sized to meet even current demands.” Testimony of Gene Corapi, Tr. 34, 38. This is of particular importance because of Suburban’s designation as the only Trauma Center in Montgomery County. *See* Abandonment Petition, A.R. Ex. 1, Written Testimony of Gene Corapi, A.R. Ex. 24, p. 1-2. Suburban’s project architect further explained:

⁶ It should be noted that other neighbors testified as to the minimal impact such inconvenience would have on them. For example, Daniel Keen testified “I use Lincoln every day because it is the most direct route for me, but it would be a trivial inconvenience for me as it would be for others, to have to move one short block in either direction to McKinley or Southwick, or two short blocks to Greentree or Roosevelt if that block of Lincoln were closed.” Testimony of Daniel Keen, Tr. 174. *See also* Testimony of Peter Kellman, Tr. 161.

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The existing building systems we found to be substandard when compared to industry standards. The existing structural grid, which is the grid that's formed by the concrete columns actually does not allow for the size rooms that are regulated by the codes today, especially in the operating room suite. And the operating room suite, as has been stated, is central to demonstrating the need for this large footprint.

Testimony of Adrian Hagerty, Tr. 45. *See also* A.R. Ex. 27. This reality was echoed by Dr. Dany Westerband, Medical Director of Suburban's Trauma Services, who testified:

... as a surgeon practicing at Suburban... I often deal with the challenges of performing certain procedures in operating rooms that are too small or very awkwardly shaped. The size and shape of our current rooms not only limit our ability to perform certain complex procedures with ease, but more importantly significantly impact the flexibility needed to deal with the unexpected, the situation that frequently happens in surgery when unforeseen problems, difficulties or complications occur, forcing the surgeon to take a different approach, or request additional equipment or staff, that cannot, unfortunately, be accommodated into a particular room. This is very stressful, and always dangerous, and it is not safe. While these operating rooms may have been just fine when they were built 30 or 40 years ago, they no longer meet the current standards, and they can no longer support the evolving needs of modern surgical techniques, as mentioned by Dr. Trout, techniques that require an increasing use of sophisticated equipment, such as MRI for computer assisted or guided surgery.

Testimony of Dr. Dany Westerband, Tr. 170-71. Therefore, the evidence of record makes abundantly clear that Suburban needs to expand with facilities equipped to meet today's healthcare standards. The provision of such updated facilities is intended to protect the health, safety and welfare of its neighbors, who rely on the Hospital for their healthcare

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needs, as well as the Hospital's larger service area. Moreover, the development of new facilities cannot be accomplished through demolition and reconstruction of various wings of the existing hospital, as is proposed by HTCA. As plainly established by the substantial evidence of record, the existing hospital facilities are overloaded, and every square foot in use. Written Testimony of Gene Corapi, A.R. Ex. 24, p.3, Testimony of Gene Corapi, Tr. 33-35. Therefore, existing facilities cannot be demolished without interruption of hospital services, which would be detrimental not only to the Hospital but, very importantly, to the community it serves.

The need for such provision of quality healthcare to the community was found to be adequate justification for an abandonment in *South Easton Neighborhood Association v. Town of Easton*, as discussed above. In *Easton*, after determining that the right-of-way was not necessary for public use, the court determined that a hospital serves a "public purpose" and, therefore, its expansion should be considered "necessary" to protect the health, safety, and welfare of the neighborhood. On this point, the court wrote:

The record before the Town Council and the Circuit Court in the present case provides ample illustration of the public purpose of the Hospital.... *The necessity of the Emergency Room constitutes a public purpose that promotes clearly the public welfare.* Amended Ordinance No. 466 states that the new facility to be constructed across the street bed would serve an undeniably "public purpose and benefit, namely, facilitating the provision of emergency and outpatient care services to the residents of the Town....

Id. 497-99, 75-77. (emphasis added).

The *Easton* court also supported the Easton Town Council's conclusion that the abandonment of the right of way to build an "expanded" hospital served a "greater public purpose" than maintaining the right-of-way "as is". See *Id.* 496, 75.

Similarly, in the instant case, the purpose of the Petition is to allow Suburban, a non-profit community-serving hospital, to construct a new surgical suite and private patient beds over the Abandonment Area, with the intent of maintaining and enhancing the high quality

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of care the Hospital provides to its neighbors and the community. Therefore, the Abandonment serves a public purpose and is "necessary to protect the health, safety, and welfare of the residents in the neighborhood of the right-of-way" pursuant to Section 49-63(c) of the Code.

B. The necessary footprint for the Hospital Expansion cannot be accommodated without the abandonment.

The record is clear that, pursuant to the 2001 Guidelines for Design and Construction of Healthcare Facilities, adopted by the State of Maryland as the code governing healthcare facility construction (the "Guidelines"), as well as sound health care planning principles, the required Addition results in a surgical suite footprint of approximately 65,000 square feet that cannot be accommodated on the Hospital Property without abandonment of the Abandonment Area. Pursuant to the evidence of record, each of the fifteen (15) relocated operating rooms in the proposed Addition must be at least "650 square feet for the very complicated procedures, which are done at Suburban Hospital." See Testimony of Adrian Hagerty, Tr. 58, *see also* A.R. Ex. 27. The record also demonstrates that the operating rooms "are required to be on the same level in order to operate safely and efficiently. Situating these rooms on different levels would severely compromise safety by separating key staff and creating the need for redundant equipment and staffing of operating room suite, which is not feasible..." Written Testimony of Adrian Hagerty, A.R. Ex. 29. Dr. Westerband further emphasized these findings, testifying "all operating rooms should be on the same floor, with a configuration that makes them rapidly accessible from certain support services, such as the preoperative care area, or the recovery room area." Testimony of Dr. Westerband, Tr. 169.

Moreover, the Guidelines dictate that "the surgical suite be divided into three designated areas unrestricted, semi-restricted and restricted areas, which dictates the specific layout shown on the plans." Written Testimony of Adrian Hagerty, A.R. Ex. 29. Each designated area must have clear divisions to assure that occupants and users honor the designated corridors. This requirement necessitates sufficient circulation and corridor space within surgical areas, as well as other areas such as post-anesthesia recovery areas, preoperative and stage two recovery areas, and staff changing and support areas. See Letter dated October 8, 2008 from Ellerbe Becket to Gene Corapi. The Guidelines further dictate that the post-anesthesia recovery unit rooms and related support spaces for staff and

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materials “be located with a direct connection to the operating room circulation system because when a patient is post-surgical, they need to be able to be brought back into the operating room if, indeed, something were to go wrong and they need to go back.” Testimony of Adrian Hagerty, Tr. 50. Dr. Westerland also stated “[w]hen the unexpected again arise, and in these rooms after, for a patient after surgery, it is vital to have surgeons and anesthesiologists able to respond quickly from adjacent operating rooms.” Testimony of Dr. Westerland, Tr. 169.

The record is similarly clear that the surgery suite cannot be reconfigured into a long-rectangular-shaped “bowling alley” configuration, as was argued by HTCA but rather must be arranged in its proposed configuration. Elongation of this configuration would “create travel distances, which created an unsafe healthcare environment.” *Id.* On this point, Dr. Westerland testified that

from the standpoint of patient safety, I know by experience, unfortunately, that you never want to have an elongated operating suite where patients have to be transported over long distances in endless hallways between the operating rooms and the recovery rooms. It is simply not safe, and it can lead to disaster.

Testimony of Dr. Westerland, Tr. 169.

Thus, the necessary size and configuration of the Addition requires that it be placed over the Abandonment Area, as it can not fit onto any other portion of the Hospital’s property. *See* Testimony of Adrian Hagerty, Tr. 61-63 (“we looked at everything”), Written Testimony of Adrian Hagerty, Ex. 29, p. 2-3, Written Testimony of Gene Corapi, A.R. Ex. 24, p. 6-7. There is no evidence of any weight to the contrary in the record. Therefore, contrary to HTCA’s unsupported assertions that the Addition could be located on other portions of the Property, the clear evidence of record indicates that the proposed location is the only feasible location given the necessary footprint for the surgical suite.⁷

⁷ In an attempt to demonstrate that the Hospital could locate an addition elsewhere on the Property, HTCA made reference to a conceptual plan that Suburban reviewed with HTCA in 2001. The infeasibility of this concept is addressed in a separate letter, dated October 9, 2008, and supporting documentation from Brian

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C. The Addition must be located in the proposed location due to adjacency to the emergency room and the radiology department.

The record is also clear that the Addition must be located as proposed because of essential adjacencies to the existing Hospital. In this regard, the proposed location provides "for a direct connection to the emergency department" and adjacencies to the radiology department. Written Testimony of Adrian Hagerty, A.R. Ex. 29, A.R. Ex. 71. As noted by hospital witnesses, direct connection to the emergency department "improves safety for transferring patients with traumatic injuries and critical conditions directly into the operating room when needed." *Id.* In fact, as noted by Dr. Westerland:

locating the operating rooms on the same floor as the emergency department and the trauma bay would be a major improvement. Currently, critically ill patients at Suburban have to be transported five floors up to the operating room, often while complex resuscitation maneuvers are being carried out. In trauma, in fact, truly emergent surgery is occasionally started in the emergency department, and completed in the operating room five floors up. For us trauma surgeons, it remains obvious daily that minimizing the travel distance within the trauma center would allow us to provide better care and possibly improve outcomes.

Furthermore, in regards to the need to locate the operating rooms adjacent to the radiology department, Dr. Trout testified that

... radiology has emerged as a hugely important imaging study technology, Pet scans, CT scans, MR scans, for example. Surgeons have become dependent on these modalities in radiology, as well as in the OR.... The future absolutely mandates that radiology, the operating rooms, the

Gragnotati, President and CEO of Suburban Hospital to Diane Schwartz Jones, Esq. As demonstrated, the 2001 concept could not be constructed under today's health care standards, code requirements, and operational and safety concerns, among other concerns.

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postoperative recovery rooms, and the emergency department be contiguous and on the same floor. The future will undoubtedly include precise robotic surgery, as already being employed in prostate centers, real time MRI imaging and operating rooms to facilitate cardiac surgery, and very sophisticated imaging capabilities so that we can treat ruptured aneurisms efficiently.

Testimony of Dr. Trout, Tr. 166. Therefore, the evidence of record demonstrates the clear need for the new surgical suite to be located in the proposed location, over the Abandonment Area and adjacent to the emergency department and radiology department.

Based on the foregoing and other evidence of record, the Abandonment is “necessary to protect the health, safety and welfare of the residents in the neighborhood of the right-of-way” because the expansion of Suburban is required to meet the needs of the community it serves, the footprint of the Addition is mandated by code and operational and safety concerns, and the Addition cannot be accommodated elsewhere on the property due to configuration issues and necessary adjacencies. It is these fundamental issues, and not the desire to provide an “imperial palace”, as alleged by HTCA, that drive the need for the abandonment. Testimony of Bob Deans, Tr. 116. As the Transportation Planning Staff wrote:

The Applicant has testified that the Lincoln Street right-of-way is needed for the hospital expansion proposal to be feasible. We recognize that retention of the Lincoln Street right-of-way may be desirable but that a greater public benefit may be recognized through its abandonment by expanding health care coverage.... The attainment of other public benefits cannot outweigh the transportation system *needs* of the general public, but they can outweigh transportation system *desires*. We support the proposed abandonment

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conditioned upon hospital expansion and the provision of
alternative on-site pedestrian connections.⁸

A.R. Ex. 73, Abandonment Staff Report, p. 4 (emphasis in original).

CONCLUSION

As demonstrated above and in the administrative record, both of the two standards specified in Section 49-63(c) of the Code for granting the Abandonment are met with this Petition, either one of which, standing alone, would be sufficient to justify closure of the Abandonment Area. As shown in the record, the Abandonment Area is not necessary for present public use or anticipated public use in the foreseeable future and those vehicles displaced by the abandonment have proximate, adequate, safe and efficient alternative means of traversing the neighborhood to arrive at the same location. On the contrary, the Abandonment is necessary for the protection of the health, safety and welfare of the residents near the Abandonment Area,⁹ as well as the community as a whole, by allowing the Hospital to expand in ways necessary to continue to deliver quality healthcare to the community it serves. Further, the Hospital's proposed expansion, which depends on the abandonment, will enhance pedestrian and vehicular circulation in and around the Hospital. We, therefore, request that the Hearing Examiner and County Council concur with the recommendation of the Montgomery County Planning Board that the abandonment is appropriate and the Petition should be granted.

⁸ This analysis is completely in line with the *Easton* case, as reviewed above, where the City of Easton determined that a greater public purpose would be served with the closure of the right-of-way to accommodate the emergency room expansion, and thus improve the healthcare of the community, than could be served by preserving the right-of-way for public vehicular access. See *Easton*, 387 Md. 496, 876 A.2d 75, as discussed *infra*.

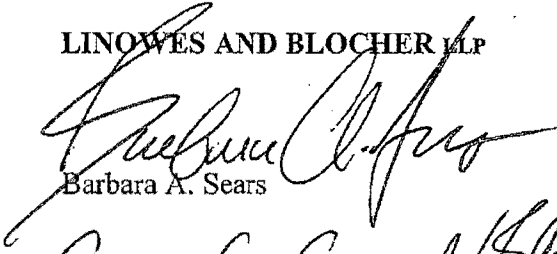
⁹ HTCA's assertions that the abandonment will not benefit the residents near the neighborhood of the Abandonment Area are unfounded. See Written Testimony of Norman Knopf, A.R. Ex. 59, p. 7. The Hospital expansion will directly affect these residents, who, as many testified, depend on Suburban for healthcare, as does the remainder of the Hospital's service area and trauma patients. See Testimony of Peter Kellman, Tr. p. 162, Testimony of Daniel Keen, Tr. p. 174-175.

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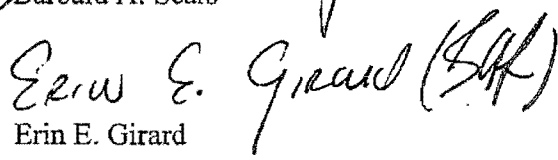
Thank you for your consideration of this information. If you have any questions, or would like any additional information, please do not hesitate to contact us.

Very truly yours,

LINOWES AND BLOCHER LLP



Barbara A. Sears



Erin E. Girard

Enclosures

cc: Mr. Michael Cassedy
Mr. Brian Gagnolati
Mr. Gene Corapi
Ms. Leslie Ford Weber
Ms. Margaret Fitzwilliam
Mr. Russ Cramer

OFFICE OF THE COUNTY EXECUTIVE
EXECUTIVE OFFICE BUILDING
ROCKVILLE, MARYLAND

IN THE MATTER OF: * DEPARTMENT OF
* TRANSPORTATION
PETITION OF SUBURBAN *
HOSPITAL, INC. * PETITION NO. AB 715
*
FOR ABANDONMENT OF A PORTION * BEFORE:
OF LINCOLN STREET IN * DIANE SCHWARTZ JONES
HUNTINGTON TERRACE * PUBLIC HEARING OFFICER
SUBDIVISION IN BETHESDA, *
MARYLAND *
* * * * *

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

On April 21, 2008, Linowes and Blocher, LLP, on behalf of Suburban Hospital, Inc. (the "Petitioner" or "Hospital") requested to abandon a Portion of Lincoln Street between Old Georgetown Road and Grant Street in the Huntington Terrace Subdivision in Bethesda, Maryland (Ex. 1). Lincoln Street was established by a subdivision plat recorded at Plat Book 2, Plat No. 131 on February 15, 1910 (Ex. 1, Exhibit C), as a street in the Huntington Terrace Subdivision, and is classified as a secondary residential street. Abandonment Case No. AB 715 seeks the abandonment of a one block portion of Lincoln Street, between Old Georgetown Road and Grant Street in Bethesda, Maryland, which is approximately 700 feet long and 50 feet wide, with an area of approximately 36,126 square feet of public right-of-way (Ex. 1, Exhibit A). The public right-of-way to be abandoned is located in the Huntington Terrace Subdivision and is described and shown in Ex. 1, Exhibit A (the "Abandonment Area"). The main hospital buildings are located at 8600 Old Georgetown Road, Bethesda, Maryland.

The Petitioner has requested the proposed abandonment of Lincoln Street in connection with the proposed expansion of the Hospital.¹ The Hospital, which has as its core services emergency, trauma, cardiac, neurosciences and stroke, oncology and orthopedics care, is the only designated trauma center in Montgomery County and proposes to 1) modernize operating rooms and related surgical facilities; 2) provide more private patient rooms to address and improve infection control, patient care, privacy and family participation; 3) enhance patient care through additions and changes to its facilities to accommodate medical advances in technology, changes in healthcare practices and evolving code regulations; 4) satisfy its responsibilities as a designated trauma facility; 5) improve access to the emergency/trauma center; 6) provide adequate parking for patients, visitors, employees and physicians; 7) maintain and attract well qualified physicians and other healthcare employees to the Hospital staff; 8) provide on-campus office space for physician services to provide patients with direct access to such physicians and hospital services; 9) improve pedestrian and vehicular safety; 10) enhance operational efficiencies in the Hospital through improvements to the internal and on-site circulation systems, including the loading docks and building systems; and 11) create a campus environment with attractive landscaped buffers, open spaces, plazas, gardens, and walkways to be used by Hospital staff, patients, visitors, and the surrounding residents.

In order to accomplish these objectives, the Hospital proposes to construct a new building in a portion of the Abandonment Area which will house new surgical facilities and related services, with a footprint of approximately 65,000 square feet, private patient

¹ The Hospital is located in the R-60 Zone and operates under a special exception. The Hospital submitted a modification to its existing special exception with the Montgomery County Board of Appeals (Case No. S-274-D) which was granted with conditions. An Administrative Appeal of this decision was filed on

rooms, and physician offices (the "Addition"). The Addition will contain approximately 235,000 square feet and will be four stories in height and connect to the existing hospital. The Hospital also proposes to construct a new multi-level parking structure with approximately 1,196 parking spaces and modify existing surface parking facilities; demolish the existing parking structure and the Lambert Building; develop an improved pedestrian and vehicular circulation system, including a new main entrance that will separate the pedestrian and vehicle entrance from the emergency vehicular entrance and the helipad; and create open spaces, plazas, walkways, gardens, landscaping, and other green areas to create a campus design in harmony with the adjacent residential areas.

Executive Order No. 127-08, dated May 29, 2008, authorized the holding of a public hearing on the petition for abandonment of Lincoln Street (AB 715) on Tuesday, August 26, 2008, beginning at 1:00 p.m., in the lobby auditorium of the Executive Office Building, 101 Monroe Street, Rockville, Maryland (Ex. 2). As required by Section 49-62 of the Montgomery County Code, public notice of the public hearing was provided by way of newspaper publication (Ex. 4), a sign posted in the right-of-way (Ex. 7), and by mail to neighboring property owners (Ex. 3). The public hearing was convened as scheduled on August 26, 2008, and testimony and evidence were received. At the conclusion of the public hearing, the record was held open until 5:00 p.m. on October 10, 2008 to provide an opportunity for public agencies and interested persons to submit comments for the record. In addition to the testimony given at the public hearing described below, and the written comments from various public agencies and public utility companies, including the Montgomery County Planning Board, the record includes

approximately 295 emails and letters from citizens and various groups opposed to the abandonment of Lincoln Street (Ex. 16), and approximately 940 emails and letters from citizens and various groups in support of the proposed abandonment of Lincoln Street (Ex. 17).

II. Summary of Testimony and Evidence of Record

At the public hearing, Mike Cassidy, Montgomery County Department of Transportation, indicated that the requested abandonment of Lincoln Street included the right-of-way shown on the GIS aerial photograph (Ex. 5), which adjoins property owned by or under contract to the Petitioner. In accordance with Section 49-62 of the Montgomery County Code, Mr. Cassidy's office requested comments from the public, appropriate governmental agencies, and public utility companies that might be affected by the proposed abandonment. Mr. Cassidy listed the Exhibits that were contained in the hearing record (Exs. 1-17). The complete list of Exhibits, including exhibits entered into the record after the public hearing, is attached hereto as Attachment I. Mr. Cassidy noted that, at the time of the public hearing, comments had not been received from the Montgomery County Planning Board, and the County Department of Transportation. He indicated that the Petitioner had requested that the record be left open for the Montgomery County Planning Board comments on the proposed abandonment (Ex. 13).

Barbara Sears, an attorney with Linowes and Blocher, who represents the Petitioner, presented an overview of the proposed Hospital project, and the requested abandonment of Lincoln Street. She noted that the requested abandonment is for a one block area of the existing Lincoln Street which contains 36,126 square feet. Ms. Sears said that Suburban Hospital is a non-profit corporation which operates under a special

exception. The Hospital filed for a modification to the special exception in April 2008 which was granted with conditions by the Montgomery County Board of Appeals on October 20, 2010 with an effective date for the Board's Opinion of December 8, 2010. Ms. Sears indicated that the Hospital owns all the property in the Abandonment Area except for one property (Lot 12) which is under contract to the Hospital (Ex. 18).

Ms. Sears pointed out that the right-of-way was dedicated in 1910 and submitted two other plats of subsequent subdivisions which make up the right-of-way proposed to be abandoned, including a 1948 plat and a 1975 plat (Ex. 19). She said that the Hospital owns approximately 15 acres which is split by Lincoln Street, and across Old Georgetown Road is the NIH development. Ms. Sears indicated that the purpose of the Hospital's addition is to add a properly sized, configured, and located functional space necessary for the Hospital to deliver quality medical services to the community in compliance with current health care standards. She said that the key element is the required footprint for the surgical area which must be adjacent and connected to the existing hospital services. The Addition proposed by the Hospital does not add any new operating rooms to the 15 that already exist, but it does propose to put all of the operating rooms on one level which will be connected to the trauma and emergency departments such that there is no other place on the site where this configuration could reasonably be put and meet the zoning standards.

Ms. Sears noted that, during the week, the portion of Lincoln Street proposed to be abandoned carries 81 to 85 per cent Hospital trips and approximately 15 per cent community trips. She said that, unlike most hospitals, all of the entrances to the Hospital, including emergency, trauma, patients, and the helicopter pad are located in the same

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place, such that everyone has to cross Lincoln Street, including pedestrians, patients, and visitors which is a terrible situation. She indicated that with the closure of the street and the additional improvements proposed, the new circulation pattern in the area would alleviate the very unsafe conflicts in pedestrian, vehicular, and hospital uses, and that the displaced traffic will be safely and sufficiently accommodated. Ms. Sears concluded that the road is not necessary for public use currently or in the future, and there is an extensive grid system which can accommodate alternatives to its use. She said that the closure is necessary to protect the health, safety, and welfare of the community in the vicinity of the right-of-way, such that the abandonment should be granted (Hearing Transcript, pages 18-29).

Mr. Gene Corapi, senior vice-president of operations at the Hospital, stated that the Hospital commenced operations under the federal government in 1943, and following World War II was bought by a voluntary, non-profit organization to serve the growing population in the community (Ex. 24). He said that the Hospital is a 238 bed hospital which provides emergency and trauma services, and other core services, including cardiac surgery, neurosciences, oncology, and orthopedics. The Hospital is the County's only designated trauma center and was named last year as one of only five most highly prepared trauma centers in the nation. In addition, the Hospital has formed partnerships with NIH and the Naval Medical Center to provide coordinated emergency response during disasters. Mr. Corapi indicated that the maintenance of these partnerships and the provision of community services is being compromised by an acute campus space shortage, and the abandonment application is intended to address this issue. He described that the Hospital was built in four phases and the wings are 30 to 51 years old, and that to

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minimize on-site expansion, many outpatient services have been moved away from the Hospital site. In addition, in the last few years the Hospital has renovated the inpatient care units, the emergency unit, and many critical ancillary service areas, but that the Hospital has reached the limit of what can be accomplished by renovation alone.

Mr. Corapi testified that advances in healthcare and technology mandate larger, specially configured operating rooms to accommodate mechanical systems and new equipment and technology. He said that a comprehensive facility assessment was done which concluded that a building of approximately 250,000 square feet was needed to meet today's standards and the current volumes of patients. This amount of space would accommodate private inpatient rooms, which is required due to infection control and from a patient privacy perspective; operating rooms sized to accommodate state-of-the-art equipment and procedures; diagnostic spaces sized to accommodate the necessary equipment; and spaces that comply with the Americans with Disabilities Act guidelines. He noted that the assessment identified other areas of concern, such as the lack of sufficient on-campus parking, poor vehicular and pedestrian circulation, and the lack of on-site physician office space.

Mr. Corapi indicated that, after considering various alternatives, it became clear that consolidation of the Hospital's property via the closure of a portion of Lincoln Street would be necessary due to 1) the need for emergency vehicles, including helicopters and patients, to have uninterrupted access to the Hospital during construction, 2) the need for the expanded facility to connect to the existing facility which would allow for the necessary proximity of service between the old and new facilities, and 3), most importantly, the need to accommodate the footprint required by the new surgery suite. He

noted that there was community input on the proposed improvements from an advisory board established by the Hospital.

Mr. Corapi described the objectives and components of the building project. He indicated that the core purpose of the proposed project is to improve and facilitate safe, efficient, and effective care to the residents of the surrounding community and the County. He said that the surgical suite will have the same number of operating rooms as currently exists but will be sized from a square footage and ceiling height perspective to accommodate the equipment, staff, and utility systems necessary for state-of-the-art surgery, including the necessary support areas such as pre-operative and recovery rooms which will be located on the same floor to ensure optimal patient care, safety, and efficiencies. Mr. Corapi stated that the proposed improvements will also address current patient care standards that call for private rooms to provide enhanced infection control and privacy, and to encourage family involvement in patient care. He indicated that to address the critical lack of on campus parking there would be provided adequate parking to support the needs of the patients, visitors, physicians, and employees, the majority of which will be provided in a new parking structure located along Old Georgetown Road, away from the neighborhood. He pointed out that campus circulation would be improved for vehicles and pedestrians, including a new main entrance separate from the emergency entrance and the helipad; that physician office space would be provided to enhance physician efficiency with increased access to the trauma center and the Hospital when time is of the essence; and that a comprehensive landscaping plan will provide for a healing environment that is compatible with the surrounding neighborhood. Mr. Corapi noted that, with the growing over 65 age population, the Hospital expects an

approximately 12 per cent increase in inpatient admissions at the Hospital over the next ten years.

Mr. Corapi described the considerations and outlined the benefits of the proposed abandonment of Lincoln Street. He said that, given the footprint required to address the needs of the Hospital and the need to connect the addition to the existing facility, the abandonment of one block of Lincoln Street is the only feasible option since the Hospital cannot build in other directions on the site. Further, he noted that building across Lincoln Street would allow the addition to be built closer to Old Georgetown Road and not back into the neighborhood. Plus, the Hospital's plan minimizes the mix of emergency vehicles, visitors, pedestrians, and helicopter traffic, all of which currently converge in one location. He pointed out that the project will create walking and bike paths through the campus, complete the neighborhood sidewalk grid surrounding the Hospital, and direct Hospital traffic away from the neighborhood and toward Old Georgetown Road. Mr. Corapi argued that the abandonment of the one block of Lincoln Street is necessary to allow the proposed expansion to occur, which expansion is critical in order for the Hospital to maintain its ability to provide first-class care to the thousands of patients that it serves (Hearing Transcript, pages 30-41).

Mr. Adrian Hagerty, a registered architect in Maryland, who specializes in healthcare design, indicated that his firm was hired by the Hospital to develop a plan that would improve the health, safety, and welfare of the community and would address the pressing needs and concerns of the organization, its mission, and the community it serves (Ex. 29). He said that the first finding concerned the access issues, which found that all of the entrances were located in the same place, that is the visitor's entrance, the patient's

entrance, the emergency department, the ambulance, and the helicopters all arrive at the same place which is a safety concern. He indicated that the existing building systems were substandard when compared to industry standards, and that the existing structural grid does not allow for the size of rooms that are regulated by the applicable State codes (Guidelines for Design and Construction of Healthcare Facilities), especially the operating room suite, and the need for private rooms.

Mr. Hagerty testified that the existing operating room in the Hospital is about 380 to 400 square feet, while the current standard is 650 square feet for very complicated procedures which are done at the Hospital. Similarly, the existing semi-private room is about 110 square feet per bed, while the current standard is 310 square feet for a private room when family focused care is part of the hospital's mission. He discussed the proposed Addition which shows that the footprint for the surgical suite is approximately 64,000 square feet and includes 15 operating rooms with semi-restricted, restricted, and unrestricted areas related to infection control, as required by the State guidelines, and adjacency to pre-operative and post operative rooms and a connection to the emergency department and the radiology department. Mr. Hagerty indicated that the existing garage would be replaced to accommodate additional parking and would be oriented along Old Georgetown Road. He said that they had looked at a variety of options and locations for the proposed expansion and whether the right-of-way could be relocated, and concluded that the only reasonable option is the one proposed by the Hospital because of the issues and regulatory guidelines related to the surgical suite (Hearing Transcript, pages 44-55).

Mr. Marty Wells, a traffic consultant for the Hospital, testified that he conducted a traffic study for the Hospital's application, and he concluded 1) that the subject right-of-

way is no longer necessary for present or anticipated public use because there is sufficient capacity at the nearby key intersections to handle any traffic diverted from Lincoln Street, and 2) that the abandonment is necessary to protect the health, safety, and welfare of the nearby residents because the pedestrian and vehicular traffic patterns would be made safer and more efficient and alternative routes exist for the traffic that will be redistributed as a result of the proposed abandonment (Ex. 34a). He described the existing physical characteristics of Lincoln Street, the number of vehicles and pedestrians that use the one block of Lincoln Street, the proportion of all traffic that is Hospital traffic versus neighborhood traffic, and the alternative vehicular routes, and the adequacy of those routes. He said that Lincoln Street, which is classified as a residential street, is situated within a connecting network of north/south, and east/west streets and that there are seven east/west streets located within about a half a mile. He indicated that Huntington Parkway and Greentree Road are classified as primary streets, Bradley Boulevard is an arterial road, and Old Georgetown Road is classified as a major highway.

Mr. Wells noted that Lincoln Street is only three blocks long and that it serves short distance trips, primarily hospital trips on the portion of the block that is proposed to be abandoned. He indicated that there are 12 driveways, including the Hospital's garage driveway, on the north side of the street which are controlled by the Hospital, and two driveways, which lead to the Hospital's surface parking lots on the south side of Lincoln Street. The paved width of Lincoln Street is approximately 19 feet at Grant Street and about 33 feet wide at Old Georgetown Road (the actual right-of-way is 50 feet). Mr. Wells said that there is one westbound travel lane between Old Georgetown Road and Grant Street, one eastbound travel lane between Grant Street and the Hospital's driveway,

and two eastbound lanes between that driveway and Old Georgetown Road with a traffic signal at Old Georgetown Road which will remain if the road is abandoned. He pointed out that the Hospital's driveways are controlled by stop signs, there are two marked pedestrian crosswalks in this block of Lincoln Street, there is a sidewalk on the north side of the block, but no sidewalk on the south side of the street, and that curb parking is prohibited.

Mr. Wells next discussed the traffic study which was conducted for 24 hours on Saturday, March 10, Wednesday, March 15, and Thursday, March 16, 2007. The total volume of cars on Lincoln Street was roughly 2270 motor vehicles on Saturday, roughly 3800 vehicles on Wednesday, and roughly 3700 vehicles on Thursday. He indicated that on Saturday about 78% of the traffic was Hospital related and about 22% was local residential traffic, and on Wednesday and Thursday, the Hospital related traffic was 81 to 85%, NIH related traffic was 4 to 5%, and 10 to 15% was community related. Mr. Wells also discussed the number of pedestrians on Lincoln Street and the overwhelming majority were Hospital related (Ex. 37).

Mr. Wells testified that there would be certain vehicle turning restrictions proposed which would limit the number of vehicles that could enter or leave the Hospital through the community to the west. He indicated that the easternmost driveway on McKinley Street would be restricted to inbound ambulance traffic only, which would eliminate the conflict that exists today by dedicating a driveway to the inbound ambulances. The westernmost entrance on McKinley Street would prohibit left hand turns in and right turns out. On Southwick Street right hand turns in and left hand turns out of the parking garage would be prohibited, so that you could not go through the

neighborhood to get to that entrance, rather all traffic would be directed to Old Georgetown Road and that entrance would be restricted to use by Hospital employees. Mr. Wells pointed out that neighborhood residents do not have to use the block of Lincoln Street proposed to be abandoned, because it is not the sole means of access for any property not controlled by the Hospital, and there are other parallel streets and a connected network of streets that the community may use. He concluded that the use of the right-of-way for the proposed Hospital expansion would be a superior public use, compared to the modest and convenient use of the street by the neighborhood residents. He noted that cut through trips in the neighborhood would be eliminated, and that the conflicts among the ambulances, automobiles, and trucks, and pedestrians at the main hospital entrance would be eliminated by the proposed abandonment.

Mr. Wells indicated that there is enough capacity on the parallel streets to accommodate the modest number of trips that would be displaced by the proposed abandonment. He said that presently Old Georgetown Road operates at 76% capacity and that with the proposed abandonment it would operate at 77% capacity. He noted that the traffic would increase on the primary alternate routes (Greentree Road and Huntington Parkway) and decrease on the local streets (Hearing Transcript, pages 56-76).

Mr. Frank Bossong, a registered professional engineer in Maryland, testified that the area surrounding the Hospital is a very well networked roadway system with tertiary roads that have a 50 foot right-of-way with pavement ranging from 20 feet to 26 feet. He noted that some of the roads in the network are open section, having no curb, and some of the roads are closed section, having a curb and gutter, and some of the roads have a curb on one side, but no curb on the other side. He indicated that if Lincoln Street is

abandoned there will be improvements to Southwick, Grant, and McKinley from an operational standpoint related to the circulation of vehicles, and also from a pedestrian standpoint. Mr. Bossong discussed the proposed improvements to Old Georgetown Road which are to realign the crosswalk and increase the width of the island within Old Georgetown Road to allow a pedestrian refuge if people are crossing from one side to the other, and also additional improvements to the crosswalk across McKinley Street.

Mr. Bossong also discussed the proposed improvements to McKinley Street which are to dedicate ten feet to allow a 50 foot right-of-way and an additional turn lane coming off of Old Georgetown Road to the entrance to the Hospital, and to put a sidewalk all the way through to Grant Street. He said that adding a right turn lane into the Hospital will keep the through traffic flowing. Mr. Bossong noted that there will be a connected sidewalk from McKinley Street along the length of Grant Street and the Hospital boundary which will improve the circulation path for pedestrians. He indicated that on Southwick Street, the sidewalk would be extended from the garage entrance to Old Georgetown Road. He introduced an exhibit (Ex. 50) which shows all the signs on the surrounding streets which restrict the parking and shows the turn lane restrictions, which are in place today; and an exhibit (Ex. 52) which shows the proposed connectivity related to pedestrian safety and circulation. This includes a proposed sidewalk through the Hospital campus which would be open to the public to come through the site, and a bike trail through the Hospital campus which could also be used for emergency vehicles if needed.

Mr. Bossong identified the existing utilities within the right-of-way of Lincoln Street which include sewer, gas, water, electric and telephone services that serve the

residences and to some extent, the Hospital. He indicated that the utilities would be abandoned, but since they serve essentially only the residences along Lincoln Street, the abandonment would not affect the community or neighborhood outside of Lincoln Street. He also noted that the County Fire and Rescue Department had approved a design which showed the access for the fire and rescue vehicles (Ex. 54). Mr. Bossong testified that he thought the abandonment of Lincoln Street, if granted, would be a positive for public use because the planned improvements, especially from a pedestrian and vehicular circulation aspect, would be much safer for the overall community due to the conflicts and crossings that exist today (Hearing Transcript, pages 77-89).

The Hospital also submitted a Report from Mr. Douglas Wrenn, a land use planner, concerning the proposed abandonment (Ex. 55). Mr. Wrenn indicated that Lincoln Street is not necessary for anticipated public use in the foreseeable future because the community is served by a well defined grid of interconnected streets that provide multiple points of east/west access. He noted that the Bethesda-Chevy Chase Master Plan does not call for the expansion of the Lincoln Street right-of-way, and that the Master Plan provides that people who work or live along Old Georgetown Road must be able to enter and leave the road safely. Mr. Wrenn argued that the abandonment of Lincoln Street will allow the Hospital to separate the main vehicular entrance to the Hospital from the neighborhood which will improve both the pedestrian and vehicular safety in the area. He discussed that the Hospital is an essential public use, and that, because Lincoln Street is not necessary for traffic circulation, the expansion of the Hospital over the right-of-way will improve the delivery of critical health care services to the community which is a superior public use.

Mr. Wrenn stated that the Master Plan recognizes the importance of community serving healthcare uses by indicating that “it is important to meet health needs through hospital services and hospice centers that are appropriately sized to be compatible with surrounding neighborhoods” (page 33), and the Master Plan anticipates the expansion of special land uses such as the Hospital by indicating that such expansion will be reviewed in the context of impacts on adjacent communities (pages 51 and 57). Mr. Wrenn discussed that the size and configuration of the Hospital campus is consistent with other institutional uses such as public schools and recreation centers located within the nearby residential community. He also argued that the creation of a unified hospital campus is in the public interest, because by eliminating traffic through the middle of the site, the Hospital can function as an integrated campus, create a safe and efficient circulation system, and separate Hospital activities from the residential neighborhood by the use of attractive parks, green areas, and landscaping features. Mr. Wrenn pointed out that the proposed project resolves conflicts by removing traffic from the Hospital entrance, relocating delivery trucks and emergency vehicle access, and separating pedestrian crossings from the parking structure entrance which will provide significant improvements to pedestrian circulation and safety on the Hospital campus and the surrounding neighborhood.

Mr. Wrenn indicated that there has been significant new development over the past 90 years since the road was platted, including the Hospital, the construction of NIH, the growth of the Bethesda CBD, and the construction of Old Georgetown Road as a major arterial roadway, such that there has been a significant change in circumstances since the original dedication of Lincoln Street which would warrant approval of the

proposed abandonment.

Mr. Norman Knopf, an attorney who represents the Huntington Terrace Citizen's Association, said that the community is opposed to the proposed abandonment. He noted the following four points 1) the proposed abandonment is not merely a road closing, but will result in the demolition of 23 houses which will destabilize the community, if not actually destroy it as a viable, desirable community; 2) the proposed road closure does not meet the legal requirements for abandonment; 3) the road closure is not necessary for the Hospital to achieve all of its goals, because there are reasonable alternatives readily available without the road closure; and 4) the community fully supports the Hospital, but they do not support this particular design which requires the destruction of 23 houses and the closure of its main street (Ex. 59).

Mr. Knopf, on the first issue, indicated that the Hospital owns ten per cent of the houses in the community and that they are going to take down eight per cent of the houses for the expansion or 23 houses. He said that the single family homes left in the areas across from the Hospital will be looking at buildings or parking lots of the Hospital, rather than single family homes.

Mr. Knopf argued that the legal requirements for the abandonment of the road have not been met because the Hospital has not shown that there is no need for this particular road in the present or the future. He pointed out that the road is heavily used by the community and that the community would be greatly inconvenienced and harmed by the road closure, because it provides one of two points of full access for the community to turn left onto Old Georgetown Road, otherwise one must turn right out of the community onto Old Georgetown Road. He noted that Lincoln Street is the main entrance

to the community for ingress and egress, and that closing Lincoln Street would result in cars being sent over to adjacent streets. Mr. Knopf discussed that many of the streets in the community are narrow and have no sidewalks and have an actual paved area of about 20 feet or less, such that sending more cars onto quiet residential streets on which people walk, children play, and bicyclists use is not something that the community wants, and is inconsistent with the residential nature of the neighborhood which makes the area a desirable community. He argued that the capacity of the other roads to handle additional traffic is not the test for closing a road, but rather, the test is whether the road is used by the public, is the road convenient for the public, will closure of the road cause harm to the public. He noted that the closure of the road would cause safety problems and quality of life problems for the community by forcing more cars and trucks over narrow roads onto another residential street.

Mr. Knopf also discussed the second legal requirement which may be used to prove that a road may be closed, and he said that the Hospital argued that it meets these criteria, because it provides for the health, safety, and welfare of the County by providing a hospital. He disputed that the Hospital met this criteria because the requirement is related to the general welfare, safety or health of the residents near the right-of-way, not the general residents of the County, and the residents believe that one should look at only traffic impacts on the immediate residents. He argued that there is no general enhancement or benefit to the community or to the County that the road closure would provide that could not be provided by an alternate design which would not involve the closing of the road, or involve the demolition of 23 houses. He said that in 2001, the Hospital and community reached agreement on an expansion plan for the Hospital that

did not require the closing of Lincoln Street and only two houses were to be demolished, but that plan has now disappeared and the Hospital now has only one plan that requires the closing of Lincoln Street (Ex. 59, Tab 3). He indicated that the Hospital has surface parking lots around the hospital and 90,000 square feet along Old Georgetown Road, such that the Hospital has plenty of other space to build on, and that the community is willing to work with the Hospital to amend the zoning ordinance if setback relief is necessary. Mr. Knopf also argued that the Hospital could tear down one of the older wings of the hospital and add on that way without the need to close Lincoln Street, such that the Hospital has not carried the burden of proof that the proposed plan is the only plan that they can come up with or the only way to expand the hospital.

Mr. Knopf next discussed that the Hospital was closing Lincoln Street for aesthetic reasons related to having a grand entrance to the hospital and the proposed gardens. He indicated that the new addition occupies about one-third of Lincoln Street and the numerous gardens and wellness walk going back towards Grant Street occupies about two-thirds of the abandoned street. He pointed out that the landscaping, gardens and paths comprise over three acres on the property with the closing of the road being about four-fifths of an acre. He argued that the community was being asked to sacrifice 23 houses, their livability, convenient access to the neighborhood, so that the Hospital could have a wellness path and meditation garden which was not sufficient reason to close the road, rather the Hospital should design an expansion plan that uses the site without closing the road. He noted that other County Hospitals had expanded without closing roads and that the County Executive should weigh the benefits to the County versus the closure of the road.

Mr. Knopf next discussed the need by the Hospital for the 235,000 square foot Addition. He noted that the Hospital was not providing any new services as part of the expansion plan; rather the number of operating rooms would be the same and would require 64,000 square feet in the addition. He pointed out that the remaining square footage was not needed for essential services. Mr. Knopf argued that there is no need to close Lincoln Street because there are other design alternatives available to the Hospital which would achieve their goals (Hearing Transcript, pages 98-113).

Mr. Bob Deans testified at the Hearing as an elected member of the Board of the Huntington Terrace Citizen's Association which he said consists of a community of 300 households that is one of the oldest residential communities in Montgomery County. He indicated that the community is a stable, viable residential community which for 65 years has supported Suburban Hospital, and that they respect the Hospital's mission and the dedicated professionals who work there. He said that the community wants to be able to support the plan for the Hospital's growth and change, so long as the plan respects the residential character of the community, the safety of the residents, and the quality of life that has led the residents to make Huntington Terrace their home.

Mr. Deans indicated that the community looked very carefully at the Hospital's plan to close Lincoln Street, and by a vote of 155-0, the community concluded that the Hospital's plan does not meet the minimum standard that any community has the right to expect from its corporate neighbor. He said that the Hospital's plan will destroy much of the community, beginning with the abandonment of Lincoln Street, which is the central byway of the community that the residents rely on every day; the closing of which would disrupt traffic patterns in a way that would undermine the safety of the residents. Mr.

Deans testified that closing Lincoln Street would be the first step in a broader plan to destroy much of the community by razing two dozen homes, by nearly doubling the size of the Hospital's parking lot, and by building commercial office space in a residential community where it does not belong. He said that the Hospital can modernize and expand its facilities by using undeveloped land currently being used for surface parking to achieve its goals without closing Lincoln Street, which the Hospital proposed to do in 2001. He indicated that the Hospital's plan would not improve the welfare of the community because no new medical services would be offered, and no new beds would be added,² but rather the Hospital's plan would build three acres of gardens and fountains for the enjoyment of the Hospital's executives and staff. Mr. Deans further testified that the community could find no precedent anywhere in Montgomery County where a corporate healthcare provider had been allowed to force the abandonment of a public road over the objections of the taxpaying residents who rely on the street and want it to remain open. He asked, on behalf of the community association, that the abandonment petition be rejected (Hearing Transcript, pages 113-118).

Mr. Bob Wisman testified that he has lived in Huntington Terrace for 42 years and that he is a member of the Board of the Huntington Terrace Citizen's Association. He said that, with the help of qualified engineers, he put together a traffic survey (Ex. 62), which was conducted in February 2008 over three randomly selected weekdays, between the hours of 6:00 a.m. to 9:00 p.m., using State Highway guidelines. He noted that 17 intersections in the neighborhood were analyzed, and that the traffic data count indicated

² The proposed expansion of the Hospital would result in the addition of up to 108 private rooms (Ex. 30, pg.15, Ex. 31, pg. 14), and the ability to increase the number of beds from 228 to a maximum of 294, an increase of 66 beds (Ex. 31, pg. 20).

that Lincoln Street was the heaviest used street in the neighborhood with 623 non-hospital trips between the 6:00 a.m. to 9:00 p.m. period. He indicated that the community agrees with the Wells Report that hundreds of people each day use Lincoln Street, such that it is not an abandoned street.

Mr. Wisman said that the Greentree Road intersection is at 40% usage and that it takes two cycles of the light to get through the intersection and that if another 235 cars are proposed to go through the intersection in the morning, then the street would be backed up all the way to Grant Street every morning. He testified that most of the traffic from Lincoln Street would shift to McKinley Street, and that the community approves the Hospital's plan to have a dedicated lane on McKinley Street for emergency vehicles. However, he said that McKinley Street is a lightly paved asphalt road which was not built to handle the anticipated heavy truck traffic (weight limit of eight tons), and that McKinley Street one block west of the Hospital was basically a one lane, seventeen foot wide street, with parking on one side. He indicated that one of the biggest issues about the closing of Lincoln Street was the loss of the left turn access (onto Old Georgetown Road), since it was one of only two lights in the neighborhood which permits a left turn (McKinley Street also permits a left turn, but Southwick Street and Roosevelt Street are right turns only). This could lead to dangerous traffic safety issues caused by persons trying to cross several lanes of traffic to make u-turns on Old Georgetown Road. Mr. Wisman testified that persons in the community likely would not use Greentree Road to turn left (onto Old Georgetown Road) because it was backed up in the morning rush hours. He was also concerned about medium and heavy truck traffic on McKinley Street, because the trucks would ride up over the curb when making turns which interferes with

other traffic on McKinley Street. Mr. Wisman said that he never saw any traffic counters in the neighborhood, as alleged in the Wells Report, and he questioned its reliability. He requested that an independent traffic study be conducted. He noted that there was an eight inch gas pipeline under McKinley Street, which he was concerned about due to the anticipated heavy truck traffic proposed on this street (Hearing Transcript, pages 120-130).

Ms. Amy Shiman, a Board member of the Huntington Terrace Citizen's Association, testified that any update to the Hospital should be done in a manner that preserves to the greatest extent possible the single family neighborhood in which the Hospital is permitted by special exception, but that the Hospital's plan does not do this because it calls for razing homes, closing a street, doubling the size, and introducing office space. She indicated that there were at least 55 residents present at the Hearing, and at least 255 letters from residents of Huntington Terrace who are opposed to the street closure. She said that she was concerned about the design and massing of the proposed addition. She suggested that the surgery portion of the Hospital's plan could be built underground, and that if the private physician space was eliminated, then the proposed addition might be able to be built in the approximately 100,000 square feet of unencumbered space along Old Georgetown Road. Ms. Shiman also said that the proposed parking structure was 500 more spaces than was needed, and that it would be a detriment to the homeowners living in the area to see a looming parking structure. She also pointed out that the Master Plan's goals, objectives, and guidelines would not be followed if the Hospital's plan was permitted, because the residents dispute that the surrounding residential neighborhood is protected, as she said that the Hospital's

buildings are not concentrated away from the residents and towards Old Georgetown Road. She testified that the demolition by the Hospital of 23 small, affordable houses would not provide for a balanced housing supply, so that persons of varying income levels, age, backgrounds, and household characteristics might not find housing appropriate to their needs as per the Master Plan. Ms. Shiman concluded that it was not necessary for Lincoln Street to be closed in order to protect the health, safety, and welfare of the nearby residents (Hearing Transcript, pages 131-136).

Ms. Ann Dorough, vice-president of the Huntington Terrace Citizen's Association, testified that Lincoln Street is the center of the neighborhood street grid and not a mere convenience. She said that the street grid promotes community cohesion, and the ability of people to walk to the park, to the Metro, to the bus, or to their neighbor's house. Ms. Dorough indicated that they have a very tight neighborhood, and she is convinced that the street grid has fostered this and should not be tampered with, not only for transportation purposes, but also for community values. She objected to having emergency vehicles exiting onto Grant Street into the residential neighborhood, which could interfere with residential traffic. She noted that the Wells Report indicated that Huntington Parkway is directly accessible to the Huntington Terrace residents, but she said that this assertion is not correct because the right-of-way from Huntington Terrace to Huntington Parkway is not developed as a through street, but is merely a pedestrian walkway/bike path. Ms. Dorough also discussed that closing Lincoln Street and allowing the Hospital to tear down 23 homes destabilizes the neighborhood, since losing the neighbors who rent from the Hospital makes the neighborhood feel less residential, and losing the physical buffer that the houses present makes the neighborhood feel more

institutional due to the lights and noises from the Hospital (Hearing Transcript, pages 136-143).

Ms. Lorraine Driscoll, a Board member of the Huntington Terrace Citizen's Association, discussed parking, and the safety of pedestrians and bikers, including children and the elderly. She pointed out that the Hospital is seeking permission to build about 60% more parking spaces than the Code requires for the proposed expansion, and that this number of parking spaces is incompatible with the residential community and one of the reasons behind the Hospital's efforts to close Lincoln Street. She noted that many businesses in Bethesda have built parking underground but that the Hospital has resisted putting in underground parking due to cost concerns. She believes that the Hospital should encourage staff to use alternative forms of transportation such as Metro which would mitigate the need for additional parking spaces. Ms. Driscoll argued that the Hospital needed to scale back the number of parking spaces in its design and not expand the parking lot by closing Lincoln Street and destroying homes.

Ms. Driscoll next discussed the impact of the expansion on the safety of pedestrians and bikers, including children. She noted that the neighborhood has narrow streets with parking on the street and that drivers get frustrated and sometimes accelerate erratically to get around cars. She indicated that the elementary school children in the neighborhood must walk to school and the middle school and high school students must walk to the bus stop on the narrow streets and that they must share the streets with bikers and other pedestrians. She said that putting more traffic onto McKinley Street was not good because the street was essentially a one lane road with many parked cars and lots of traffic and had a sight problem due to a large hill. She noted that Greentree Road was

very congested, had sight problems, and speeding traffic. She expressed concern that the children might be in significant danger due to the increased traffic on the neighborhood streets if Lincoln Street is closed (Hearing Transcript, pages 143-149).

Mr. Wayne Goldstein testified on behalf of the Montgomery County Civic Federation Planning and Land Use Committee. He said that they were not aware of any example of a functioning road being abandoned for the benefit of a non-governmental institution, and that the Civic Federation was opposed to the abandonment because they did not want to see a precedent set in this case. He argued that the Petitioner has not made the case that the abandonment is necessary to benefit any public policy. Mr. Goldstein noted that other hospitals have built operating rooms on different floors contrary to the assertion of the Hospital that the operating rooms must all be built on the same floor. He argued that the Hospital makes the most tenuous of claims in relying on the Master Plan language concerning special exceptions and health services. He testified that the traffic conditions that supposedly prove that Lincoln Street is not needed also prove that changing the Hospital entrance is not needed. Mr. Goldstein pointed out that despite the proposed park like setting, the Hospital would be ringed by more surface parking and a new parking structure that would tower over the existing neighborhood. He indicated that the Civic Federation Committee recommended disapproval of the abandonment request (Hearing Transcript, pages 150-154).

Mr. Stuart Borman testified that he was opposed to the closing of Lincoln Street because it would have a very adverse affect on the neighborhood, and that there are other alternatives that the Hospital could pursue (Hearing Transcript, pages 154-155).

Mr. Robert Resnick testified concerning the lack of proper planning of the

existing footprint of the Hospital. He suggested that the abandonment of Lincoln Street was nothing more than a land grab by the Hospital which has infiltrated the surrounding residential community. He noted that there was support from the general public who use the Hospital for the proposed abandonment, but that they do not understand what it would do to the community. Mr. Resnick argued that the actions of the Hospital reflect the actions of corporations that alter configuration and land uses without regard to the consequences on its surroundings. He said that closing Lincoln Street will not improve the Hospital functions, but provides an escape from poorly planned structural changes to the existing facility within its existing footprint (Hearing Transcript, pages 155-157).

Ms. Dona Patrick said that Ms. Driscoll had said what she wanted to say but that she wanted to be on record that she was opposed to the abandonment (Hearing Transcript, pages 157-158).

Mr. David Snyder indicated that he understands the important role that the Hospital plays in the community, and its need to expand. However, he does not understand the Hospital's need to close the principal east/west street in the community for the additional two acres that the Hospital would use for the aesthetics of their design and not for efficiency purposes. He said that he would approve the temporary closure of Lincoln Street for the Hospital to build a bridge over the street or an underground operating room, but that a permanent closure of the street would alter the character of the neighborhood, and would force most of the traffic onto McKinley Street which has a blind hill in the middle of it. He testified that he was opposed to the abandonment of Lincoln Street (Hearing Transcript, pages 158-159).

Ms. Nicole Morgan testified that she was a resident of Huntington Terrace and

indicated that Lincoln Street was used by a lot of bicycle commuters and pedestrians. She questioned whether having high speed bicycle traffic on the proposed bike path would be compatible with the proposed meditation walk. She also was concerned that additional bicycle traffic would not be appropriate on Greentree and McKinley because of the traffic congestion. Ms. Morgan indicated that she was concerned as a pedestrian with walking on the proposed path through the Hospital campus during off hours since there was a safety issue if the path does not have a clear line of sight and snakes around buildings. She expressed concern that some of the traffic would move to Southwick Street and that since there would not be sidewalks on both sides of the street the increased traffic in the neighborhood would be a hazard to children due to cars being parked on the street with no sidewalk (Hearing Transcript, Pages 159-161).

Mr. Peter Kellman lives in the neighborhood, but not in Huntington Terrace, and he walks to work at NIH down Lincoln Street. He said that his family has used the Hospital and that he was on the community panel that worked with the Hospital on some of the issues raised by the residents. He supports the proposed expansion of the Hospital because he believes that there is a need for modern surgical operating rooms that are compatible with new technologies and equipment. Mr. Kellman indicated that he was concerned about the impact of the road closure on traffic, but he believes that there will be less traffic in the area if Lincoln Street is closed because most of the Lincoln Street traffic goes into the Hospital. He indicated that he understood that there would be more traffic on McKinley Street and Greentree Road but that the Hospital's plan would minimize some of the impacts (Hearing Transcript, pages 161-164).

Dr. Hugh Trout, a vascular surgeon in private practice, is also a member of the

community panel put together by the Hospital. He said that there was a need for a sufficient hospital footprint for the new facility. He indicated that Radiology has emerged as a very important imaging studying technology which is crucial to being able to treat a patient, including treatment in the operating room. Dr. Trout said that if the Hospital was unable to upgrade the facilities appropriately, then it would fail in its responsibility to its community. He observed that the Radiology equipment was becoming bigger and heavier, not smaller, and that the future mandates that Radiology, the operating rooms, the post-operative recovery rooms, and the emergency department be contiguous on the same floor in order to better employ new and existing technologies. Dr. Trout indicated that a well-designed and efficient hospital also helps in the recruitment and retention of talented doctors, nurses, and other allied health providers, and he supports the Hospital expansion (Hearing Transcript, pages 164-167).

Dr. Dany Westerband, a general surgeon specializing in trauma surgery, who is in private practice and is the medical director for the Hospital's trauma services, expressed support for the Hospital's plan. He indicated that the Hospital, in order to maintain a high level of trauma service and excellence, must be able to improve operating room capabilities which are currently inadequate. He noted that well designed and easily accessible operating rooms are a very critical component of any trauma center. Dr. Westerband testified that the size and shape of the current operating rooms not only limit the ability to perform certain complex procedures, but more importantly significantly impact the flexibility needed to deal with the unexpected situations that frequently happen in surgery when unforeseen problems, difficulties or complications occur where additional equipment or staff may be needed, that cannot be accommodated in a

particular operating room. He said that the existing operating rooms no longer meet the current standards or support the evolving needs of modern surgical techniques which increasingly rely on sophisticated equipment.

Dr. Westerband noted that, as equally important to the size and shape of the operating room, is the floor and layout of the entire operating suite because they are critical to patient safety. He said that ideally all operating rooms should be on the same floor, with a configuration that makes them rapidly accessible from certain support services, such as the pre-operative care, or the recovery room area. He indicated that from the standpoint of patient safety, you do not want to have an elongated operating suite where patients have to be transported over long distances between the operating room and the recovery room, and that it is vital to have surgeons and anesthesiologists able to respond quickly from nearby operating rooms. Dr. Westerband testified that locating the operating rooms on the same floor as the emergency department and the trauma bay would be a major improvement because currently critically ill patients had to be transported five floors to the operating room while complex resuscitation maneuvers are being carried out. He said that it was obvious that minimizing the travel distance within the trauma center would result in better care and possibly improved outcomes. He also noted that the addition of private rooms will improve patient care related to infection control efforts, privacy, patient dignity, and comfort. He concluded by saying that Suburban is one of the few hospitals that does not offer physician office space on its campus which significantly impairs the delivery of emergency services. He indicated that having physician office space on campus would alleviate some of the daily struggles with specialist coverage for emergencies, and should increase patient access to community

physicians (Hearing Transcript, pages 164-172).

Mr. Daniel Keen indicated that he lives near the Hospital but not in the Huntington Terrace community. He strongly supports the Hospital's plan to expand the hospital. Mr. Keen indicated that he travels on Lincoln Street nearly every day by bike on his way to the Metro and that he often walks or runs on Lincoln Street. He noted that most of the traffic on Lincoln Street was traffic associated with the Hospital and that it would not be inconvenient for him or others to move a block or two in either direction if the street were closed. Mr. Keen said that the closing of Lincoln Street would pale in significance compared to the much greater benefits that would accrue to the wider community if the Hospital's expansion were allowed to proceed and he wanted his family and Montgomery County to have access to the best possible medical facilities (Hearing Transcript, pages 173-175).

Ms. Susan Snyder is opposed to the proposed abandonment. She noted that the quality of care offered by the Hospital is not dependent on the footprint of the expansion and that it does not have to cross Lincoln Street. She indicated that the streets in the community are oil bound tar with crowns and that most of them have no gutters or sidewalks. Ms. Snyder said that shifting the traffic patterns would change the use of the streets significantly. She also noted that building a sidewalk around the Hospital's perimeter is not a substitute for Lincoln Street (Hearing Transcript, pages 175-177).

Ms. Joan Lunney, a former officer of the Sonoma Citizen's Association, testified that there are significant congestion issues on Greentree Road. She indicated that the Sonoma residents are concerned that the closing of the street would cause greater traffic congestion in their neighborhood especially with the coming BRAC expansion. She noted

that the community would like information from the Hospital as to the reasons that the Hospital's expansion has to be on one floor and couldn't be underground (Hearing Transcript, pages 177-180).

Ms. Kate Stern feels that the quality of the neighborhood needs to be maintained and that the street should not be abandoned. She said that the neighborhood cares deeply about the quality and care of the Hospital, that they could compromise, and that the Hospital can be maintained on its existing footprint (Hearing Transcript, page 181).

The record also contains approximately 295 letters and emails from citizens who are opposed to the Lincoln Street abandonment (Ex. 16). These letters and emails generally expressed the following concerns: 1) the residents use this portion of Lincoln Street to access and turn left onto Old Georgetown Road, 2) if the road is abandoned, then traffic will back up onto other streets in the neighborhood (Southwick and McKinley) which will lead to unsafe situations for children, pedestrians, and bikers due to the fact that the neighborhood streets are narrow, mostly without sidewalks, and have cars parked on them, 3) the traffic will be diverted to already congested streets, and 4) the character of the neighborhood will be changed due to the demolition of 23 houses. Also in the record are approximately 940 letters and emails from citizens in support of the proposed abandonment (Ex. 17). These letters and emails indicate the following reasons in support of the proposed abandonment: 1) better access to the emergency/trauma center, 2) private patient rooms that are necessary for infection control, 3) larger operating rooms that can accommodate modern technology, 4) adequate parking for staff, patients, and visitors, 5) convenient physician office space, and 6) high quality healthcare services to meet the community's needs.

Comments were sought from the government agencies and public utility companies listed in Section 49-62(h) of the Montgomery County Code. The evidence in the record indicates that the relevant public agencies and public utilities have reviewed the abandonment petition or foregone the opportunity to provide comments on the proposed Lincoln Street abandonment. Those responding agencies and utilities either had no objection to the proposed abandonment, or if they did object, they proposed conditions, which if satisfied, would eliminate their objection to the abandonment. A response was not received from the Potomac Electric Power Company. Pursuant to Section 49-62(g) of the Montgomery County Code, this entity is presumed not to oppose the proposed abandonment because the required sixty days has elapsed from the date of the notices of the public hearing which were published in the *Montgomery County Sentinel* on August 14 and 21, 2008 (Ex. 4).

The Montgomery County Department of Transportation, by memorandum dated October 10, 2008, provided comments on the proposed abandonment. The Department indicated that the Petitioner's traffic consultant had satisfactorily demonstrated that the nearby roadway network has sufficient capacity to handle traffic which would be displaced if the abandonment is approved. The Department also indicated that MCDOT reserves the right to require adjustments for operational and safety considerations to the plans of the Hospital to improve McKinley Street at the Site Plan/or permit stage. The Department discussed that the Hospital is proposing to construct an on-site network of paths to replace the existing sidewalk and bicycle routes, and recommended that, if the abandonment is approved, then the Hospital must be required to grant and record a perpetual easement along those paths, in location(s) that most closely replicate the

Lincoln Street sidewalks and bicycle routes, with appropriate lighting of the paths, and that the Hospital must be responsible for the maintenance and liability of the paths within the limits of the perpetual public access easement. The Department also recommended that, if the abandonment is approved, it should be conditioned upon the Petitioner 1) granting easements for the County storm drains and public utility facilities or at the Petitioner's sole expense relocating these facilities and granting easements, and 2) recording a new record plat that incorporates the former right-of-way (Ex. 74).

The Montgomery County Planning Board, by letter dated September 29, 2008, supported approval of the proposed abandonment subject to the following two conditions. First, that the Special Exception application (Case No. S-274-D) for the Suburban Hospital expansion is approved and includes a condition that the on-site sidewalk network must be made available for public use; and second, that the proposed abandonment become effective simultaneously with the complete record plat for the proposed Hospital preliminary plan that consolidates all parcels fronting Lincoln Street between Old Georgetown Road and Grant Street (Ex. 73).

The Washington Suburban Sanitary Commission, by letter dated July 8, 2008, indicated that the Commission maintains water and sewer mains within the portion of Lincoln Street proposed to be abandoned. The Commission has no objection to the proposed abandonment if its interests are adequately protected, including the Petitioner's grant to the Commission of a right-of-way of sufficient nature and extent to protect the integrity of the existing water and sewer mains (at least 20 feet wide). The Commission noted that any assessments, including house connection charges, of abutting property should continue for the life of the bond (Ex. 8).

Washington Gas, by email dated June 27, 2008, stated that it has a gas line in the area of the proposed abandonment and objected to the proposed abandonment.

Washington Gas indicated that it could lift the objection if the Petitioner would locate the gas lines in conflict and guarantee they would grant and execute an easement for these gas lines in the area of the abandonment (Ex. 9).

Verizon, by email dated July 11, 2008, stated that it has facilities in the area of the proposed abandonment and objected to the closing of the street unless an easement is granted to Verizon Maryland Inc. to cover the existing and future facilities or the Petitioner is willing to pay for the relocation or removal of its facilities (Ex. 10).

The Montgomery County Department of Fire Rescue Service, by email dated July 1, 2008, stated that it did not object to the proposed abandonment since circulation is still good in the community behind the Hospital and they were working with the Hospital on access to the proposed buildings (Ex. 11).

The Montgomery County Department of Police, by email dated July 1, 2008, stated that it would object to the abandonment of Lincoln Street because this is a public access street to the adjoining neighborhood (Ex. 12). By letter, dated September 18, 2008, the Police Department stated that it endorsed the request by the Hospital to abandon the area of Lincoln Street in Case No. AB 715 because there exist several alternatives to the right-of-way to be abandoned that are sufficient to meet their needs (Ex. 78).

III. Conclusions and Recommendations

The abandonment of road rights-of-ways is governed by the provisions of Sections 49-62 and 49-63 of the Montgomery County Code. Section 49-62 permits an application for abandonment of a right-of-way by any person or government agency,

provides for public agency and utility company review of the proposed abandonment, and requires notice of the proposed abandonment be given to certain parties and that a public hearing be held. In this case, the hearing and notice provisions have been satisfied, and the required public agencies and utility companies have been given the opportunity to review and comment on the petition for abandonment as described above.

Section 49-63 allows the abandonment of a right-of-way if 1) the right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future, or 2) the abandonment is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned. In assessing the health, safety and welfare issues, the County Council may consider 1) any adopted land use plan applicable to the neighborhood; 2) the safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives, in the immediate neighborhood, for local and through traffic; and 3) changes in facts and circumstances since the original dedication of the right-of-way.

A street may not be vacated for private use or for the purpose of devoting it to the exclusive use and benefit of a private person or corporation, but it may be vacated to promote the public welfare. The rule is that a municipality cannot vacate a street or part thereof for the sole purpose of benefiting an abutting property owner, and that the power to vacate streets cannot be exercised in an arbitrary manner without regard to the interest and convenience of the public or individual rights; but the municipality may vacate a street on the petition of an abutter for his or her benefit where the vacation is also for the benefit of the municipality at large, such as where the use to which the vacated part of the street is to be put is of more benefit to the community than the retention of such land as a

street (McQuillen, Municipal Corporations, 3rd Ed. Revised, Section 30.186.10). Where the Legislature has delegated to municipal authorities the power to carry out a general street improvement plan, such power includes the authority to close a street in furtherance of such plan, where the closing of the street serves a proper public purpose; however, a municipal corporation may not close a street for the benefit of a purely private interest. *Perellis v. Mayor and City Council of Baltimore*, 190 Md. 86, 94-95, 57 A.2d 341 (1948). The streets of a municipality are held in trust for the benefit, use, and convenience of the general public. The closing of a street and the conveyance of the City's interest in the street solely for the private benefit of another, is not within the legislative body's power; whether to close a dedicated street necessarily turns upon considerations of public benefit, and not by barter and sale to private interests. *Inlet Associates V. Assateague House Condo. Assoc.*, 313 Md. 413, 431, 545 A.2d 1296 (1988).

In a case somewhat analogous to the matter in this petition for abandonment, the Court of Appeals found that the Town of Easton did not exceed its express power to convey real property when it enacted an ordinance closing a public street and conveying the roadbed to a private hospital to allow a new emergency room facility to be built across the street. The Court upheld the Town's determination that the continued use of the street was no longer needed and that the expanded hospital facility was a public use and a public benefit. *South Easton Neighborhood Association, Inc. v. Town of Easton*, 387 Md. 468, 498-499, 876 A.2d 58, 2005 Md. Lexis 306 (2005). The Court indicated that the characterization of the transfer of the street is determined by its use, and not by the private status of the property owner, and by whether the primary purpose or effect is public or private. The Court found that the necessity of the proposed expansion of the

emergency room constitutes a public purpose that promotes clearly the public welfare, and that the Town of Easton legislatively determined that the new facility to be constructed across the street bed would serve an undeniably public purpose and benefit, namely, facilitating the provision of emergency and outpatient care services to the residents of the Town. *Town of Easton*, 387 Md. at 497-499.

The Hospital asserts that the evidence in the record unequivocally demonstrates that the Hospital has satisfied both criteria of Section 49-63(c), even though only one part of the standards needs to be satisfied in order for the abandonment petition to be granted. The Hospital argues that the abandonment should be granted because the Abandonment Area is no longer necessary for present public use or anticipated public use in the foreseeable future because the evidence in the record clearly reflects that the Abandonment Area is not needed from a traffic or neighborhood circulation perspective. Citing the *Easton* case discussion on the issue of whether the right-of-way is “necessary for present public use”, the Hospital argues that the Court rejected the neighborhood’s claim that any roadway in use by the public is “necessary” under the law and cannot be abandoned. The Court indicated that “recognizing an absolute no-use standard would permit one person to walk the length of Adkins Avenue, or any other public right-of-way, and thereby foreclose any conveyance of the roadbed, regardless of the Town Council’s legislative determinations.” *Town of Easton*, 387 Md. at 495. Thus, the *Easton* Court determined that a right-of-way can be abandoned even if it is presently used by the public, provided that the right-of-way is not necessary and provides a public benefit.

The Planning Board staff concluded that no lots adjacent to the right-of-way would be landlocked as a result of the proposed abandonment and that the right-of-way

was no longer necessary for present public use or anticipated future use in the foreseeable future based on the following reasons: 1) alternative routes provide both sufficient capacity and a more appropriate functional classification for motor vehicle traffic not associated with the Hospital; 2) the benefit of network connectivity is greatest for pedestrian circulation and this need can be adequately met by connecting the Hospital's on-site sidewalk and pathway network to the adjacent street system and requiring public access to the on-site sidewalk network as a condition of the Hospital's expansion; and 3) although retention of the Lincoln Street right-of-way might be desirable, it is not necessary because consideration of need in this case must reflect a sense of the overall public benefit provided by the Hospital's expansion of its healthcare coverage (Ex. 73).

A review of the evidence in the record indicates that most of the present traffic on Lincoln Street is Hospital related, including approximately 81 to 85 per cent during the week, and that most of the pedestrian usage of Lincoln Street is Hospital related. It is also evident that there are numerous alternate routes for ingress and egress by vehicles from the neighborhood if Lincoln Street is abandoned (for example, Southwick, McKinley and Greentree), and that Lincoln Street is not the sole means of access for any property not controlled by the Hospital. The evidence demonstrates that the proposed abandonment will not cause a significant traffic increase on the surrounding neighborhood streets. The Planning Board staff indicated that, based on the Hospital's traffic study, the study intersections and roadway links presently operate within the Bethesda/Chevy Chase congestion standards at all times of day during typical weekdays and Saturdays and these acceptable traffic conditions would continue in the foreseeable future with the abandonment of Lincoln Street, that the effect of the abandonment would shift local trips,

decreasing traffic on some streets, and resulting in up to 170 additional vehicles per day on portions of Southwick and McKinley Streets, and that both the daily traffic volumes and peak hour intersection analyses indicate that the abandonment will not cause a vehicular capacity concern.

The evidence in the record also demonstrates that the concern of the neighborhood related to pedestrian and bicycle access to Old Georgetown Road as a result of the proposed abandonment is addressed by the Hospital's proposed improvements to enhance safety in the vicinity of the Hospital. The Hospital's plan includes constructing sidewalks around the perimeter of the Hospital and building a designated pedestrian/bike path for public use through the Hospital site which will connect Grant Street to Old Georgetown Road. These improvements will make pedestrian circulation safer in the vicinity of the Hospital. The Planning Board staff noted that the proposed network of bike and pedestrian routes on the Hospital site will retain and may enhance pedestrian connectivity in the area.

The evidence in the record demonstrates that Lincoln Street is no longer necessary for present public use or anticipated future use in the foreseeable future. The use of the street is mostly by Hospital users. There are sufficient alternative routes for the neighborhood users of the street and there is sufficient traffic capacity to handle the diverted traffic volume on the other neighborhood streets. The evidence reflects that pedestrian circulation will be improved by adding sidewalks around the perimeter of the Hospital and the public use of on-site pathways and sidewalk proposed to be built through the Hospital will provide network connectivity to the neighborhood. Although I sympathize with the neighborhood's concern over losing a street in their road network,

the street is one block of a three block long street that is well served by other connecting roads. I find that while the road may be *convenient* to some area residents; it is predominantly used by Hospital traffic and is not necessary for transportation capacity or to serve the neighborhood which is well served by several other roads. There is a greater public benefit that will result from the Hospital being able to provide modern operating rooms that can accommodate state of the art equipment with supportive services and which will provide quality healthcare to the surrounding community, many of whom use the Hospital's services and the other community served by the Hospital. Similar to the *Town of Easton* case, there is a sufficient network of interconnected streets which the community may use to access the neighborhood such that Lincoln Street is no longer necessary for present public use or anticipated public use in the foreseeable future. The use of Lincoln Street is secondary to the greater public benefit of modern hospital facilities and therefore, the Hospital has proved that, under Section 49-63(c)(1) of the County Code, the abandonment may be approved because the right-of-way is no longer necessary for present public use or anticipated future use in the foreseeable future.

In the alternative, the Hospital asserts that the proposed abandonment should be granted because it is necessary to protect the health, safety and welfare of the residents near the neighborhood of the right-of-way to be abandoned or closed. Section 49-63(c)(2) provides that in assessing these issues, the Council may consider a) an adopted land use plan; b) safe and efficient pedestrian and vehicular traffic flows, together with alternatives, in the immediate neighborhood, for local and through traffic; and c) changes in facts and circumstances since the original dedication of the right-of-way.

The evidence in the record pertaining to the Bethesda/Chevy Chase Master Plan

indicates that the general language of the Master Plan recognizes special exception uses related to health services and other community-serving needs (pages 3 and 59), which would recognize that the Hospital may have to modify its special exception to meet modern healthcare standards (Ex. 1). The Master Plan also recommends that along Old Georgetown Road, special exception uses should increase the screening and buffering between such uses and the adjacent neighborhood (page 61) which is consistent with the Hospital's plans to create new open spaces, gardens, sidewalks, landscaping and other amenities between the Hospital campus and the adjacent neighborhood. The Master Plan does not classify Lincoln Street in a transportation context. The Planning Board staff indicated that unclassified roads provide access to fronting land uses but are generally not intended for through traffic (Ex. 73, page 2). Thus the Master Plan would seem to support the Hospital's plans for neighborhood buffering through landscaping and expansion of Hospital services which are designed to serve the health and well being of the community, and which enable the Hospital to more fully and efficiently meet the modern health needs of the community under its existing special exception.

The second criteria to be considered relates to the safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives, in the immediate neighborhood for local and through traffic. The evidence in the record on this issue makes clear that the approval of the abandonment will improve the many vehicular and pedestrian safety issues which users of the hospital and residents of the neighborhood presently experience as a result of Lincoln Street dividing the Hospital site. The current situation where visitors, patients, staff, and emergency vehicles plus the helipad all converge at the main entrance to the Hospital on Lincoln Street raises many safety

concerns and traffic conflicts. The approval of the proposed abandonment would resolve these conflicts by separating out the local neighborhood and cut through traffic from the Hospital related traffic. The Addition would also create an on-site circulation system that appropriately separates pedestrians and vehicles, as well as emergency vehicles from non-emergency vehicles. Additionally, most of the Hospital traffic will enter and leave the Hospital campus off of Old Georgetown Road and this should result in a decrease of traffic into the neighborhood from the Hospital. While it is true that some of the local neighborhood traffic will be diverted to other neighborhood streets, the evidence supports the conclusion that numerous alternate routes exist for ingress and egress to the neighborhood and that the surrounding neighborhood streets have sufficient capacity to handle any traffic displaced by the proposed abandonment.

On the issue of the safe and efficient pedestrian traffic and flow through the neighborhood, the evidence indicates that the Hospital's plan includes an expansion of the sidewalks around the perimeter of the Hospital to include sidewalks where they do not presently exist, as well as an extensive on-site pedestrian and bicycle circulation system, that will be open to the public, and includes, gardens, paths, and green spaces that will enhance both on-site pedestrian circulation, as well as circulation through the adjacent community. Many of these new features should address some of the concerns of the neighborhood related to traffic and pedestrian safety. The Planning Board staff determined that the proposed network of bike and pedestrian routes on the Hospital's campus will retain and may enhance pedestrian connectivity in the area.

On the third issue related to changes in fact and circumstances since the original dedication of the right-of-way, the evidence indicates that Lincoln Street was dedicated in

1910. Since that time, the Hospital was established and the traffic reports indicate that it is currently the primary user of Lincoln Street. Obviously, the expansion of the Hospital over the course of time, the fact that NIH is across the street from Lincoln Street, and the creation of the nearby Bethesda CBD are evidence that the facts and circumstances have changed since the original dedication of the right-of-way. The desire of the Hospital to provide modern health care facilities and satisfy its responsibility as the County's *only* trauma center are also changes that need to be considered in determining if the proposed abandonment should be approved.

In summary, I agree that the proposed abandonment is necessary to protect the health, safety, and welfare of the residents near the right-of-way to be abandoned because it will improve existing traffic conditions, which are predominantly hospital related, eliminate conflicts with emergency and other vehicles and direct hospital related traffic away from the residential neighborhoods. Furthermore, the portion of Lincoln Street to be abandoned is not necessary for the neighborhood which has a well developed grid of streets providing access in all directions. The abandonment of the road is necessary to allow the expansion plans of the Hospital to proceed. The proposed Addition has a public purpose to provide modern healthcare with state of the art equipment to the residents of the neighborhood and the community at-large by the construction of operating rooms that will be properly sized, configured, and have functional space required for the Hospital to deliver quality medical services to the community in compliance with current healthcare standards, provide private rooms to reduce infection concerns, and provide physician office space. It is clear from the testimony and documents in the record that many residents of the surrounding community use the Hospital for their health care needs, such

that the provision of modern hospital services is necessary to protect the health, safety, and welfare of the residents near the right-of-way to be abandoned.

The proposed abandonment is consistent with the adopted land use plan which acknowledges community serving uses such as healthcare services and provides for buffering and transitional landscaping to the neighborhood. I find that there have been changes in facts and circumstances since the original dedication in 1910 of the Lincoln Street right-of-way. The proposed abandonment affects one block of a three block street. All of the houses on the portion of Lincoln Street to be abandoned are owned by or under the control of the Hospital and the remaining two blocks of Lincoln Street have ample access to cross streets in all directions. As indicated by the testimony and evidence provided, the new flow of hospital related traffic and the new sidewalk and paths through Hospital grounds will result in a more safe and efficient pedestrian and vehicular traffic and flows in the immediate neighborhood, for local and through traffic as well as a safer pedestrian and bicycle path through the Hospital site.

For all of the foregoing reasons I find that abandonment of the right-of-way is permitted both under Section 49-63(c)(1) and (2) of the County Code and based upon a thorough review of the testimony, exhibits, and the evidence of record, I recommend that the petition to abandon the Lincoln Street Abandonment Area, consisting of approximately 36,126 square feet of public right-of-way as described and shown on Ex. 1, Exhibit A, be granted, subject to the following requirements:

- 1) The Petitioner must grant, prepare, and record any necessary easements for County storm drains and public utility facilities, including but not limited to gas lines, electric facilities, and water and sewer facilities to the satisfaction of

the County or the public utility, as applicable, allowing facilities to remain at their current location or relocated locations, and providing perpetual right of ingress and egress from the easement area at any time (which rights must not be subordinate to other interests);

- 2) The Petitioner must at its sole cost prepare and record a new record plat incorporating the Abandonment Area into the existing lots;
- 3) The Special Exception application (Case No. S0-274-D) for the Suburban Hospital Expansion must be finally approved with no further appeals;
- 4) The proposed abandonment will become effective simultaneously with the complete record plat for the proposed Hospital preliminary plan that consolidates all parcels fronting Lincoln Street between Old Georgetown Road and Grant Street and including a condition that the on-site sidewalk network must be available for public use;
- 5) Suburban Hospital must grant and record a perpetual access easement for the on-site network of paths that will replace the Lincoln Street sidewalk and bicycle routes and the perpetual public access easement area must have appropriate lighting on the paths. Suburban Hospital must be responsible for the maintenance and legal liability of the paths within the limits of the perpetual public access easement.

Respectfully submitted,

1/25/2011
Date

Diane R. Schwartz Jones
Diane R. Schwartz Jones
Public Hearing Officer

The Public Hearing Officer's Recommendations in Petition AB 715 have been reviewed and are approved.

Jan 27, 2010
Date

Isiah Leggett
Isiah Leggett, County Executive

June 29, 2011

Via email and fax (240) 777-7888

Council Member Roger Berliner, Chairman of T&E Committee
Council Member Nancy Floreen and Council Member Hans Riemer
c/o Glenn Orlin, Deputy Council Staff Director
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

RE: Application for Abandonment of Lincoln Street

Dear Council Members Berliner, Floreen and Riemer;

Please include this letter and its attachments in your informational package for the T&E Committee meeting on July 11, 2011 regarding the possible abandonment of Lincoln Street. We respectfully request that you deny closure of this street for several reasons:

Hospital Expansion does not require Street Closure. The only reason for this proposed street closure is to accommodate Suburban Hospital's requested expansion plan. The hospital has stated that it must center an addition on Lincoln Street because new operating rooms must be on the same floor and contiguous to the existing first floor emergency rooms. This representation was made in the hospital's application, as well as at the DOT hearing in August 2008. (DOT Rep., p7, 10). Yet, it was discovered during lengthy Board of Appeals' hearings that neither zoning code nor hospital design guidelines require this configuration. (Ex.411). In fact, many hospitals in the DC Metro area have their emergency suites and operating suites on different floors including Sibley, Holy Cross, Shady Grove, and Adventist. (Ex.427 and 436). Even Johns Hopkins Bayview (a larger trauma hospital in Maryland) has its operating rooms and emergency rooms on different levels. Board of Appeals' Hearing Examiner Francoise Carrier (now Chairman of the county Planning Board) recommended that the hospital redesign its plan from "many possible alternatives"....including "moving the loading dock v. moving part of the utility plant v. reducing the size of the physician office space v. keeping satellite parking v. enlarging the underground footprint of the parking garage v. changing the shape of the surgical suite". (F. Carrier, p. 136, 6/18/10 report). Please refer to the attached HTCA letter to Council Members dated February 10, 2011.

Also note that the WA Business Journal printed on October 18, 2010 that "top (hospital) executives have consistently argued the plans to close one block of a city street and knock down houses are necessary to bring the hospital's facility up to modern medical standards. Neighbors who oppose the plan say they could just as easily build up with a tower, not out into the neighborhood". Johns Hopkins President Ronald Peterson stated to the WA Business Journal "There's still a backup plan ...they would be able to go up vertically, but it would be much less of a solution than they've laid out..." (attached).

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We advise the Council that this critical information regarding hospital design was not available at the DOT hearing in August 2008, nor incorporated into the DOT record. We strongly agree with Ms. Carrier that the hospital should redesign this plan so that it will not have such a deleterious impact on our residential community. Johns Hopkins has admitted that this is possible.

Please also note that Suburban Hospital's 2001 expansion plan did not require the closure of Lincoln Street, yet it included 14 new operating rooms (vs. 15 proposed now).

BRAC Traffic Impacts Worse than Anticipated. The hospital's traffic studies are several years old and do not reflect current analyses of BRAC traffic. This massive relocation of Walter Reed Hospital from Washington, DC to Bethesda (just ½ mile away) will bring an estimated 2,500 additional employees and 400,000 additional visitors annually to the area, and "turn already-frustrating morning drives into a nightmare on wheels" according to the Gazette on June 24, 2011. In particular Old Georgetown Road is already stop-and-go traffic during several hours daily, and this huge government project is projected to bring traffic to unacceptable levels on Rockville Pike and Old Georgetown Road. Montgomery County's own webpage admits that there will be "BRAC-related gridlock" nearby. (BRAC Facts and FAQ). Just recently local politicians have acknowledged "a lack of funding aid from Annapolis and Washington, D.C., that county executives say will severely hamper communities as they attempt to deal with BRAC. Of the \$371 million needed just for short-term, high-priority projects identified by the State Highway Administration as BRAC-related, officials have only \$136 million available from all sources, including federal earmarks and appropriations from the state, said Andy Scott, a special assistant for economic development at SHA." (Gazette, June 24, 2011).

Physicians' Office Spaces are not Required and Generate Much Traffic. Given the current analyses that more traffic than anticipated will be brought imminently to Rockville Pike and Old Georgetown Road from BRAC, it is not prudent to bring another high generator of traffic to the immediate area. There is no zoning requirement or hospital design guideline that requires hospitals to have physicians' offices on site. Francoise Carrier acknowledges that the physicians' offices component of the expansion plan will generate a larger share of traffic than the conversion of double patient rooms to single patient rooms or upgrade/expansion of surgical suites, and she recommends that the hospital consider reducing the size of the physicians office space. Especially given the BRAC traffic problems, it would be imprudent of the County Council to allow commercial office space to be built where it does not now exist in a residentially-zoned area on Old Georgetown Road. Rather, physicians' offices should be appropriately located in commercially-zoned areas such as downtown Bethesda or on Democracy Road near I-495.

Introducing 38,000 sf of physicians' office space into the residentially-zoned hospital site will bring an estimated 1,373 additional daily vehicle trips to an already congested Old Georgetown Road, and require 190 parking spaces according to the hospital's own

traffic consultant. (testimony of hospital's traffic expert, Wells 12/18/08 Tr. 196; Wells 6/30/09 Tr. 122.). Its traffic expert acknowledged that the proposal would increase traffic on some neighborhood streets, such as McKinley and Southwick (Ex. 410). HTCA showed that there were routes through neighborhood streets that vehicles coming from the west to the hospital were likely to use. (Sokolove 5/5/09 Tr. 25; Ex. 339).

The Director of Trauma services at Suburban Hospital, Dr. Westerband, admitted that the needs of the Emergency Department are satisfied if physicians' offices are located off-site at a distance not greater than would permit the doctor to reach the Emergency Department within 30 minutes. (Westerband 12/15/08 Tr. 5; Tr. 28-29; Tr. 46-48; Corapi 11/17/08 Tr. 79). The record establishes that doctors' offices in the nearby Bethesda downtown, which begins approximately 1/2 mile from the hospital, are well within that timeframe. Physicians can reach the hospital in about 10 minutes, possibly 15 minutes during rush hour. (Wells 12/18/08 Tr. 218; Shiman 5/29/09 Tr. 163).

Additionally, under its current expansion plan, Suburban hospital would eliminate all of its existing off-site (satellite) parking facilities, totaling some 351 spaces and relocate them to its proposed new parking garage on Old Georgetown Road. (The new garage would have 1,200 spaces, four times as many as the existing garage). Many of these off-site spaces are located on Democracy Road near I-270 in a commercially-zoned office park, which is a more appropriate site than near a residential community. Again, bringing more cars to a congested area is not sound traffic management.

Traffic Hazards and Safety Concerns. If Lincoln Street were to be closed from Old Georgetown Road to Grant Street, neighborhood and hospital-related traffic would be funneled onto McKinley Street and Grant Street, which have dangerous blind hills with impaired sight lines. Please refer the photos of these narrow (in fact, substandard) and steep streets. Because many homes in the residential neighborhood do not have driveways, cars are forced to park on streets. This creates a "one-lane" driving experience as cars and school buses and trucks must serve around parked cars on narrow streets. Closing the wide, level Lincoln Street removes a primary access street for residents and guests who navigate through Huntington Terrace, and creates a safety concern. The report by the hospital's own traffic engineer admits that some 374-571 non-hospital related cars use Lincoln Street daily (Ex. 173, p.19; Exs. 174; 226). Over 250 nearby residents have written to the DOT that they do not want Lincoln Street closed.

Thank you for your consideration of these issues. Our residential community continues to support Suburban Hospital's medical services. However, we believe an expansion of the hospital can and should be made without such significant and unnecessary adverse impacts to our established residential neighborhood.

Amy Shiman



President, Huntington Terrace Citizens' Association

(68)

(3)

Amy Shiman

From: Amy Shiman [ashiman301@starpower.net]
Sent: Tuesday, October 19, 2010 2:01 PM
To: 'councilmember.andrews@montgomerycountymd.gov'; 'councilmember.berliner@montgomerycountymd.gov';
 'councilmember.elrich@montgomerycountymd.gov'; 'councilmember.ervin@montgomerycountymd.gov';
 'councilmember.floreen@montgomerycountymd.gov'; 'councilmember.knapp@montgomerycountymd.gov';
 'councilmember.leventhal@montgomerycountymd.gov'; 'councilmember.navarro@montgomerycountymd.gov';
 'councilmember.trachtenberg@montgomerycountymd.gov'; 'county.council@montgomerycountymd.gov'
Subject: Johns Hopkins admission of alternative hospital plan

Dear Members of the County Council,

For your interest, below is an article in yesterday's Washington Business Journal in which the President of Johns Hopkins Hospital and Health System admitted (and later retracted) to the reporter that it has a vertical backup plan to Suburban Hospital's proposed sprawling expansion. This is significant because Suburban Hospital has stated throughout its public testimony that there was no other possible design for an addition. Huntington Terrace Citizens' Association has repeatedly suggested that a vertical design along Old Georgetown Road is much more appropriate than closing a public road and demolishing 23 houses to sprawl into a residential neighborhood with a low-rise design. We continue to tout the Holy Cross expansions as a model of good land-use planning in Montgomery County; its latest tower project will be sited away from houses and new parking will be mostly underground. We are hopeful that tomorrow the Board of Appeals will suggest a redesign of Suburban Hospital's low-rise expansion plan, as Francoise Carrier has recommended in her 162 page report as BOA hearing examiner.

Thank you,

Amy Shiman, President, Huntington Terrace Citizens' Association

Hospital expansion

Hopkins comment riles Suburban neighbors

Washington Business Journal - by Ben Fischer

Date: Monday, October 18, 2010, 9:34am EDT
[http://cdn.doubleverify.com/script2.js?
 agnc=2875&cmp=4807044&cr=&crname=&adnet=&dvtagver=3.3.1346.2176&adsvr=1&plc=52721975&advid=1359940&sid=622694&adid=](http://cdn.doubleverify.com/script2.js?agnc=2875&cmp=4807044&cr=&crname=&adnet=&dvtagver=3.3.1346.2176&adsvr=1&plc=52721975&advid=1359940&sid=622694&adid=)

Since Suburban Hospital proposed a \$230 million expansion in 2008, its top executives have consistently argued the plans to close one block of a city street and knock down houses are necessary to bring the hospital's facility up to modern medical standards. Neighbors who oppose the plan say they could just as easily build up with a tower, not out into the neighborhood.

Therefore, while I was working on Friday's print article on the subject last week, everybody involved was taken aback when the president of Johns Hopkins Hospital and Health System -- Suburban's owner -- temporarily veered off message, seeming to give the neighbors' side of the argument some backing.

Amy Shiman, president of the nearby Huntington Terrace Citizens' Association, jumped all over comments made, and then quickly disavowed, by Hopkins president **Ronald Peterson** during an interview Oct. 11.

Peterson said: "There's still a backup plan, but it's not nearly as elegant as the one that would enable them to have access to that property they really need." Elaborating, he said: "They would be able to go up vertically, but it would be much less of a solution than they've laid out in their master plan." (However, Peterson demurred on further follow-ups, including one about cost, saying he didn't know that level of detail.)

Shiman said: "The implications of this information from **Johns Hopkins** are enormous, especially since Suburban Hospital stated throughout its testimony in public hearings that no other design option or alternative was possible."

But the day after Peterson made his remark, I reached out to Suburban spokeswoman **Ronna Borenstein-Levy** for reaction. I was curious. After all, hospital officials have said 1.) A high-rise tower wouldn't work because they need operating rooms, emergency rooms and related equipment on one floor and 2.) There isn't a backup plan until the Board of Appeals weighs in.

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6/29/2011

Instead of hearing from Borenstein-Levy or another Suburban official, I then heard back from **Jeff Nelligan**, Hopkins' senior director for strategic communications, who said "Mr. Peterson was mistaken. There is no alternative plan." Nelligan passed along a statement from Peterson that more closely aligned with the official Suburban position: "...there are significant constraints on this property that would preclude certain redesigns."

So is there a Plan B high-rise tower? There's no public evidence of it, and Suburban local officials had been consistent that there was not, even though the neighbors dispute their reasoning for why there can't be. Then Peterson said there was, but took it back within a day. Was he truly mistaken? Neighbors aren't so sure; Shiman considers it an admission that the hospital hasn't been working in good faith.

We'll likely find out soon. The Montgomery County Board of Appeals is expected to vote Wednesday on a special exception to permit the current plan. Its hearing examiner recommended returning the plans to Suburban for changes, mostly agreeing with the neighbors.

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Friday, June 24, 2011

Home News Local Business Sports Entertainment

Along with its jobs, BRAC bringing traffic woes

Local politicians praise BRAC, but worry about its impact on commuters

by Andrew Uffusa, Staff Writer

For about three decades beginning in the 1940s, David Craig's father worked at Aberdeen Proving Ground. If he were to come to the base today, said the Harford County executive, the U.S. Army post would be light-years beyond his experience in the World War II era.

"He wouldn't recognize it, because it has changed so dramatically," Craig said.

But before reaching the new Aberdeen post and its 8,000 new jobs, Craig's father would have to fight through massive traffic jams that his son claims will be his biggest source of consternation as the federal Base Realignment and Closure process comes to a close. On one key route to the post, he said, a commuter's average travel time could multiply fivefold.

Initiated through 2005 legislation and required to be completed by the fall, the three largest BRAC expansions in Maryland in terms of job growth are taking place at the National Naval Medical Center in Bethesda, Fort George G. Meade in Anne Arundel County and Aberdeen. The process is also occurring at Joint Base Andrews, formerly Andrews Air Force Base, and Fort Detrick.

BRAC will bring the kind of economic impact officials like Craig crave, with 60,000 direct and indirect jobs and 28,000 new households projected to result from it. BRAC would represent the largest boost to state economic growth since appropriately enough World War II, a January report from the state's BRAC subcommittee stated.

In terms of finishing its relocation of personnel and construction, the military may be on time, but many commuters likely will struggle much of the time to



Right now the jobsite: The drag on Calverton is making Falls Church Park a way to get to work and the "beast" is still in the air around the base. Maryland's highway network is under construction and maintenance.



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say the same.

Headache ahead for commuters

Local politicians representing the areas with the three largest base realignments, like Craig, can envision lines of traffic, delays and frustrated commuters snaking out of main gates and clogging their communities' most vital arteries.

They also see a lack of funding aid from Annapolis and Washington, D.C., that county executives say will severely hamper communities as they

Autos

attempt to deal with BRAC. Of the \$371 million needed just for short-term, high-priority projects identified by the State Highway Administration as BRAC-related, officials have only \$136 million available from all sources, including federal earmarks and appropriations from the state, said Andy Scott, a special assistant for economic development at SHA.

In Anne Arundel County, roads will feel the impact of both the positive and negative changes on the horizon due to BRAC. The county is awaiting 5.4 million square feet of office space that are in the planning stages or being built in the Fort Meade area, at the same time that 2,000 new students are expected to enroll in Anne Arundel public schools.

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MOST READ

State Route 175, a major feeder road to Fort Meade off the Baltimore-Washington Parkway, is a good example of just how much one road can be affected by BRAC. It is being widened from two to five lanes for a portion of the road east of the parkway. Four state Route 175 intersections with local roads are being upgraded to take pressure off one of the gates into Fort Meade, although two of them won't be finished by the time BRAC finishes its work in September.

"The BRAC has helped facilitate looking at our transportation and infrastructure in a more regional approach," said Robert Leib, special assistant for BRAC to Anne Arundel County Executive John R. Leopold. "It's let us realize how really interconnected we are."

Leib said small strides have been made to push more commuters to use mass transit for Fort Meade, where non-BRAC expansion is also taking place. New bus routes are taking about 90 cars off the road every day, while the number of Fort Meade commuters using the MARC station at Odenton has risen from 20 per day prior to the BRAC buildup to 160 in May.

Commuters won't be the only ones who will have to exercise patience. Leib said that studies of areas surrounding military installations after BRAC have shown that it takes between nine and 19 years for the communities to create enough infrastructure to absorb the impacts.

Although many of the BRAC conversations don't center on the past, Scott noted that the area around the Patuxent Naval Air Station in St. Mary's County might serve as a good example of BRAC's long-term effect.

The latest BRAC expansion there was approved in 1995. The state is still trying to rebuild and widen Thomas Johnson Memorial Bridge at Solomons Island and ever since 1995 has spent significant time and resources upgrading state Route 235, both major arteries around the air station.

A 2006 report from the state transportation department stated that more than \$350 million had been spent on infrastructure, including roads, to support the Navy's operations at Patuxent Air Station. It also warned that the stress on transportation infrastructure may spread beyond the area immediately around the base, because many might choose to move to adjoining counties.

"During the transition period, impacts to roadways and transportation service may not be realized for many years, and in some cases facilities' impacts occur in unexpected areas," the report said.

But in Bethesda's case, planners know exactly where already-weary commuters will feel the new burden.

'A big fire drill'

One day in late summer, people in lower Montgomery County will see a steady stream of ambulances bringing patients from Walter Reed Army Medical Center in Washington, D.C., to the National Naval Medical Center campus, which after BRAC will be renamed the Walter Reed National Military Medical Center.

That day will be like "a big fire drill," said Montgomery County's BRAC coordinator, Phil Alperon, and it will signal the traffic snarls to come in mid-September. The 2,500 new employees could turn already-frustrating morning drives into a nightmare on wheels. In addition to the new employees, the military estimates that there will be about 400,000 additional visitors annually.

"People are suddenly going to say, 'What the heck is going on here?'" Alperon said.

Work on the most problematic intersection near Navy Med, including a main artery into Washington, D.C., via Bethesda (state Route 355), could disrupt traffic from September this year through 2015. When the new Walter Reed center opens in September, nine traffic and commuter projects are scheduled to begin or be under way around the campus.

Construction at a Connecticut Avenue intersection just south of the Interstate 495 Capital Beltway, another traditional traffic bottleneck, will take all but one month of 2012.

The news could hardly be worse for drivers around the base. Earlier this year, the Texas Transportation Institute reported that the average peak-hour commuter in the D.C. metro area lost 70 hours because of traffic congestion delays in 2009, the highest number in the nation.

A 2008 study by the SHA of 107 intersections around Fort Meade, Aberdeen and Navy Medical concluded that without recommended improvements, just more than half 54 would be rated as failing in 2011 after BRAC was finished. Twenty of the 34 around Fort Meade would fail, while 20 of the 49 would fail around Aberdeen, highlighting the \$235 million gap in available money for state-sponsored, short-term projects. In Bethesda, even the upgrades likely won't boost all the intersections above a failing grade.

Unlike the other BRAC projects in Maryland, there will be virtually no relocation of base personnel to be closer to Navy Med because the new military hospital will move only a few miles from the current Walter Reed site. There wouldn't be much room for new residents near the base anyway the National Institutes of Health, with more than 20,000 employees, is across the street and already exerts a huge, separate impact on traffic conditions.

Navy Med has initiatives in place to encourage military personnel and visitors to carpool and take other modes of transportation, such as the Metro Red Line train. The county recently decided to add a pedestrian and biker trail to a bridge project near the campus.

But those efforts don't fundamentally change the huge problem looming this fall. Alperon said that he is telling residents who drive to their jobs every day, "You should think about other ways to get to work."

For those who have no choice in BRAC areas, the state is doing all it can, but it might seem like far from enough once drivers confront the new commuting landscape.

Scott said the state is providing \$42 million for a major upgrade near Aberdeen on state Route 22 to ease BRAC traffic, but Craig said the average time to get from I-95 to the post is still going to increase from nine minutes to 45 minutes once work on the base wraps up, an unacceptable figure for his constituents.

As part of its February report on the need to increase annual state transportation funding by \$800 million, the Maryland Blue Ribbon Commission recommended \$25 million annually for BRAC projects in the state. The commission noted, however, that this money would satisfy only half of the needs at the BRAC facilities.

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Alpers argued that the Bethesda BRAC is getting less scrutiny than the other projects because it will lead to less economic growth and job creation, leaving only a tangled snarl of new traffic to grab all the attention.

Before the U.S. Senate in April, Montgomery County Executive Isaiah Leggett (D) testified that more federal money must be released for BRAC transportation projects. He cited the \$1 billion shortfall in funding for projects on state roads, even though many of those projects are not BRAC related.

The U.S. government did subsequently appropriate \$300 million to be used eventually for transportation projects in BRAC-affected communities, including Bethesda. But Leggett said Wednesday that he is still extremely concerned about the short term and has told residents that they face a challenge, particularly from the increase in visitors to the new Walter Reed.

"We are likely to see larger amounts of congestion throughout the entire day," he said.


Craig, meanwhile, said there has been a bipartisan lack of attention to Aberdeen's needs because of its location in northern Maryland, despite the 27,000 new jobs being created by BRAC on and off the site.

"I don't think it's a Democrat-Republican thing," said Craig, a Republican, arguing that both Gov. Martin O'Malley (D) and his Republican predecessor Gov. Robert L. Ehrlich Jr. have not given enough support. "They don't see beyond the Harbor Tunnel."

aujifusa@gazette.net

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Leave a comment

0 Items

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February 10, 2011

Via Email

([councilmember.ervin@montgomerycountymd.gov](mailto:councilmember ervin@montgomerycountymd.gov))

President Valerie Ervin and Council Members
Montgomery County Council
100 Maryland Ave, 6th Floor
Rockville, MD 20850

Re: **Lincoln Street Abandonment**

Dear President Ervin:

As the President of Huntington Terrace Citizens Association (“HTCA”), I request that the Council take no action on the County Executive’s recommendation to abandon Lincoln Street until HTCA’s judicial appeal of the grant of the Suburban Hospital Special Exception Modification is decided. The County Executive’s recommendation for abandonment, as well as the proposed Resolution for adoption by this Council, contains the provision that any abandonment must be conditioned on Suburban Hospital’s expansion being “finally approved with no further appeals.” (Public Hearing Officer’s Report and Recommendation, e.g., p.46, ¶3; Resolution, p.3). (“DOT Rep”). As long as the appeals process is under way, therefore, there is no reason for the Council to act on this matter.

The County Executive’s recommendation is based upon a DOT hearing held in August 2008 on Suburban Hospital’s petition to abandon Lincoln Street. That hearing lasted a half a day and included presentation by hospital witnesses who were not subject to cross examination. Since that hearing, extensive new information has become public through the Special Exception hearings, held by the Board of Appeals Hearing Examiner, Françoise Carrier. The hearings took 34 days, involved scores of witnesses, all of whom were subject to cross examination, over 477 exhibits, and thousands of pages of transcripts.

At the DOT 2008 hearing, the hospital represented that the proposed design of the modification, which included the abandonment of Lincoln Street, was the only available option which would permit the hospital to meet legal requirements and its needs. (DOT Rep. pp. 7, 10). Based upon this representation, the DOT Hearing Officer recommended the abandonment of the road, concluding that the abandonment was necessary to permit the hospital to expand and this expansion would be a public benefit. (DOT Rep., e.g., p. 44). The County Executive has adopted the Hearing Officer’s Report and Recommendation.

At the subsequent extensive hearings before Françoise Carrier, the hospital again represented that the proposed expansion design was the only option available to it. The

President Valerie Ervin
and Councilmembers
February 10, 2011
Page 2

Hearing Examiner, having the benefit of extensive cross examination and other additional evidence that was not before the DOT Hearing Officer, rejected the hospital's representation that there was no possible alternative design.

"It is up to Hospital to decide which of the many possible alternatives to choose, e.g., moving the loading dock v. moving part of the utility plan v. reducing the size of physician office space v. keeping satellite parking v. enlarging the underground footprint of the parking garage v. changing the shape of the surgical suite. The Special Exception standards focus on whether a proposal will have an acceptable level of adverse impact, not on how the applicant gets there."

(Hearing Examiner's Report and Recommendation, pp.136-137.) ("Carrier Rep.")

Suburban Hospital testified at the DOT hearing in 2008 that its proposed low-rise expansion must center on Lincoln Street because of the zoning code and regulatory design guidelines:

"the key element is the required footprint for the surgical area which must be adjacent and connected to the existing hospital services. The Addition proposed by the Hospital does not add any new operating rooms to the 15 that already exist, but it does propose to put all of the operating rooms on one level which will be connected to the trauma and emergency departments such that there is no other place on the site where this configuration could reasonably be put and meet the zoning standards." (DOT Rep., p.5)

During the course of the hearings before Francoise Carrier, it was brought forth that neither county zoning code nor Hospital Design Guidelines require that emergency rooms and operating rooms be on the same floor. In fact, many hospitals in the Washington, D.C. area, and throughout the nation, have these functions on different floors: Shady Grove Hospital, Sibley Hospital, Holy Cross Hospital, Adventist Hospital, and Johns Hopkins Bayview (a trauma hospital with 560 beds). There is no regulatory requirement that Suburban Hospital have this ideal configuration of a low-rise plan that would sprawl onto a public street and demolish adjacent homes, rather than a more efficient, vertical configuration on surface parking areas of its current footprint. In fact, Johns Hopkins stated to the Washington Business Journal on October 18, 2010 that it had a vertical backup plan for Suburban Hospital's expansion.

The Hearing Examiner recommended that the Board of Appeals not approve the Special Exception Modification as proposed, but remand the matter for further proceedings at which other alternative designs could be explored that would lessen adverse impacts on the community. (Carrier Rep., p.161.)

President Valerie Ervin
and Councilmembers
February 10, 2011
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This remand recommendation was based, in part, upon Ms. Carrier's findings relating to the hospital's preparation of its proposed expansion plans. Ms. Carrier found that "it does not appear that that the hospital make[sic] it a priority to look for ways to meet its needs by minimizing adverse impacts on the neighborhood to the greatest extent feasible." (Carrier Rep., p.144.) This, in turn, was based upon the hospital's Chief Operating Officer's testimony that "what we are proposing best meets the needs of the community because it best meets the needs of the hospital." (Carrier Rep., p.143; Hearing Examiner's Errata Statement, ¶8.) Thus, in preparing its expansion proposal, the hospital did not even consider a plan the hospital had proposed to the HTCA community in 2001 which did not involve the closure of Lincoln Street and had numerous other features which the community believed created fewer adverse impacts.(Hearing Examiner Errata Statement, ¶7.) And, the hospital's architect testified that he was not made aware of this prior plan.

The record before the DOT Hearing Officer, compiled in 2008, was not reopened to receive Françoise Carrier's 2010 findings of fact, recommendation, or any of the evidence before her. Thus, the County Executive's recommendation for abandonment is made without the benefit of this information.

On January 4, 2011, HTCA filed an appeal to the Circuit Court of the Board of Appeals decision, which ignored Ms. Carrier's findings of fact and recommendation of remand, applied the wrong legal standard, and approved the Hospital Special Exception Modification. This approval involves building on Lincoln Street and demolishing 10 houses. The appeal will permit the Court to review the entire record for error of fact and law. As stated previously, the County Executive's recommendation on this matter is conditioned on Suburban Hospital receiving approval with no further appeals.

Accordingly, we are requesting that the Council take no action on the Resolution until the a final court decision. Should the Council reject our request, we ask that no action be taken by the Council until after oral argument before the Council, by the attorney for HTCA, Norman Knopf, and by the attorney for Suburban Hospital. It is not necessary for this Council to act until the courts so rule and deferring will eliminate the possibility of prematurely and unnecessarily abandoning the road should the courts rule in HTCA's favor. Further, awaiting final judicial action will facilitate HTCA's efforts to try to meet with representatives of Suburban Hospital and Johns Hopkins (of which Suburban Hospital is now part) to explore ways of resolving differences so as to avoid the lengthy appeal process.

Sincerely yours,

Ms. Amy Shiman

cc: Councilmember Mark Elrich

KNOPF & BROWN

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NORMAN G KNOPF

June 29, 2011

Delivery by Hand

Councilmember Roger Berliner, Committee Chair
Councilmember Nancy Floreen, Member
Councilmember Hans Riemer, Member
T&E Committee
Montgomery County Council
100 Maryland Ave, 6th Floor
Rockville, MD 20850

Re: Abandonment of Lincoln Street

Dear Committee Chair Berliner and Committee Members Floreen and Riemer:

On behalf of the Huntington Terrace Citizens Association ("HTCA"), we request an opportunity to address the T&E Committee in its consideration of the Lincoln Street abandonment in order to explain points outlined below:

I. The decision to abandon a road lies within the discretion of the Council. Section 49-62 of the Code expressly provides that the Council "may" abandon a public right-of-way if certain conditions are met.

II. Any street abandonment must be made contingent upon final approval of the Board of Appeals decision. The sole purpose for the abandonment is for Suburban to implement the expansion as authorized by the Board of Appeals. HTCA has the right to appeal the recent adverse Circuit Court decision to the Court of Special Appeals. That Court, or a higher court, could reverse the Board decision so that the hospital may not proceed with the expansion as approved by the Board, or the hospital may decide for any other reason, not to proceed with an expansion which requires the closure of Lincoln Street. Accordingly, any approval of abandonment must be made contingent upon the hospital obtaining final approval of its expansion as approved by the Board of Appeals with the commitment to implement that expansion.

III. Abandonment to permit a major development without the developer talking to the community is contrary to County policy.

1. County policy is to encourage applicants for large scale developments to meet with the affected communities to try to resolve concerns and mitigate adverse effects. For example, the Council recently made clear in connection with the Costco location in Wheaton that Mall representatives should confer with the community representatives. The plan submitted by

the hospital for approval by the Board of Appeals was prepared by a team of architects and other design professionals that did not meet with the community to discuss its concerns and suggestions for mitigation of adverse impacts. After the current proposed plans were submitted to the Board for approval, the hospital refused to set up meetings with representatives of the HTCA and the hospital design team for the purpose of discussing impacts on the community and modifications needed. Similarly, after the hearings on the new proposal before Hearing Examiner Carrier, and her recommendation that the matter be remanded so that the plan could be modified to mitigate the adverse effects, the hospital continued to refuse to meet with the community to discuss such modifications. ***This refusal continues today. Not only has the hospital rejected our requests to meet, but we understand it has also rejected such requests from Councilmembers.***

2. Any grant of abandonment would have the effect of rewarding the hospital for its refusal to have meaningful discussions with the community. The refusal of the hospital to comply with the County policy of meeting with the affected communities is particularly egregious here because of the following facts.

a. Prior to the hospital's preparation of its current plan, it had met with the HTCA community to discuss expanding in a way that would satisfy the hospital's needs and the community's concerns. In 2001, the hospital presented a proposed plan which did not involve abandonment of Lincoln Street; required demolition of only 2 houses; located new surgical suites in an East Tower situated next to the existing hospital buildings, on a portion of the existing surface parking lot; and located much of the new parking under the East Tower. (Exhibit 376, pp. 3, 6-9, Attachment A to this letter; Exhibit 458, Hearing Examiner's Report, Errata Statement ¶7, Attachment B to this letter.) HTCA had concerns regarding other aspects of the 2001 plan and did not endorse it. The Hearing Examiner found that "Shortly thereafter, the head of the hospital changed, and the 2001 plan was shelved." (Exhibit 458, Hearing Examiner Report, Errata Statement ¶7, Attachment B)

b. Thereafter, the hospital retained as its chief architect Adrian Hagerty. He and his design team were not advised by the hospital of the previously expressed community's concerns or given any guidelines to try to meet those concerns. The new design team was not even advised of the hospital's 2001 plan! Thus, the new architect testified:

Q But in terms of guidelines, did someone say to you, for example, design a project that minimizes or eliminates the need to take down any houses?

A That was not a guideline.

Q Did anyone suggest as a guideline that the project should not involve the closing of Lincoln Street?

A That was never a given guideline, no.

Q Did anyone call to your attention the discussions that the hospital have had with the community and Park and Planning regarding possible designs of an expansion for a standard hospital?

A We were not made aware of, our involvement started in this part of the project in 2005. I was aware that there had previous plans, but no, we were not specifically made aware of what those plans were. It was, no. No.

Transcript of 11/18/08 hearing, pp. 128-129.

c. The Hearing Examiner found that **“it does not appear that the Hospital make [sic] it a priority to look for ways to meet its needs while minimizing the adverse impact of this neighborhood to the greatest extent feasible”**. She further found that the hospital’s plan was based on **“what would optimally meet its needs”** premised on the attitude of its Chief Operating Officer that **“what we are proposing best meets the needs of the community because it best meets the needs of the hospital”**. Exhibit 449, Hearing Examiner’s Report pp. 143, 144 (Attachment C); Ex. 458 Errata Statement ¶8. (Attachment B).

d. The Hearing Examiner thus recommended that the matter be remanded to provide the hospital with an opportunity to “look more closely at alternatives” and stated:

The Hearing Examiner does not wish to dictate to Suburban Hospital how to satisfy the parameters suggested for a compatible, Master Plan compliant expansion. It is up to the Hospital to decide which of the many possible alternatives to choose, e.g., moving the loading dock v. moving part of the utility plant v. reducing the size of physician office space v. keeping satellite parking v. enlarging the underground footprint of the parking garage v. changing the shape of the surgical suite.

Hearing Examiner Report, Ex. 449, 144, 136 (Attachment C).

3. As noted, after the Hearing Examiner made this recommendation, the hospital continued to refuse to meet with the community. Needless to say, since the Board of Appeals ignored the Hearing Examiner’s recommendation, and approved the expansion as proposed by the hospital with the exception of reducing the number of houses to be demolished to 10, the hospital has continued to refuse to meet with the community.

IV. The County Executive’s recommendation is based upon an incomplete and outdated record. The County Executive’s recommendation for abandonment is based upon a DOT hearing of a few hours conducted in 2008 with no right of cross-examination. Subsequently, the hearings in the special exception were held taking more than 30 days with

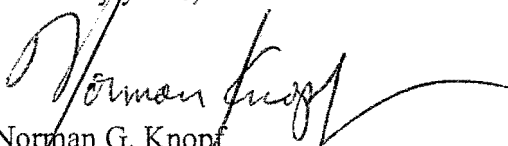
scores of witnesses and literally thousands of pages of transcript and hundreds of exhibits. The special exception record clearly disclosed, and the Hearing Examiner so found, that there were ways to implement the hospital expansion to satisfy the needs of the hospital while mitigating some of the adverse impacts. This information was obviously not before the County Executive and had it been, he might well have recommended that the hospital meet with the community before making his recommendation. Information before the County Executive was also outdated by more recent developments relating to BRAC. The BRAC traffic generation "mess" has become even more clear since the DOT and the Board of Appeals hearings. The gridlock that is anticipated on Rockville Pike will surely make it more difficult, if not impossible, to access NIH from Rockville Pike. This will result in more traffic on Old Georgetown to access the NIH campus from Old Georgetown Road entrances. The huge volume of cars generated by the proposed physicians office building proposed to be built as part of the hospital expansion will greatly add to the Old Georgetown Road congestion. This is an aspect not fully appreciated or analyzed as part of any of the proceedings. Additional information and analysis should be required before any vote on abandonment and its effect of approving the physicians' office building.

V. Lincoln Street serves the Huntington Terrace community and should not be abandoned. For the reasons more fully set forth in the letter of June 29, 2011, of Amy Shiman, President of HTCA, to the T&E Committee, keeping Lincoln Street opened is extremely important to the community. It is a primary access street for the Huntington Terrace community. Its closure would not only greatly inconvenience the residents, but would create traffic hazards and safety concerns on the nearby narrow residential streets that would have to accommodate the displaced traffic. Abandonment should not be permitted absent a showing that there is no reasonable alternative – a showing the hospital has not made to date. The street should not be abandoned at least until there are good faith discussions between community representatives and the hospital relating to possible reasonable alternatives. As discussed above, the Council should not abandon the road without at least requiring the normal procedure of developer and community talking with each other.

CONCLUSION

For the above stated reasons, we respectfully request that the abandonment of Lincoln Street be denied, or in the alternative, be deferred until the hospital meets in good faith with community representatives.

Sincerely yours,


Norman G. Knopf
On behalf of Huntington Terrace Citizens
Association

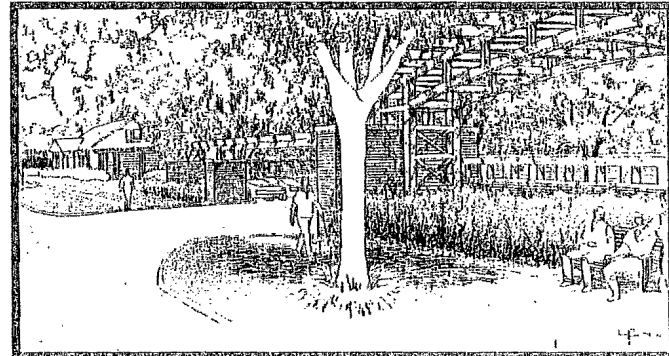
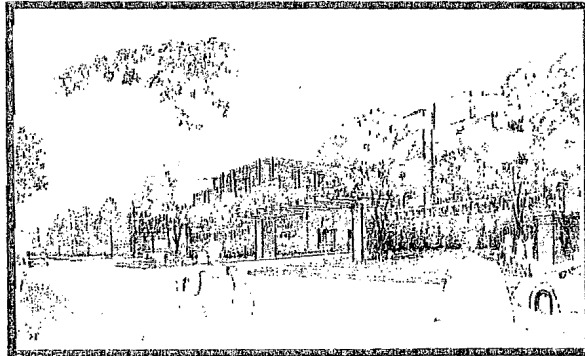
cc: Glen Orlin, Deputy Council Staff Director

Suburban Hospital Bethesda, Maryland

Master Plan Implementation

HTCA & Suburban Hospital Work Session #5

18



October 9, 2001

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Introductory Message

The Huntington Terrace Citizens Association (HTCA) Liaison Committee and Suburban Hospital have been working together since April of this year to find a balance in the needs of the Community and of the Hospital regarding necessary expansions of Suburban Hospital. The October 9th meeting represents our fifth and final work session.

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The locations of the major eastward building expansion (called the East Tower), the parking structure located north of Lincoln Street and other more modest building expansions, have not changed for last several meetings. The Hospital has taken this to indicate a basic agreement on these building location options.

To avoid disruption of this vital service during construction of the East Tower, the Hospital is considering relocating the Emergency Department to the southeast corner of the building. If the Emergency

Department moves, ambulance and Emergency Department traffic will enter and exit the campus from a curb cut on McKinley Street. This traffic relocation will also help to reduce Lincoln Street congestion.

Outstanding issues involve the technical legal mechanism for County project approval. There appear to be two approaches to this: 1) a legislative/zoning ordinance text amendment with modest resubdivision, and 2) a partial Lincoln Street abandonment and property resubdivision. A significant outcome goal of the October 9th work session is to arrive at an approach consensus.

The following materials are intended to assist the work session attendees prepare for the meeting. Other supplemental materials will be available at the meeting.

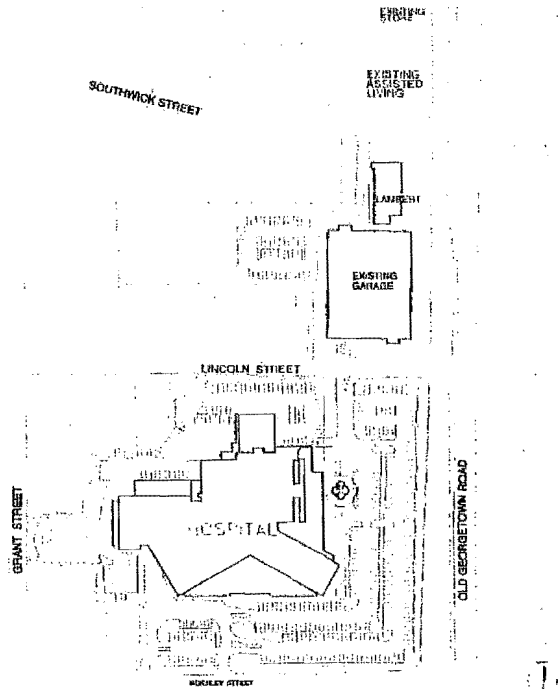
Work Session Agenda

1. Introduction Statements by Maryland National Park and Planning Commission
2. Statements From HTCA Liaison Committee Members
3. Site Plan Review
 - Architectural Site Plan
4. Approval Process Discussion – Pros & Cons
 - *Approval Process A: Legislative/Zoning Ordinance Text Amendment & Minor Resubdivision*
 - *Approval Process B: Regulatory Review Process: Abandonment and Resubdivision*
5. Site Plan for Approval Process A
6. Site Plan for Approval Process B
7. Traffic & Parking Update
8. Short-Term Schedule & Next Steps

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Existing Site Plan & Context

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EXISTING SITE PLAN

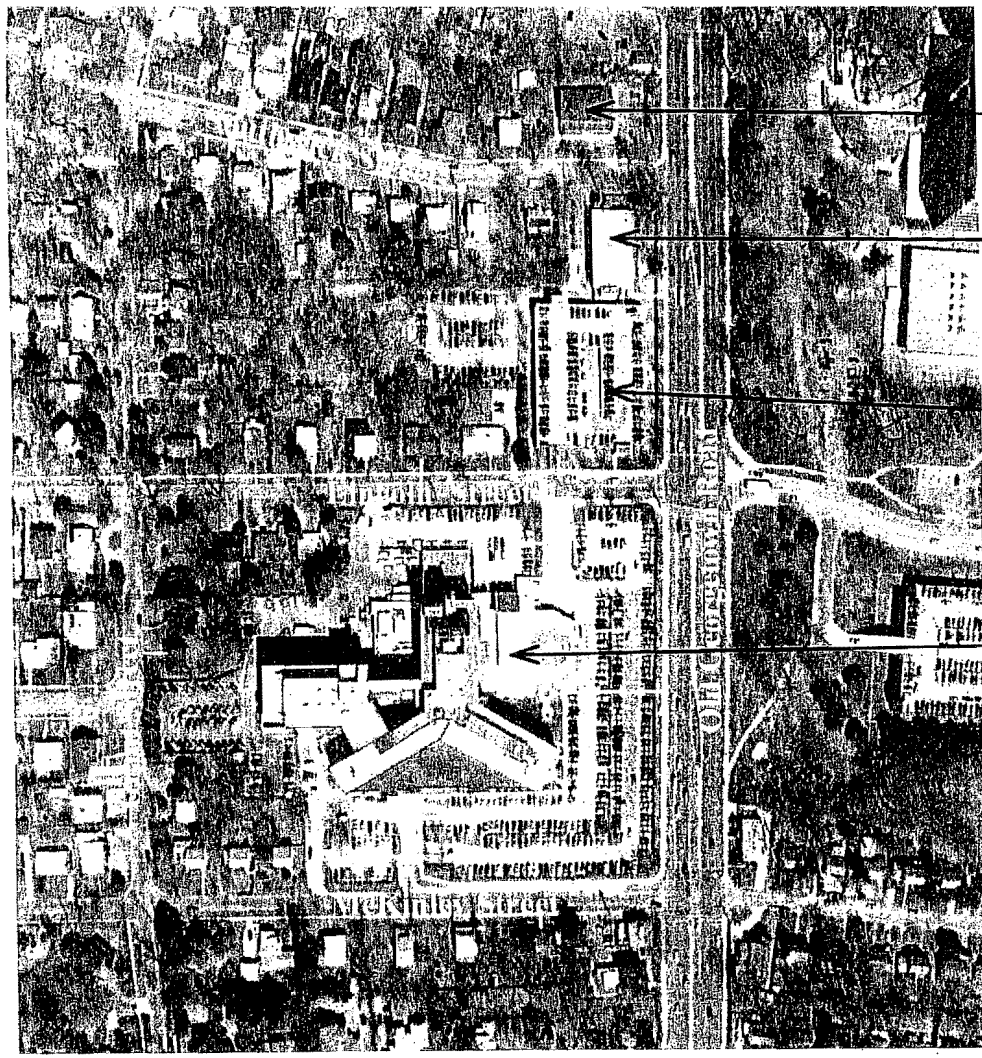
SUBURBAN HOSPITAL
SCALE 1"=50'

LAND OWNED HOSPITAL USE
LAND OWNED RESIDENTIAL USE



Existing Environment

98



Assisted Living Facility

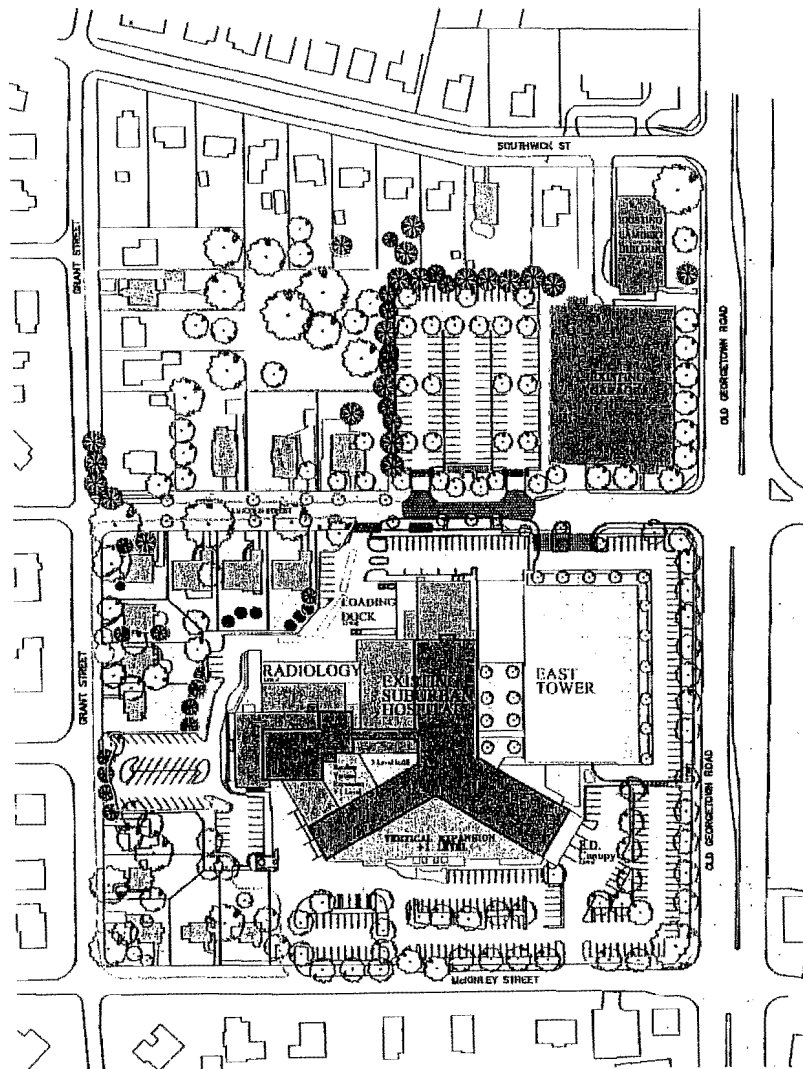
Lambert Building

Parking Structure (255 Spaces)

Suburban Hospital

Suburban Hospital

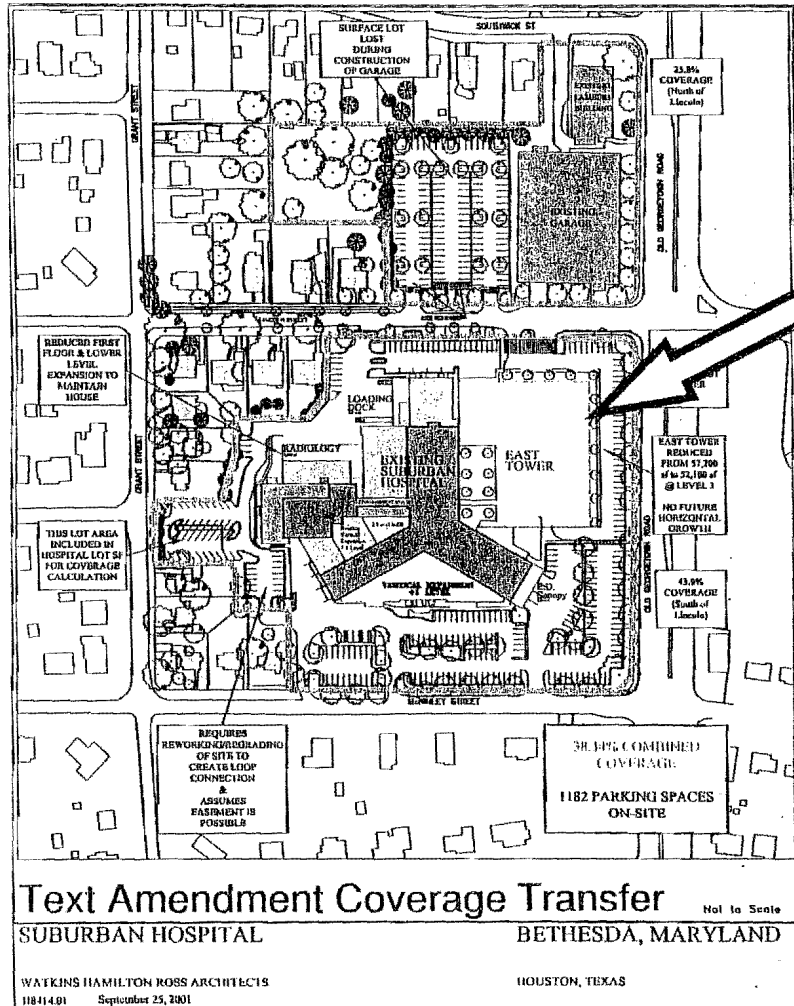
Proposed Architectural Site Plan



- A new tower on the Old Georgetown Road side of the hospital is built to replace outdated surgical suite.
- 1180 parking spaces on site including underground parking below the East Tower
- Landscaping and amenities are provided along Lincoln Street
- Two houses along Lincoln street razed for new parking garage.
- Houses along Grant Street & Southwick Street remain as a buffer zone.
- Relocated entrance on McKinley Street for ambulances & other Emergency Department traffic

Suburban Hospital

Master Plan Implementation: Stage II



New East Tower with One Level of Parking Below

Construction: 18 Months

Parking on Site: 1180 Spaces

No homes razed

Text Amendment Coverage Transfer

Not to Scale

SUBURBAN HOSPITAL

BETHESDA, MARYLAND

WATKINS HAMILTON ROSS ARCHITECTS
11841401 September 25, 2001

HOUSTON, TEXAS

Suburban Hospital

BEFORE THE MONTGOMERY COUNTY BOARD OF APPEALS
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:	*	
PETITION OF SUBURBAN HOSPITAL, INC. ,	*	
Petitioner	*	
<u>Barbara A. Sears, Esquire</u>	*	* Board of Appeals Case Nos.
<u>Erin Girard, Esquire</u>	*	* S-274-D and A-6254
Counsel for the Petitioner	*	* (OZAH Referral Nos.
*****	*	08-31 and 08-32)
<u>Martin Klauber, Esquire</u>	*	
People's Counsel for Montgomery County	*	
Partially in Support and Partially in Opposition	*	
*****	*	
<u>Norman G. Knopf, Esquire</u>	*	
<u>Mollie Habermeier, Esquire</u>	*	
Counsel for the Huntington Terrace	*	
Citizens Association	*	
*****	*	

ERRATA STATEMENT

The Report and Recommendation in the above-captioned case dated June 18, 2010 contained inadvertent errors that need to be corrected. This errata statement is hereby incorporated into the Report and Recommendation and sets forth the following corrections and clarifications.

1. The cover page misspells the first name of Huntington Terrace counsel Mollie Habermeier, misspells the last name of Suburban Hospital counsel Erin Girard, and fails to add "Esquire" after the names of both Huntington Terrace counsel. No disrespect was intended. The cover page should be replaced with the enclosed page.

2. On page 8, the last sentence of the penultimate paragraph should end with "individual lots facing McKinley Street, Lincoln Street, Southwick Street and Grant Street."

3. Page 20 refers to a table, but the table was not actually inserted into the report. The heading and table should appear as follows:

the boundaries of Huntington Terrace. The transcript reference was also incorrect, and should read "Tr. 12-12-08 at 60-61."

6. On page 130, at the end of the second sentence, "the west side of Grant" should read "the east side of Grant."

7. Pages 137 to 144 summarize various hospital expansion alternatives that were the subject of extensive testimony. Counsel for the Hospital and the HTCA have noted the absence of any reference to a second plan that the Hospital and the HTCA jointly developed during 2001. This was an inadvertent omission that needs to be corrected with the insertion of a new paragraph. The partial paragraph at the top of page 142 should end with "It was rejected by the HTCA membership, however, because it involved closing Lincoln Street. See *id.*, HTCA Newsletter, at Ex. 284." This should be followed a new paragraph reading as follows:

"Shortly after the Huntington Terrace community rejected the 2000 plan, a liaison committee was appointed by HTCA that worked with Suburban, the People's Counsel and Technical Staff from the MNCPPC to develop another concept for the expansion. See Tr. 5-29-09 at 166. The Hospital described the main elements of the concept (in a document prepared for a final work session on with HTCA representatives on October 9, 2001) as a new East Tower on the Old Georgetown Road side of the existing hospital building; 1,180 parking spaces on site including some beneath the East Tower; landscaping and amenities along Lincoln Street; removal of two houses on Lincoln Street to accommodate a new parking garage; preservation of houses on Grant and Southwick streets as a buffer zone; and a potential relocated entrance on McKinley Street, for ambulances and other Emergency Department traffic, if the Hospital decided to relocate the Emergency Department to the southeast corner of the building to avoid a disruption in service. See Ex. 376 at 3, 7. It appears that some HTCA representatives approved of at least some of these elements, see Tr. 5-29-09 at 170, but the HTCA Board communicated to the Hospital that the plan was unacceptable because it included a parking garage on residentially zoned property and it would remove houses. See Ex.

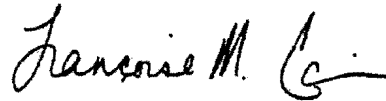
431(d)(2). Shortly thereafter the head of the Hospital changed, and the 2001 plan was shelved. Mr. Corapi objected to even referring to a "2001 plan" because it was never more than a concept – the Hospital did not consider it further once the HTCA had rejected it. Moreover, in Mr. Corapi's view, the 2001 plan was not viable then and is not viable now."

8. On page 143, the second sentence in the partial paragraph at the bottom of the page contains empty quotation marks. The end of that sentence should read as follows: ". . . when he testified that "what we are proposing best meets the needs of the community because it best meets the needs of the hospital." Tr. 7-24-09 at 165.

9. On page 144, the first paragraph under "M. Community Participation" states that one Huntington Terrace resident testified in support of the Hospital. This was an incorrect reference to Mr. Keen, who lives four blocks from Suburban but outside the boundaries of Huntington Terrace.

Dated: June 25, 2010

Respectfully submitted,



Françoise M. Carrier
Hearing Examiner

drive by or close to only two houses, both of which are currently used as medical offices, a use that is much less sensitive to noise and other intrusions than a residence. Truck traffic would be a change for McKinley Street, because trucks currently use the westernmost Lincoln Street entrance. McKinley Street residents are accustomed, however, to a significant number of shuttle bus trips on a daily basis. Trucks currently drive past or close to four houses on Lincoln Street, and with the new truck route they would drive past four houses on McKinley, three of which are used for medical offices. This would change the location of the impact, but it would be difficult to consider that change a significant adverse effect, particularly when the number of truck trips is quite small and the number of tractor trailers among them is only one or two a day.

Many opposition witnesses argued that the proposed physician offices should not be permitted because they would bring a great deal of traffic to the site that is not directly related to hospital operations. The physician offices do make a significant contribution to traffic generation and the demand for parking spaces, as outlined in the parking study and the traffic study. On the surface of the question, prohibiting Suburban from creating on-site physician offices would be a simple way to reduce adverse impacts on the neighborhood. The Hearing Examiner is reluctant to take this step, however, in light of persuasive testimony from Dr. Westerland (head of Trauma Services) and Mr. Corapi about the crucial role that on-site offices can play when a trauma patient has an emergency and a doctor's ability to arrive a few minutes sooner could make a difference in the outcome. Mr. Corapi emphasized the importance of the physician offices to the Hospital at the last hearing session, when he stated that losing the physician offices would jeopardize the entire expansion plan. For all of these reasons, the Hearing Examiner does not recommend prohibiting Suburban from having on-site physician offices.

The Hearing Examiner does not wish to dictate to Suburban how to satisfy the parameters suggested for a compatible, master plan compliant expansion. It is up to the Hospital to decide which of the many possible alternatives to choose, e.g. moving the loading dock v. moving part of the utility plant v. reducing the size of the physician office space v. keeping satellite parking v. enlarging the underground footprint of the parking garage v. changing the shape of the surgical suite. The special

about whether the Hospital might be able to gain approval for a higher building coverage by seeking a zoning text amendment or a variance. Mr. Wrenn and Ms. Sears argued that neither of those approaches is possible, because it is extremely difficult to get a zoning text amendment or a variance. HTCA offered to support such a request, and described another case where a special exception holder obtained a zoning text amendment with the support of the local citizen's association. The evidence from the Hospital and the HTCA on this point established that efforts to get a zoning text amendment might or might not be successful.

The Hearing Examiner notes that in a recent hospital special exception modification, Holy Cross Hospital received approval of a variance allowing it to exceed the building coverage limit by some 17 percent. The Hearing Examiner in that case found that the first prong of the variance test under the Zoning Ordinance, often called the "uniqueness" requirement, may be satisfied not only by unusual physical characteristics such as shape or topography, but by "other extraordinary situations or conditions peculiar to a specific parcel of property." Examiner's Report and Recommendation dated June 22, 2009 in Case No. S-420-H at 51, quoting Code § 59-G-3.1. The Hearing Examiner concluded that the Holy Cross site satisfied the uniqueness test because of extraordinary situations comprised of its location, hemmed in between I-495 and Sligo Creek Park, and master plan recommendations that limited any expansion of the hospital to its existing site boundaries and suggested specific height limitations on certain parts of the site. The Board of Appeals adopted the Hearing Examiner's report and granted the modification. See BOA Opinion effective September 18, 2009. While each case is decided on its own merits, this recent Holy Cross decision suggests that a variance from the building coverage limit might be granted to Suburban based on the physical and master plan constraints it faces.

In this Hearing Examiner's view, Suburban set out to plan an expansion that would optimally meet its needs. This approach was articulated by Mr. Corapi, the Hospital's Chief Operating Officer, when he testified that "A". See Tr. _____. The Hospital did make some choices that reduce impacts on the neighborhood, such as installing noise mitigation equipment and reducing the size of the physician

See ERRATA STATEMENT EX 458

office space from the 70,000 or more square feet it originally wanted to 38,000 as requested now. Nonetheless, as Mr. Doggett stated, in an urban environment a major institutional land use should not expect to achieve optimal results, but to work out a compromise that respects the needs of the surrounding community as well as those of the institution. It does not appear that the Hospital make it a priority to look for ways to meet its needs while minimizing adverse impacts on the neighborhood to the greatest extent feasible. For instance, it may be possible to put all of most of the structured parking underground by extending it beneath the current Lincoln Street right-of-way, or beneath the physician parking lot on Old Georgetown Road. Putting all the parking underground would completely change the visual impact of the expansion, and allow the corner of Southwick and Old Georgetown Road to be a beautiful entry point for both the Hospital and Huntington Terrace. Even reducing the parking garage to one story, or significantly reducing its footprint while keeping it at a modest height of two to three stories above ground, would dramatically decrease impacts on the neighborhood and help preserve its residential character. Similarly, while it may be inconvenient or more costly to build over the loading dock or adjust its location, the Hospital's team might be able to find a way to make that work, allowing the addition to be moved farther away from homes on Southwick and on Grant near its intersection with Southwick. The Hospital will need to look more closely at alternatives if the remand is granted.

M. Community Participation

Community participation in this case was extensive, in terms of both testimony and written submissions. Six community members testified in support of the petitioner, including one Huntington Terrace resident, one resident of the Bradmoor subdivision immediately west of Huntington Terrace, a cardiac care center patient, and representatives of the Bethesda-Chevy Chase Chamber of Commerce, the Oakmont Special Taxing District (a district of about 60 homes half a mile from the Hospital) and the Wingate Citizens Association (an association of about 1,365 homes a three to five-minute drive from Suburban). The record contains 726 letters in support of the expansion plan – a new record for OZAH. Almost all the letters in support were form letters, supporting the project because it would allow Suburban to make a number of improvements to the hospital including better access to emergency and

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July 6, 2011

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Roger Berliner, Chair,
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Montgomery County Council
100 Maryland Avenue
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Rockville, MD 20850

Re: Resolution to Approve Abandonment of a Portion of Lincoln Street in Bethesda –
July 11, 2011 T&E Committee Meeting (Petition No. AB 715)

Dear Chairman Berliner and Members of the T&E Committee:

On behalf of Suburban Hospital, Inc. (“Suburban” or “Hospital”), the purpose of this letter is to request that the T&E Committee recommend approval of the above-referenced Abandonment Petition (“Abandonment”) to the full Council. The Public Hearing Officer’s Report and Recommendation as reviewed and approved by the County Executive on January 27, 2011 (“Report”) is a very thorough and well-thought out analysis which fully supports a finding by the County Council that the Abandonment satisfies the requirements of Section 49-63(c)(1) and (2) of the Montgomery County Code, although compliance with only one of these subsections is necessary for the grant of the Abandonment.¹ As more fully discussed below, Suburban also requests that a minor modification to recommended requirement 4 of the Report which is in the nature of a technical clarification, be included in the Council’s Resolution of Approval.

¹ Sections 49-63(c) and (d) of the Montgomery County Code (the “Code”) permit the abandonment of a right-of-way if:

- (1) the right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future, or
- (2) the abandonment or closing is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned or closed. In assessing health, safety, and welfare issues, the Council may consider:
 - (A) any adopted land use plan applicable to the neighborhood;
 - (B) safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives, in the immediate neighborhood, for local and through traffic; and
 - (C) changes in fact and circumstances since the original dedication of the right-of-way.

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As noted, the Report provides a detailed statement of the background, a summary of testimony and evidence presented, and findings and recommendations. The purpose of this letter is to call certain matters of record to the Committee's attention and to provide additional relevant and material information.

Background and Status

Suburban Hospital has been in its present location for over 60 years and is an important hospital facility serving Montgomery County. It is the only designated Trauma Center in Montgomery County. Suburban's continued viability as an outstanding hospital facility is essential to the County's public health and welfare. Suburban, which operates pursuant to a special exception first granted in 1955, has not had a major clinical expansion in over 30 years. In recognition of its critical need to expand and upgrade its facilities, Suburban filed a modification to its special exception ("Modification") on March 26, 2008. The Modification proposed a Hospital addition ("Addition"), a new parking structure ("Garage"), as well as a substantial redesign of the Hospital campus to address several identified deficiencies. On December 9, 2010, the Board of Appeals for Montgomery County ("BOA") issued an Opinion approving the Modification subject to conditions. A copy of the BOA's Opinion is attached as Exhibit "A".

The conditions required by the BOA's approval include (a) the retention of 13 Suburban-owned houses along McKinley, Grant and Southwick Streets to serve as a buffer; (b) the establishment of the two block area bordered by McKinley Street, Grant Street, Southwick Street and Old Georgetown Road as the Hospital's maximum expansion limits ("Maximum Expansion Boundaries"); (c) the prohibition of the purchase of homes in the Huntington Terrace Subdivision beyond the Hospital's Maximum Expansion Boundaries; (d) the requirement to retain any single-family dwelling the Hospital purchases within its Maximum Expansion Boundaries; and (e) the closure of the employees-only entrance on Southwick Street between 8 p.m. and 6 a.m. daily. Attached as Exhibit "B" is a copy of Suburban's Illustrative Site Plan ("Site Plan") showing the maintenance of its 13 residences along Grant, McKinley and Southwick Streets as required by the BOA. The Site Plan also shows the outline of Lincoln Street that is the subject of the Abandonment and, by asterisk, the other properties owned by Suburban within its Maximum Expansion Boundaries. As noted, Suburban is required to retain these houses by the conditions of approval of the Modification. The Huntington Terrace Citizens Association ("HTCA") appealed the decision of the BOA to the Circuit Court for Montgomery County on January 4, 2011. On June 21, 2011, the Court dismissed HTCA's appeal and affirmed the decision of the BOA approving the Modification. A copy of the Court's Order Denying Petition for Judicial Review and Affirming Opinion of Board of Appeals for Montgomery County signed by the Honorable Thomas L. Craven on June 30, 2011 is attached as Exhibit "C".

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In 2005, by way of background, after careful review led by qualified healthcare professionals, a number of deficiencies with the existing Hospital facilities were identified including: 1) small, awkwardly shaped, and inappropriately located operating rooms with ineffective layouts and inadequate adjacencies; 2) inappropriately sized facilities, including diagnostic, emergency and support spaces; 3) inappropriate building configurations; 4) lack of sufficient private patient rooms; 5) a critical parking shortage; 6) safety concerns arising from a single point of access for emergency vehicles, patients, visitors, employees, cars, and helicopters; and 7) lack of on-site physician office space.

To address these deficiencies, a conceptual expansion plan was prepared and, prior to the filing of the Modification, reviewed with the community, which resulted in a number of changes. As thoroughly reviewed by the project architect during the Abandonment hearing, an essential component of the Modification was the consolidation and proper sizing and placement of the Hospital's 15 existing operating rooms within the new construction. The shape and size of the surgical suite footprint of approximately 65,000 square feet was established by applicable healthcare codes and standards of care, which dictated certain minimum sizes and required adjacencies, such as the placement of the operating rooms and post-anesthesia recovery units, as well as the necessary separation of sterile and non-sterile areas. Additionally, the need for the proximity of the surgical suite to existing facilities and services within the hospital, most notably the Emergency and Trauma Departments, further limited the placement of the surgical suite.

Included within the Addition are the new surgical suite, 38,000 square feet of on-site physicians' office space² to provide patients and physicians whose specialties are directly associated with hospital services and inpatient care with direct access, 108 private patient rooms (with an overall increase of 66 patient beds) to achieve appropriate private patient room ratios and improve infection control, patient care, privacy and family participation, and a new main entrance, separate from the Emergency and Trauma entrance, to resolve existing access and safety conflicts. We note that the additional private patient rooms permit the Hospital to convert existing semi-private rooms to private rooms. The Modification also included a new Garage to address severe parking deficiencies, to be placed in approximately the same location as the existing garage and administrative building (both to be demolished). Campus improvements also addressed loading, pedestrian, vehicular, and emergency transport circulation conflicts. These improvements included 1) consolidating access points from 6 to 4, with primary access on Old Georgetown Road; 2) limiting secondary access points on Southwick and McKinley Streets to minimize community impacts, including prohibitions on westbound turns into the neighborhood

² 38,000 square feet of physicians' offices was established to be the minimum necessary. The record demonstrates that Suburban is the only Montgomery County hospital without on-site physicians' offices and that the other County hospitals have significantly more than 38,000 square feet.

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and eastbound turns into the hospital; 3) restricting the Southwick Street entrance to employees only, with access limited to between 6 a.m. and 8 p.m.; 4) separate entrances for visitors and Emergency and Trauma; 5) the widening of McKinley Street, as well as several other safety and circulation improvements.

A more detailed discussion of the identified deficiencies and compelling need for Suburban to address these deficiencies if it is to continue to provide quality healthcare to the community as well as a detailed description of how the Modification successfully addresses these deficiencies, is found in Suburban's April 21, 2008 letter to Isiah Leggett filed with the Abandonment (see AB.-1, pp. 3-6)³ and is further discussed in Suburban's letter dated October 10, 2008 to Diane Schwartz Jones, Abandonment Hearing Officer (AB.-72), and in the Report at pp. 6-16, and 28-30, which summarizes the Abandonment testimony of 1) Gene Corapi, Senior Vice President of Operations at the Hospital; 2) Martin Wells, Transportation Planner; 3) Frank Bossong, Civil Engineer; 4) Douglas Wrenn, Land Planner; 5) Adrian Hagerty, Healthcare Architect; 6) Hugh Trout, Vascular Surgeon; and 7) Danny Westerband, MD, Director of Suburban Hospital's Trauma Services.

Essential to the implementation of the approved Modification is the closure of the one-block, approximately 700 linear foot portion of Lincoln Street between Old Georgetown Road and Grant Street (the "Abandonment Area"). As the evidence shows, consolidating the Campus by abandoning the Lincoln Street right-of-way and construction over the Abandonment Area is necessary to accommodate the required surgical footprint and properly connect the Addition to the existing Hospital facilities. After over 3 years of intensive scrutiny through the special exception process, the BOA approved the Modification and specifically found that neither the Abandonment nor construction of the Addition and Garage caused adverse effects on nearby properties or the general neighborhood (see Exhibit "A").

Compliance with the Code

We have listed below some of the key points demonstrating how the Abandonment Petition satisfies the findings required to be made by the County Council for granting the Abandonment in both Sections 49-63(c)(1) and (2).

I. Section 49-63(c)(1) - The right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future.

³ References to the Abandonment Record before the County Executive Hearing Officer are identified as "AB._".

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- No properties adjacent to the Abandonment Area will be landlocked as a result of the Abandonment. All of the properties adjacent to Lincoln Street, between Old Georgetown Road and Grant Street, are owned by the Hospital.
- The Abandonment Area is used predominately by Hospital users.
- On weekdays, 81 to 85 percent of the traffic on the Abandonment area is Hospital related.
- Almost all pedestrian traffic along the Abandonment Area is Hospital related.
- There are numerous and adequate alternate routes for the neighborhood users of Lincoln Street and sufficient traffic capacity to handle the diverted traffic volumes on other neighborhood streets.
- Lincoln Street is situated within an interconnected network of north-south and east-west streets.
- Lincoln Street is only 3 blocks long, terminating at Garfield Street and Old Georgetown Road.
- Lincoln Street is one of several east-west streets located within a half of a mile.
- Lincoln Street is classified as a residential street. Huntington Parkway and Greentree Road are classified as primary streets and Old Georgetown Road as a Major Highway.
- Alternative routes provide both sufficient capacity and a more appropriate functional classification for non-Hospital associated motor vehicle traffic.
- The Department of the Fire Marshall, Police, Montgomery County Department of Transportation, Planning Board and Planning Board Transportation Staff have all supported and endorsed the Abandonment, recognizing the sufficiency of alternate routes for necessary access.
- All public utilities currently existing in the Abandonment Area will be maintained or relocated, as appropriate, and all relevant agencies have acknowledged the sufficiency of the proposed utility plan.
- As found by the County Executive: "The evidence in the record demonstrates that Lincoln Street is no longer necessary for present public use or anticipated future use in

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the foreseeable future. The use of the street is mostly by Hospital users. There are sufficient alternative routes for the neighborhood users of the street and there is sufficient traffic capacity to handle the diverted traffic volume on the other neighborhood streets.” Report, p. 40.

II. Section 49-63(c)(2) - The abandonment or closing is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned or closed.

- Approval of the Abandonment allows Suburban to address its identified deficiencies as discussed above and brings the Hospital into compliance with current healthcare codes and standards of care, which is required for the Hospital to continue to deliver quality medical services to the nearby and larger community it serves.
- As recognized by the County Executive, “There is a greater public benefit that will result from the Hospital being able to provide modern operating rooms that can accommodate state of the art equipment with supportive services and which will provide quality healthcare to the surrounding community, many of whom use the Hospital’s services and the other community served by the Hospital.” Report, p. 41.
- Approval of the Abandonment resolves existing unsafe circulation conditions through construction of a new main entrance separate from the Emergency and Trauma entrance and separation of the flow of patients and visitors, emergency vehicles and helicopters.
- Approval of the Abandonment results in a circulation system that directs Hospital traffic away from the local neighborhood streets and towards primary and higher classification streets. Hospital entrances on McKinley and Southwick Streets will be restricted and preclude Hospital traffic from turning west into the neighborhood.
- As noted by the County Executive: “The evidence in the record on this issue makes clear that the approval of the abandonment will improve the many vehicular and pedestrian safety issues which users of the hospital and residents of the neighborhood presently experience as a result of Lincoln Street dividing the Hospital site.” Report, p. 42.
- Approval of the Abandonment places the bulk of Hospital traffic onto Old Georgetown Road, Greentree Road, and Huntington Parkway and generally decreases hospital-related traffic accessing the Hospital from the west using neighborhood streets. Those neighborhood streets seeing a modest increase in trips can easily absorb them.

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- Approval of the Abandonment provides improvements to Old Georgetown Road, substantial improvements to the section of McKinley Street between Old Georgetown Road and Grant Street, including construction of 1) a dedicated right-turn lane for Hospital traffic; 2) sidewalks along the entirety of the Hospital's two-block campus, where none currently exist; and 3) an on-site pedestrian path system.
- Approval of the Abandonment provides sufficient on-site parking to meet established demand, eliminating Hospital traffic circulating through the neighborhood to park on Hospital parking facilities located to the north and south of Lincoln Street.
- As found by the County Executive: "The evidence reflects that pedestrian circulation will be improved by adding sidewalks around the perimeter of the Hospital and the public use of on-site pathways and sidewalk proposed to be built through the Hospital will provide network connectivity to the neighborhood." Report, pp. 40.
- In summary, the Executive states: "[T]he proposed Abandonment is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned because it will improve existing traffic conditions, which are predominately hospital related, eliminate conflicts with emergency and other vehicles and direct hospital traffic away from the residential neighborhoods." Report p. 44.
- 1990 Bethesda-Chevy Chase Master Plan ("Master Plan") recognizes the importance of community-serving uses in the planning area, of which Suburban Hospital is certainly one.
- As found by the County Executive: "The proposed abandonment is consistent with the adopted land use plan which acknowledges community serving uses such as healthcare services and provides for buffering and transitional landscaping to the neighborhood." Report, p. 45.
- The Master Plan specifically identifies Suburban as an existing large land user to be preserved and anticipates its likely expansion.
- The Master Plan encourages the development of a "green corridor" along Old Georgetown Road, which is implemented by the Abandonment, through landscaping and improved setbacks along Old Georgetown Road.
- The Abandonment Area was originally dedicated by Plat No. 131 in 1910.

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- The Hospital was subsequently established in 1943, and has become primary user of Abandonment Area.
- NIH, located across the street from the Hospital, and the nearby Bethesda CBD have developed over time.
- Evolution of healthcare codes, standards and technology and population growth and demographic changes necessitate hospital expansion as proposed.
- As found by the County Executive: “[T]he expansion of the Hospital over the course of time, the fact that NIH is across from Lincoln Street, and the creation of the nearby CBD are evidence that the facts and circumstances have changed since the original dedication of the right-of-way. The desire of the Hospital to provide modern health care facilities and satisfy its responsibility as the County’s *only* trauma center are also changes that need to be considered[.]” (Emphasis in original) Report, p. 44.

Relevant Case Law

The recent Court of Appeals case of *South Easton Neighborhood Association v. Town of Easton*, 387 Md. 468 (2005) is instructive. AB.-65. As properly noted by the County Executive and Transportation Staff in their respective reports, the convenience or desire of area residents is not a sufficient consideration to warrant the denial of an abandonment request. *See* Report, pp. 40-41 and Transportation Staff’s September 17, 2008 Memo (AB.-72). Such was the holding of *Easton*, in which a non-profit community hospital much like Suburban petitioned for the abandonment of a roadway, to allow for the expansion of that hospital’s Emergency Department facilities across the right-of-way. 387 Md. at 474. In finding that the right-of-way was not necessary for public use, the Court rejected a “no-use” standard and held that a right-of-way can be abandoned even if it is presently being used by the public, provided that such right-of-way is not “necessary,” even if it is “convenient.” *Id.* at 495. After determining that the right-of-way in that case was not necessary for public use, the Court then determined that a hospital serves a “public purpose” and, therefore, its expansion should be considered “necessary” to protect the health, safety, and welfare of the neighborhood. *Id.* at 498-99. Such is the situation in the instant case.

Technical Modification to County Executive’s Requirement 4

At pages 45 and 46 of the Report, the County Executive recommends that the Abandonment be granted subject to certain requirements. Requirement 4 calls for a record plat that “consolidates all parcels fronting Lincoln Street between Old Georgetown Road and Grant

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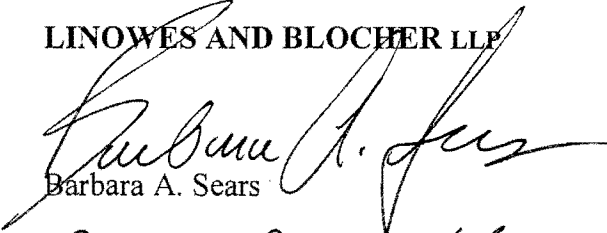
Street and including a condition that the on-site sidewalk network must be available for public use.” Requirement 5 provides that Suburban must grant and record a perpetual access easement for the on-site network of paths that will replace the Lincoln Street sidewalk and bicycle routes[.]” To conform Requirement 4 of the Report to the approved Modification, a change should be made. The BOA has required the retention of the Suburban-owned house on Lot 12 located at the corner of the Lincoln Street right-of-way and Grant Street. Technically, Lot 12 fronts the Abandonment Area although its driveway is on Grant Street. Therefore, the record plat may not technically include Lot 12. Additionally, the construction of the Modification is required to be phased. The proposed sidewalk and bike path run along the perimeter of the Addition. The Addition area of which the Abandonment Area is a part, will be used for interim parking while the Garage construction is underway (the existing garage will be demolished). Once the Garage is constructed, the interim parking will be removed and the Addition and final site improvements built. Therefore, to avoid any potential confusion, we request that the Council’s Resolution reflect the following wording of Requirement 4:

“4. The proposed Abandonment will become effective simultaneously with the complete record plat for the proposed Hospital preliminary plan that consolidates all parcels fronting Lincoln Street between Old Georgetown Road and Grant Street, with the exception of Lot 12 if it remains a separate recorded lot and including a condition that the on-site sidewalk must be available for public use when the Special Exception Addition is substantially complete.”

For reasons articulated above and presented by Suburban in support of its Petition, Suburban respectfully requests that the T&E Committee recommend that the County Council grant the Abandonment as recommended by the County Executive with the requested Modification to Requirement 4. Thank you for your consideration of this matter.

Very truly yours,

LINOWES AND BLOCHER LLP


Barbara A. Sears


Erin E. Girard

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Attachments

cc: Glenn Orlin
Brian Gagnolati
Jacky Schultz
Leslie Ford Weber
Margaret Fitzwilliam
Russ Cramer

BAS/dls

**BOARD OF APPEALS
for
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Case No. S-274-D

PETITION OF SUBURBAN HOSPITAL

OPINION OF THE BOARD

(Opinion Adopted October 20, 2010)

(Effective Date of Opinion: December 9, 2010)

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

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

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

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

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

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

The Hearing Examiner for Montgomery County held thirty-four days of public hearings on the application, from November, 2008 through July of 2009.²

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

² Hearings were conducted on the following days:

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

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

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

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

The Hearing Examiner found that the proposed modification and expansion failed to meet the requirement in Section 59-G-2.31, in that the use would adversely affect the present character or future development of the surrounding residential community, in four specific respects: the removal of 23 houses, the proximity of the addition and parking garage to the closest houses, the size of the garage and the inclusion of an employee entrance on Southwick Street. The substance of these findings was repeated by the Hearing Examiner in her analysis of this proposal under some of the General Standards in Section 59-G-1.21 and under Section 59-G-1.2.1. As further explained below, the Board adopts the Hearing Examiner's findings with respect to the adverse effects associated with the removal of 13 of these Hospital-owned homes along McKinley Street, Grant Street, and Southwick Street. The Board finds no adverse effects associated with the removal of eight (8) hospital-owned homes on Lincoln Street and the closing of that street, as explained below, or with the removal of the homes on lots 7 and 8 on Southwick Street, necessary for construction of the parking garage. The

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

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

Removal of the houses

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

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

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

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

grant of this special exception on the retention of 13³ of the hospital-owned homes that border the perimeter of the two-block area defined by Old Georgetown Road, McKinley Street, Grant Street and Southwick Street to serve as a buffer, in lieu of the gardens proposed by the Hospital. The Board further finds that because the Hospital owns these peripheral properties, any economic impact on the values of these homes resulting from the expansion of the hospital would be borne by the Hospital.⁴

Proximity of the addition and garage

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

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

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

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

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

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

Size and proximity of garage

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

Employee entrance on Southwick Street

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

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

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

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

Closing of Lincoln Street

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

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

Specific Standards

Sec. 59-G-2.31. Hospitals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Not applicable.

General Standards

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

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

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

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

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

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

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

59-G-1.21. General Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No finding necessary.

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

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

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

59-G-1.23 General Development Standards

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

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

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

As discussed above, the proposed Alternate Garage will be no more than 36 feet high. It will be 64.28 feet from its shared lot line with Lot 30 on Southwick Street and 55.8' and 58.05' away from its lot line along Southwick Street. It is set back 50.1' from Old Georgetown Road. [Exhibit 238(b)]. The Board reiterates its finding that the standards for parking garages in Section 59-E of the Zoning Ordinance are less stringent than the requirement in Section 59-G-2.31, for hospitals, and that the proposed Alternate Garage complies with these more stringent standards.

MOTIONS

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

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

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

CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

any single family dwelling it purchases within the boundaries of the hospital's maximum expansion limits⁸

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

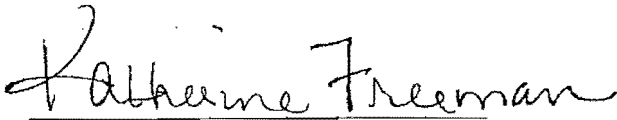
34. Petitioner shall submit to the Board revised site and landscape plans consistent with this Opinion prior applying for building permits.

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


Catherine G. Titus
Chair, Montgomery County Board of Appeals

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

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



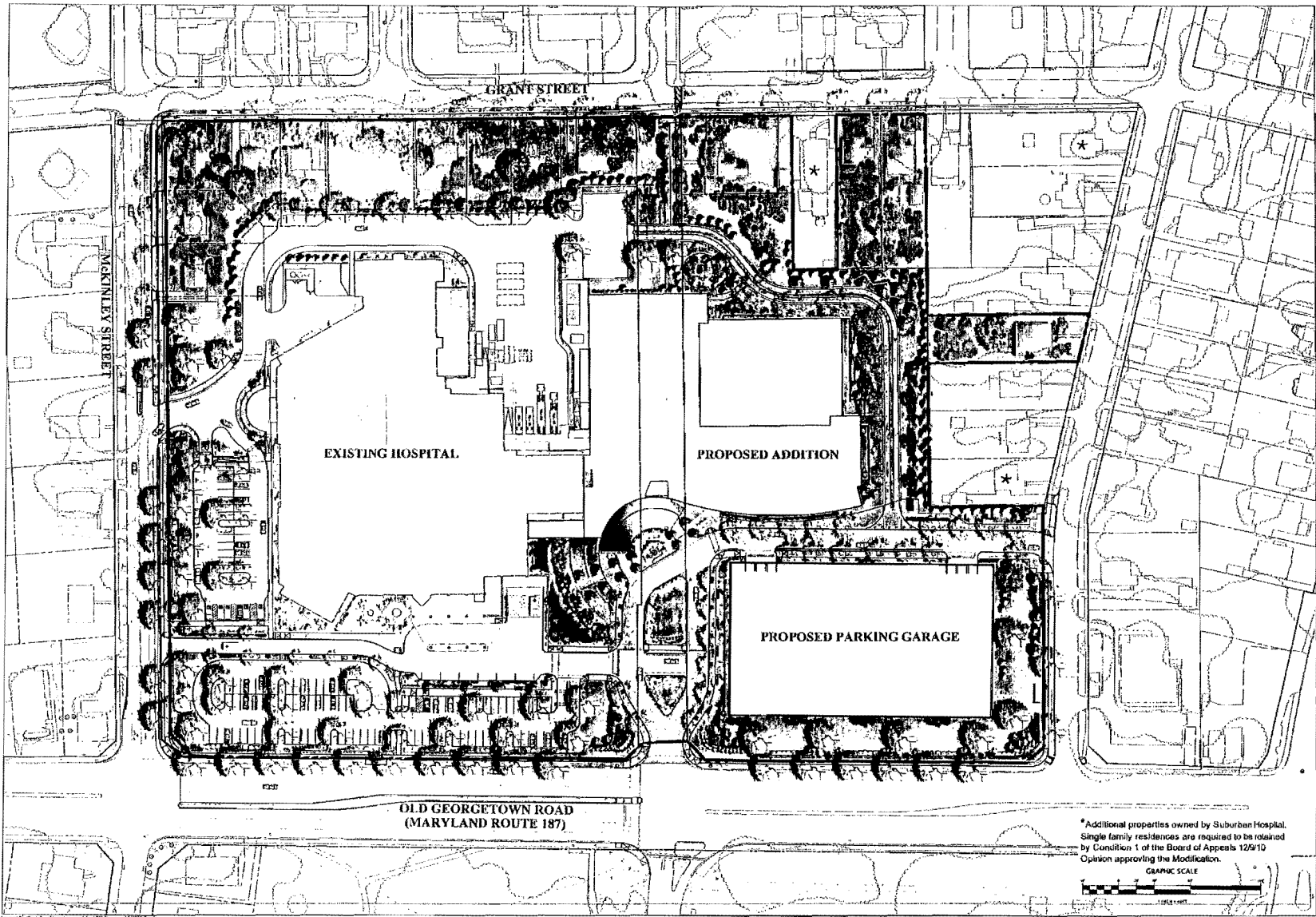
Katherine Freeman
Executive Director

NOTE:

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

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

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*Additional properties owned by Suburban Hospital. Single family residences are required to be retained by Condition 1 of the Board of Appeals 12/9/10. Opinion approving the Modification.

GRAPHIC SCALE

NOTES:
 1. This plan is a preliminary site plan. It is subject to change without notice.
 2. The site plan is based on the information provided by the client and is not a warranty of accuracy.
 3. The site plan is not a legal document and should not be used for legal purposes.

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 840 OLD GEORGETOWN ROAD
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SUBURBAN HOSPITAL
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DATE: 12/20/10
 SHEET: 200-A2
 SCALE: AS SHOWN

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IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PETITION OF: *

HUNTINGTON TERRACE CITIZENS ASSOCIATION *

FOR JUDICIAL REVIEW OF THE DECISION OF * Case No.: 342309-V

THE MONTGOMERY COUNTY BOARD OF APPEALS *

IN THE CASE OF *

PETITION OF SUBURBAN HOSPITAL *

Case No. S-274-D *

ORDER DENYING PETITION FOR JUDICIAL REVIEW AND AFFIRMING OPINION
OF THE BOARD OF APPEALS FOR MONTGOMERY COUNTY

The Court has reviewed and considered the Petition for Judicial Review of the Decision of the Montgomery County Board of Appeals ("Petition for Judicial Review") filed by Petitioner Huntington Terrace Citizens Association ("Petitioner"), including Petitioner's Memorandum of Law, Respondent Suburban Hospital's Response to Petitioner's Memorandum of Law, and Petitioner's Reply Memorandum of Law. After consideration of the preceding, ^{relevant portions of the} ~~the~~ record of the Board of Appeals for Montgomery County Case No. S-274-D, and the arguments presented by counsel for the parties during hearings before this Court on June 21 and June 22, 2011, the Court concludes that the Petition for Judicial Review should be denied, and the Opinion and Resolution of the Board of Appeals for Montgomery County in Case No. S-274-D ("Opinion") should be affirmed for the reasons summarized by the Court orally at the conclusion of the hearings on June 22, 2011. The Court specifically finds that the Chair of the Board of Appeals for Montgomery County was not required to recuse herself from the proceedings; that the Board of

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Appeals for Montgomery County applied the correct legal standards in reaching its decision; and that the Opinion is supported by legally sufficient findings of fact and substantial evidence.

WHEREFORE, it is this 30th day of June, 2011,

ORDERED, that Huntington Terrace Citizens Association's Petition for Judicial Review be and hereby is **DENIED**; and it is

FURTHER ORDERED, that the Opinion of the Board of Appeals for Montgomery County in Case No. S-274-D be and hereby is **AFFIRMED**.



Thomas L. Craven

Judge, Circuit Court for Montgomery County, Maryland

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Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DOT Docket No. AB715
Abandonment – Lincoln Street
Huntington Terrace Subdivision
Bethesda, Maryland

Background

1. By letter dated April 21, 2008, from Linowes and Blocher on behalf of its client, Suburban Hospital, Inc. (the Applicant), Montgomery County was requested to abandon a portion of Lincoln Street in the Huntington Terrace Subdivision in Bethesda. The portion of Lincoln Street is one block long from Old Georgetown Road (Route 187) on the east to Grant Street on the west, and it consists of approximately 36,126 square feet. The Applicant owns all properties adjoining the subject right-of-way.
2. A Public Hearing was held by the designee of the County Executive to consider the request for abandonment on August 26, 2008, pursuant to Executive Order No. 127-08, dated May 29, 2008.
3. Washington Suburban Sanitary Commission conditioned its approval upon being granted an easement for its facilities.
4. Washington Gas objected to the abandonment unless granted an easement for its facilities.
5. VERIZON objected to the abandonment unless granted an easement for its facilities.
6. PEPCO did not respond within 60 days and therefore, concurrence is presumed.
7. The Police Department approved of the proposed abandonment.
8. The Department of Fire and Rescue Services has no objection to the proposed abandonment.

9. The Department of Transportation (DOT) provided the following comments on the proposed abandonment:

a. The Applicant's traffic consultant had satisfactorily demonstrated that the nearby roadway network has sufficient capacity to handle traffic which would be displaced if the abandonment is approved.

b. DOT reserves the right to require adjustments for operational and safety considerations to the plans of the Hospital to improve McKinley Street at the Site Plan/or permit stage.

c. DOT discussed that the Hospital is proposing to construct an on-site network of paths to replace the existing sidewalk and bicycle routes, and recommended that, if the abandonment is approved, then the Hospital must be required to grant and record a perpetual easement along those paths, in location(s) that most closely replicate the Lincoln Street sidewalks and bicycle routes, with appropriate lighting of the paths, and that the Hospital must be responsible for the maintenance and liability of the paths within the limits of the perpetual public access easement.

d. DOT recommended that, if the abandonment is approved, it should be conditioned upon the Applicant 1) granting easements for the County storm drains and public utility facilities or at the Applicant's sole expense relocating these facilities and granting easements, and 2) recording a new record plat that incorporates the former right-of-way.

10. The Montgomery County Planning Board recommended approval of the proposed abandonment subject to the following two conditions: 1) that the Special Exception application (Case No. S-274-D) for the Suburban Hospital expansion is approved and includes a condition that the on-site sidewalk network be made available for public use; and 2) that the proposed abandonment become effective simultaneously with the complete record plat for the proposed Hospital preliminary plan that consolidates all parcels fronting Lincoln Street between Old Georgetown Road and Grant Street.

11. The County Executive recommends approval of the proposed abandonment.

Action

The County Council for Montgomery County, Maryland, finds that the one block section of Lincoln Street in the Huntington Terrace Subdivision from Old Georgetown Road to Grant Street and consisting of approximately 36,126 square feet that is proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment subject to the following conditions which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective:

1. The Applicant must grant, prepare, and record any necessary easements for County Storm drains and public utility facilities, including but not limited to gas lines, electric facilities, and water and sewer facilities to the satisfaction of the County or the public utility, as applicable, allowing facilities to remain at their current location or relocated locations, and providing perpetual right of ingress and egress from the easement area at any time (which rights must not be subordinate to other interests).
2. The Applicant must at its sole cost prepare and record a new record plat incorporating the Abandonment Area into the existing lots.
3. The Special Exception application (Case No. So-274-D) for the Suburban Hospital Expansion must be finally approved with no further appeals.
4. The proposed abandonment will become effective simultaneously with the complete record plat for the proposed Hospital preliminary plan that consolidates all parcels fronting Lincoln Street between Old Georgetown Road and Grant Street and including a condition that the on-site sidewalk network must be available for public use.
5. Suburban Hospital must grant and record a perpetual access easement for the on-site network of paths that will replace the Lincoln Street sidewalk and bicycle routes and the perpetual access easement area must have appropriate lighting on the paths. Suburban Hospital must be responsible for the maintenance and legal liability of the paths within the limits of the perpetual public access easement.
6. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area.
7. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by the Council.

This is a correct copy of the Council Action.

Linda M. Lauer, Clerk of the Council

consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: The proposed modification will not increase the number of special exceptions in the area. For the reasons stated in Part III.K, the Hearing Examiner concludes that the removal of 23 houses as proposed would alter the residential character of Huntington Terrace and have unacceptable adverse effects.

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

Conclusion: For the reasons stated in Part III.K, the Hearing Examiner concludes that the proposed modification and expansion would have unacceptable adverse effects on the general welfare of residents in the area of the subject site.

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

Conclusion: The evidence supports the conclusion that the subject property is and will continue to be served by adequate public facilities. Having carefully examined all of the traffic-related evidence as summarized in Part III.D, the Hearing Examiner concludes that the proposed modification and expansion would not have a material adverse effect on the local road network. It would have beneficial impacts in the form of roadway improvements on Old Georgetown Road and McKinley Street and dramatic improvements to on-site circulation and parking, which would reduce spillover traffic and parking on local streets. It would result in traffic increases on some local streets and decreases on others, given that some drivers will take residential streets and some will stick to larger streets. The Hearing Examiner considered seriously the critiques of the Hospital's traffic studies presented by opposition witnesses, but found no substantive, probative evidence that could outweigh the credibility and probative value of the Hospital's evidence.