

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-274-C

PETITION OF SUBURBAN HOSPITAL, INC.

**RESOLUTION TO MODIFY SPECIAL EXCEPTION
AND DISMISS SHOW CAUSE HEARING**

(Resolution Adopted November 28, 2007)

(Effective Date of Resolution: December 13, 2007)

The Board of Appeals has received the following correspondence:

- A letter, received August 20, 2007, from Barbara Moskowitz, Secretary, Oakmont Citizens Association, which requests that Oakmont be included in the Community Liaison Council to be established in connection with the special exception modification;
- A letter, dated September 4, 2007, from Allen Myers, President, Maplewood Citizens Association which requests that Maplewood be included in the Community Liaison Council to be established in connection with the special exception modification;
- A letter dated November 5, 2007, from Barbara A. Sears, Esquire and Erin E. Girard, Esquire, which requests modifications to Condition Numbers 3 and 8 of the Hearing Examiner's October 25, 2007 Report and Recommendation;
- A letter dated November 8, 2007 from Norman G. Knopf, Esquire, objecting to consideration by the Board of Ms. Sears and Ms. Girard's letter of November 5, 2007;
- A letter dated November 13, 2007 from Barbara A. Sears, Esquire and Erin E. Girard, Esquire, responding to Mr. Knopf's letter of November 8, 2007;
- A memorandum, dated November 13, 2007 from Barbara J. Piczak, Permitting Services Inspector, Department of Permitting Services, notifying the Board that the Department of Permitting Services has lifted the Stop Work Order issued October 16, 2007 and rescinded the Inspection Report (Notice of Noncompliance) issued on October 25, 2007 to Suburban Hospital, citing the exterior, temporary ductwork installed on the side of the hospital's C wing facing Lincoln Street;

- A letter, dated November 27, 2007 from Barbara A. Sears, Esquire and Erin E. Girard, Esquire, objecting to consideration by the Board at its November 28, 2007 Worksession of an administrative appeal by Huntington Terrace Citizens Association of the Department of Permitting Services' rescission of the Inspection Report (Notice of Noncompliance) issued on October 25, 2007 to Suburban Hospital, citing the exterior, temporary ductwork installed on the side of the hospital's C wing facing Lincoln Street.

The Board also takes note of a letter, received August 31, 2007, from Virginia Miller, President of the Wyngate Citizens Association, and entered into the record as Exhibit No. 47.

By Resolution of July 16, 2007 the Board granted an administrative modification of the special exception to permit installation of an air handler and new air shaft to serve six relocated operating rooms and a renovated nursing unit in the "C" wing of the hospital, and also, having received a request for a hearing on the administrative modification, suspended the modification and referred the matter to the Hearing Examiner to conduct the public hearing required by Section 59-G-1.3(c)(1) of the Zoning Ordinance.

The Hearing Examiner held a hearing on the administrative modification on September 6, 2007, and September 12, 2007, closed the record in the case on September 20, 2007, and on October 25, 2007 issued a Report and Recommendation for approval of the administrative modification.

On November 6, 2007 the Board issued a Notice of Show Cause Hearing, for a hearing on December 12, 2007, based upon the Inspection Report (Notice of Noncompliance) issued on October 25, 2007 to Suburban Hospital, citing the exterior, temporary ductwork installed on the side of the hospital's C wing facing Lincoln Street.

The Board considered the above-listed correspondence, together with the October 25, 2007 Report and Recommendation from the Hearing Examiner for Montgomery County, for approval of the modification, at its Worksession on November 28, 2007.

Based upon the Department of Permitting Services' rescission of the October 25, 2007 Inspection Report (Notice of Noncompliance), the Board finds that it must in turn, rescind the Show Cause Hearing. On a motion by Catherine G. Titus, seconded by Caryn L. Hines, with David K. Perdue and Allison Ishihara Fultz, Chair, in agreement, and Wendell M. Holloway necessarily not participating, the Board voted to open the record to receive the above noted documents as Exhibit Nos. 91-97, and **rescind** the Show Cause Hearing scheduled for December 12, 2007.

The Board considers the November 5, 2007 letter from Barbara Sears and Erin Girard to be in the nature of a request for oral argument. Ms. Sears and Ms. Girard stated at the November 28, 2007 Worksession that they did not wish to request a formal, oral argument, but requested that the Board consider the changes they propose to the conditions of approval for the modification in the course of its deliberations on the Hearing Examiner's Report and Recommendation. Mr. Knopf argued that the information contained in the letter could only be considered in the context of an oral argument, formally granted and advertised via written notice to the public. Rule 5(c) of the Board of Appeals Rules of Procedure gives the Board authority, "on motion by any party, or by the Board [to] introduce into the record documentary or other evidence, provided that all parties are given reasonable notice." The Board finds that the letter of November 5, 2007 was provided to the parties in the case, that its contents are relevant to the Board's consideration of the Report and Recommendation, and that it can therefore properly be considered without holding oral argument. On a motion by Caryn L. Hines, seconded by Allison Ishihara Fultz, Chair, with Catherine G. Titus and David K. Perdue in agreement, and Wendell M. Holloway necessarily not participating, the Board voted to deny the request for oral argument.

The Board considered revisions to Condition Nos. 3, 8, 9, and 11 of the conditions of approval recommended by the Hearing Examiner, and added Condition No. 12. On a motion by Catherine G. Titus, seconded by David K. Perdue, with Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board voted to revise Condition 3 to read as follows:

The new air handler and air shaft approved in this modification may be installed but not tested or in any way used on site until the four noise screens that are approved in this modification have been properly installed, noise measurements have been taken that demonstrate compliance with the daytime and nighttime residential noise limits established in the Montgomery County Noise Ordinance, Chapter 31B of the County Code, and the results of such testing have been submitted to the Board of Appeals. The testing results submitted to the Board of Appeals shall be presented at a meeting of the CLC required under Condition 11 below, such meeting to be held as soon as possible for the express purpose of presenting these testing results to the Huntington Terrace Citizens' Association.

With respect to Condition No. 11, regarding formation of a Community Liaison Council, the Board appreciates the interest of Wyngate Citizens Association, Oakmont Citizens Association and Maplewood Citizens Association in Suburban Hospital. The Board finds, however that the impact of the instant

modification will be limited to the Huntington Terrace Citizens Association area, particularly the residents of Grant and Lincoln Streets.

After careful review of the Hearing Examiner's Report and Recommendation, the record in the case, and the subsequent correspondence, on a motion by Caryn L. Hines, seconded by David K. Perdue, with Catherine G. Titus and Allison Ishihara Fultz, Chair, in agreement, and Wendell M. Holloway necessarily not participating, the Board voted to adopted the Hearing Examiner's Report and Recommendation and grant the administrative modification, subject to the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's Report and Recommendation and in the Board's Resolution.
2. All terms and conditions of the approved special exception shall remain in full force and effect, except as specifically amended by this modification.
3. The new air handler and air shaft approved in this modification may be installed but not tested or in any way used on site until the four noise screens that are approved in this modification have been properly installed, noise measurements have been taken that demonstrate compliance with the daytime and and nighttime residential noise limits established in the Montgomery County Noise Ordinance, Chapter 31B of the County Code, and the results of such testing have been submitted to the Board of Appeals. The testing results submitted to the Board of Appeals shall be presented at a meeting of the CLC required under Condition 11 below, such meeting to be held as soon as possible for the express purpose of presenting these testing results to the Huntington Terrace Citizens' Association.
4. After installation, the new air handler and air shaft approved in this modification may not be put into use until noise measurements have been taken that demonstrate compliance with the daytime and nighttime residential noise limits established in the Montgomery County Noise Ordinance, and the results of such testing have been submitted to the Board of Appeals. The testing results submitted to the Board of Appeals shall be presented at a meeting of the CLC required under Condition 11 below, such meeting to be held as soon as possible for the express purpose of presenting these testing results to the Huntington Terrace Citizens' Association.

5. All equipment installed in connection with this modification, as well as all existing equipment on the outside of the hospital building that generates noise, must be kept in good working order through a regular maintenance program.
6. Noise levels generated by the hospital must be tested on a quarterly basis by a professional who is trained in noise measurement. Unless permission to do the testing is denied by residents of the homes, testing must be carried out on at least three abutting residential parcels on Grant or Lincoln Streets, and on the three homes closest to the C-Wing on the north side of Lincoln Street. The results of such testing must be submitted to the Board of Appeals as soon as possible, and to the CLC required under Condition 11 below at its next regularly scheduled meeting.
7. In the event that any noise testing shows noise levels on a receiving residential parcel that exceed the statutory limits established in the Noise Ordinance, the hospital must, within 45 days of receiving the test results, submit a proposed Noise Mitigation Plan and associated modification request, if necessary, to the Board of Appeals. Within the same 45-day period, the Noise Mitigation Plan must be submitted to the Montgomery County Department of Environmental Protection, Division of Environmental Policy and Compliance, with a request for its review and for comments to be submitted to the Board of Appeals within 30 days. Any such Noise Mitigation Plan must also be presented to the CLC required in Condition 11 below at its next regularly scheduled meeting.
8. The new air handler approved in this modification must be operated in the reduced-power "nighttime mode" described by Petitioner's noise consultant, Scott Harvey, on weekdays from 9:00 p.m. to 7:00 a.m. and on weekends and holidays from 9:00 p.m. to 9:00 a.m. Exceptions to this condition may be made in the event of an emergency requiring nighttime use of the one of the operating rooms served by this air handler, but abuse of this exception may lead to the imposition of additional conditions on the special exception. The Hospital shall keep a log of the instances in which such emergencies arise.
9. Within 60 days of the Board of Appeals' Opinion in this matter, the hospital must submit to the Board of Appeals the hospital's long-range development plan, as currently constituted. The submitted plan must set out how the hospital sees expansion occurring at 5-, 10- and 15-year intervals. The plan submitted to the Board of Appeals must be presented to the HTCA at the next regularly scheduled meeting of the CLC required under Condition 11 below.

10. No further modifications of the subject special exception will be accepted for filing until a long-range plan has been submitted per Condition 9.
11. The hospital shall undertake the formation of a Community Liaison Committee, whose members shall consist of the President and CEO of Suburban Hospital, or the President's designee from Suburban Hospital in the event he is unable to attend any meeting in person; representatives of the Huntington Terrace Citizens' Association. Invitations shall be extended to homeowners and residents on Lincoln and Grant Street adjacent to or opposite the hospital and Martin Klauber, People's Counsel, as an *ex officio* member. The CLC shall meet at least once every three months, and its first meeting shall be held no later than 60 days after the Board of Appeals' Opinion in this matter is issued. A copy of the minutes of each meeting of the CLC shall be submitted to the Board of Appeals within 30 days of each meeting.
12. Within 30 days of issuance of this Resolution, the hospital shall submit a noise map showing current conditions, unmitigated, in a form similar to Exhibits 48(h) and 48(i).

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.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of December, 2007.



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.