

**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: \***  
**MONTGOMERY GENERAL HOSPITAL, INC. \***

Petitioner \*  
Todd Cohen \*  
Edward Wallington \*  
James Wilmot \*  
Craig Hedberg \*  
For the Petitioner \*  
Jody S. Kline, Esquire \*  
Attorney for the Petitioner \*

Board of Appeals Case Nos. CBA-2521-K  
(OZAH Case No. 10-25)

\*\*\*\*\*

Before: Martin L. Grossman, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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## I. STATEMENT OF THE CASE

### A. Procedural Background

On March 3, 2010, Petitioner Montgomery General Hospital, Inc., filed a petition seeking to modify an existing Special Exception (CBA-2521-J, and earlier grants) to permit the construction of a three-story addition above a recently erected three-story patient building (*i.e.*, the existing Western Addition, also known as the Emergency Room Wing) located on the main hospital campus. The three-story patient building was the subject of an earlier modification, CBA-2521-I, approved by the Board of Appeals in 2008. The proposed modification also includes renovation of 21,355 square feet of the unfinished space on the third floor of the existing building on which the proposed new addition will sit.

Montgomery General Hospital (MGH) is located at 18101 Prince Phillip Drive, Olney, Maryland, in the RE-2, R-200 and R-60 Zones. Its property consists of 46.46 acres of land identified on the plat records as Parcels N-122, N-900, N-933 (Part of Parcel-A), N-961, P-120, P-207, P-209; and Lots 3 through 7, Block B of “Timberland Estates.” Montgomery General operates under numerous special exceptions and modifications,<sup>1</sup> the most recent being CBA-2521-J, approved in January 2010.

On March 12, 2010, the Board of Appeals issued notice of a hearing to be held by the Hearing Examiner on July 9, 2010. Exhibit 10.

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) issued its report on June 18, 2010 (Exhibit 13), recommending approval of the special exception petition, with conditions.<sup>2</sup> On July 1, 2010, the Montgomery County Planning Board voted unanimously to recommend approval of the special exception, with the same conditions recommended

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<sup>1</sup> CBA-2521; CBA-2521-A through J; S-640; S-343; S-327; CBA-2979; BAS-511; BAS-1920; BAS-1921.

<sup>2</sup> The Technical Staff report is frequently quoted and paraphrased herein.

by Technical Staff, as stated in the Planning Board's July 2, 2010, letter to the Board of Appeals (Exhibit 15).

A public hearing was convened as scheduled on July 9, 2010, and testimony was presented by Petitioner in support of the petition. There was no opposition at the hearing; nor were there any opposition letters from the community. The record was held open until July 16, 2010, for additional filings by Petitioner and until July 30, 2010, for responses thereto from Technical Staff and other interested parties.

Petitioner made additional submissions on July 16, 2010, as required, but on July 30, 2010, Petitioner informed the Hearing Examiner that Technical Staff had discovered a mathematical error in Petitioner's calculations regarding parking and that additional time would be needed to resubmit materials for Technical Staff's review (Exhibit 24). By letter dated September 14, 2010, Petitioner indicated that it would submit its revised computations shortly, and that Technical Staff would likely need two weeks for additional review. Petitioner asked that the record remain open to allow time for the resubmission and Staff review. Exhibit 25.

On September 15, 2010, the Hearing Examiner issued an order granting Petitioner's request and reopening the record. Exhibit 26. That order also gave Technical Staff and interested parties time to comment and set the closure of the record for October 8, 2010. On October 8, 2010, the Hearing Examiner received an e-mail from Petitioner's counsel indicating that Petitioner needed additional time to file the required documents, and requesting that the record be kept open to allow these filings and comment by Technical Staff and interested parties (Exhibit 27).

In view of these circumstances and the fact that there was no opposition to this modification petition, the Hearing Examiner granted Petitioner's request by Order dated October 8, 2010 (Exhibit 28). That Order postponed closure of the record until November 5, 2010, to give Petitioner additional

time to file its revised documents and gave Technical Staff and interested parties time to submit comments, if any, pursuant to Zoning Ordinance §59-A-4.24.

On October 26, 2010, Petitioner submitted a revised special exception plan (Exhibit 30(a)), which recalculated parking. On October 27, 2010, Technical Staff submitted an e-mail (Exhibit 31) approving the parking plan, at least until it can review an entire hospital campus plan in the future. There were no public comments received, and the record closed, as scheduled, on November 5, 2010.

### **B. Scope of the Hearing**

Zoning Code §59-G-1.3(c)(4) provides that the public hearing on modification applications must be limited to discussion of those aspects of the special exception use that are directly related to the proposed modifications, and if the total floor area will be expanded by more than 25% or 7,500 square feet, the Board may review “the underlying special exception,” but only to a limited extent, as specified in Zoning Ordinance §59-G-1.3(c)(4)(A). That section provides:

*(A) After the close of the record of the proceedings, the Board must make a determination on the issues presented. The Board may reaffirm, amend, add to, delete or modify the existing terms and/or conditions of the special exception. The Board may require the underlying special exception to be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, if (1) the proposed modification expands the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less, and (2) the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. [Emphasis added.]*

In the subject case, the planned changes to the hospital will add a total 47,435 square feet, comprised of 26,010 square feet of new construction and 21,355 square feet of renovation (within the current unfinished “shell” of the third floor of the emergency services wing on which the three new floors will sit), according to Petitioner’s Statement of Operations (Exhibit 3(a)). Therefore, the Board may require that the underlying special exception be brought into compliance with the general

landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, but only if it finds that the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

As discussed below, the Hearing Examiner finds that the proposed modifications would not change the nature or character of the special exception, nor are the proposed changes so extensive as to create substantial adverse effects on the surrounding neighborhood.

## **II. FACTUAL BACKGROUND**

### **A. Subject Property and Current Use**

Montgomery General Hospital, Inc. operates pursuant to Special Exception CBA-2521, with modifications A through J. It is located in the northwest quadrant of the intersection of Olney-Sandy Spring Road and Prince Philip Drive, and at the intersection of Prince Philip Drive, Tall Timbers Road, and Brook Farm Drive. The overall subject site, including the East Campus, the West Campus, and Miscellaneous Parcels, consists of 46.46 acres of land, zoned RE-2, R-200 and R-60.

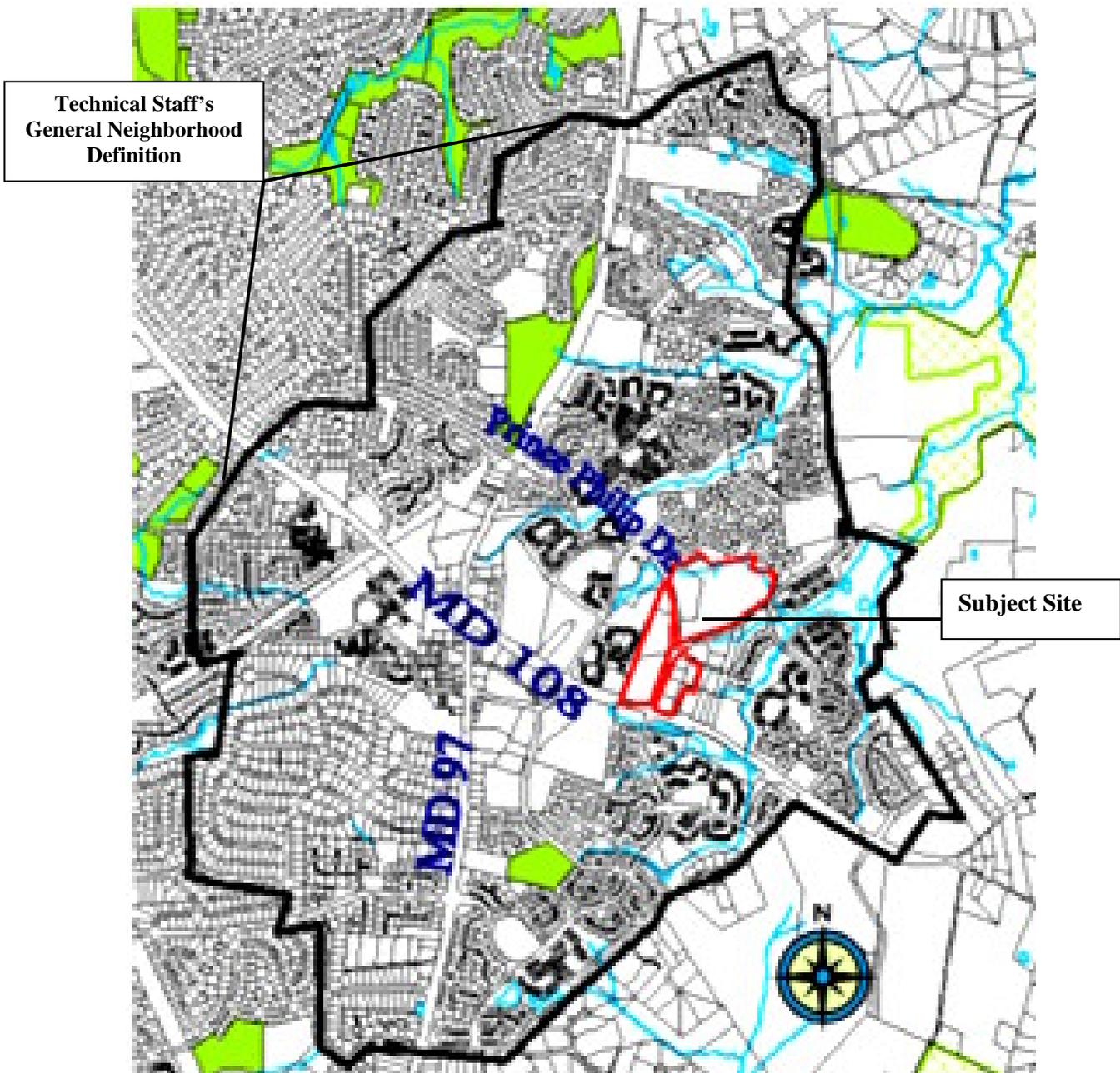
The Main (or East) Campus is improved with the main hospital building, several other professional buildings, two physicians office buildings (POB #1 and POB #2), a three-level parking garage and surface parking lots. Two additional physicians office buildings (POB #3 and POB #4) were approved for the West Campus in January of 2010, by Special exception CBA-2521-J. According to Technical Staff (Exhibit 13, p. 4), construction of the medical office buildings on the West Campus has not yet commenced. The West Campus is, however, improved with a day care facility for senior adults located at the north end of the West Campus. The East Campus is separated from the West Campus by Prince Philip Drive.

The portion of the property that is the subject of the proposed modification (East Campus) is located on the east side of Prince Philip Drive and consists of approximately 27.19 acres of land. The East Campus is directly accessed from Prince Philip Drive and is located on the portion of the hospital's property that is zoned RE-2. The northernmost portion of the East Campus site lies within a stream valley buffer. The hospital campus is depicted below in an annotated aerial photograph from the Technical Staff report (Exhibit 13, p. 4):



### B. The Neighborhood

Technical Staff proposed to define the general neighborhood boundaries as Gold Mine Road to the north; Old Baltimore Road, James Creek and Old Vick Boulevard to the east; Old Baltimore Road to the South; and Blossom View Drive, Queen Elizabeth Drive, Heritage Hills Drive and Gold Mine Road to the west. These boundaries are depicted on Staff's Neighborhood Map (Exhibit 13, p. 5), which is reproduced below:



Technical Staff defined the neighborhood to be consistent with the neighborhood definition in modification cases CBA-2521-I and J, which took into account all the intersections which would be affected by additional traffic from those modifications, rather than limiting it to the area of visual impact. Petitioner accepts Technical Staff's neighborhood definition (Tr. 11), as does the Hearing Examiner. Although the proposed addition will not generate any new traffic (Exhibit 13, p. 6), it makes sense to keep the neighborhood definition consistent with the earlier modification cases.

Technical Staff described the neighborhood, in detail, as follows (Exhibit 13, pp. 5-6):

The neighborhood is predominantly residential with a concentration of commercial, retail, and office uses around the intersection of MD 97 and MD 108, an area of approximately 90-acres identified as the Olney Town Center in the Olney Master Plan. The neighborhood also includes three churches, a library, and two elementary schools. MD 97 traverses the neighborhood from north to south and MD 108 traverses the neighborhood from east to west, intersecting closer to the middle portion of the neighborhood.

The northern portion of the neighborhood is developed with single-family houses in the RE-2/TDR and R-2 zones. The northern-most part of the neighborhood also includes a 23-acre church (the Marian Fathers Novitiate). The Montgomery General Hospital campuses are located on the eastern portion of the neighborhood, east of Georgia Avenue. The Main (East) Campus is separated from the residential developments to the north by a stream valley buffer.

The area east of the hospital is sparsely developed with single family homes in the R-200 and RE-2/TDR zones and also contains stream valley. The Brooke Grove Elementary School is located along the eastern boundary of the neighborhood, northeast of the hospital campus in the RE-2/TDR zone. The St. Peters Catholic Church and Day School is also located on the eastern portion of the neighborhood on the south side of MD 108. A mixture of residential uses, including townhouses, single-family dwellings in the R-90, R-200 and RE-2/TDR zones, is located farther south.

A mixture of office and commercial uses exist within the Village Mart Shopping Center, Olney Shopping Center, Olney Town Center Shopping Center, and Olney Shops, all of which are located in the western portion of the neighborhood at and near the intersection of MD 97 and MD 108 in the MXTC zone. The Safeway and Giant grocery stores are also located in the area along the north and south side of Spartan Road. The Hospital's West Campus (the subject site), is located east of the Olney Town Center Shopping Center, separated from the shopping center with townhouse developments in the PD-9 zone. The Olney Library, Refuge Church of Christ, St. John's Episcopal Church and the Only Elementary School are also located on the western portion of the neighborhood.

### C. Proposed Modification

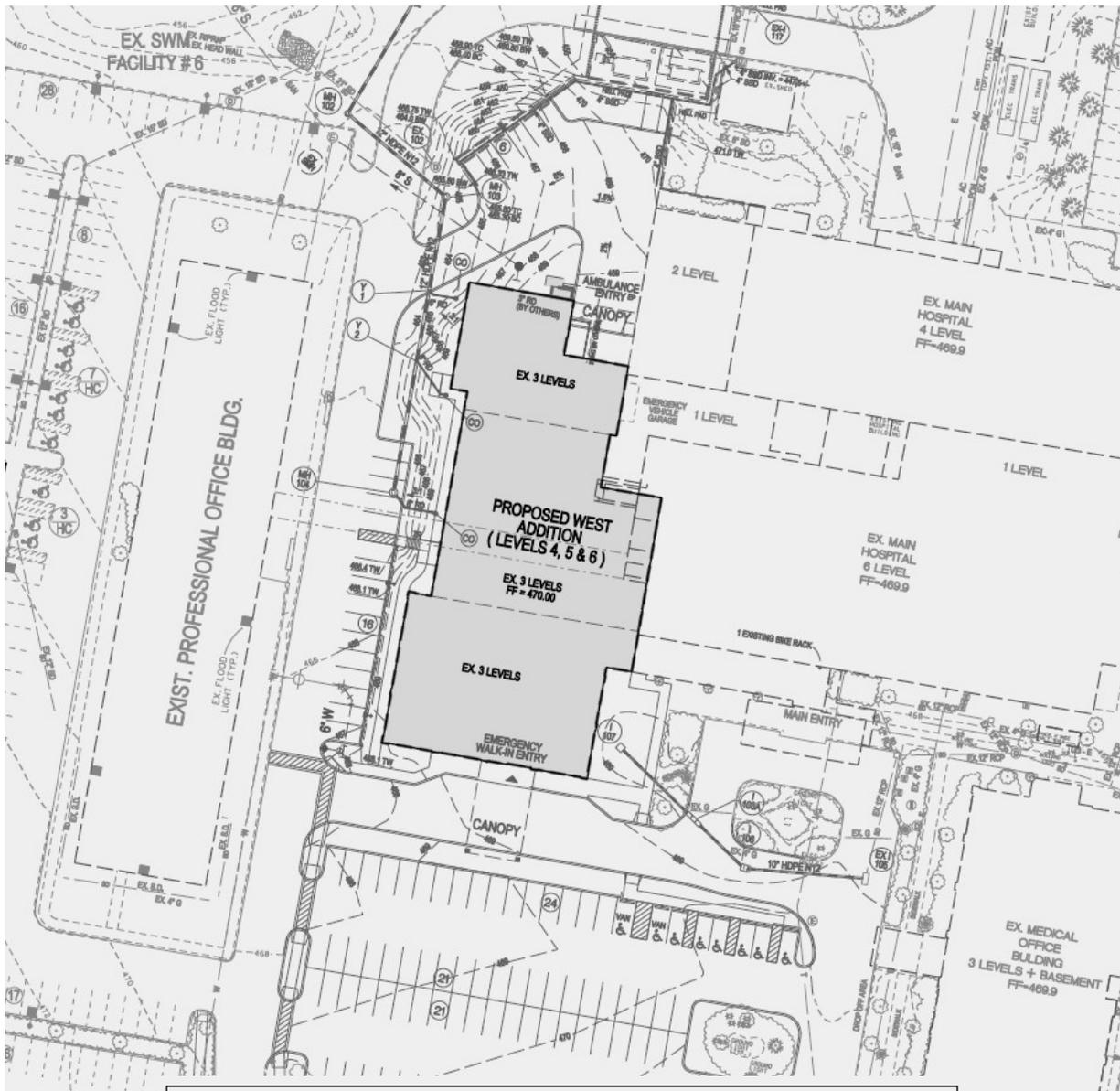
The Hospital desires to modify its special exception in order to permit the expansion of the western tower of the existing main hospital building to add three stories of new construction, which will contain single-occupancy rooms. Statement of Operations (Exhibit 3(a)). In the modification to the special exception listed as CBA-2521-I, the Board of Appeals approved a three-story addition at the western end of the existing main Hospital building to be built in a way that is structurally designed to accept the three additional floors now being proposed. The existing three-story building was also constructed with shell space, including an elevator tower. Outpatient services and a dining hall are located on the second floor.

Petitioner is now proposing to complete the second phase construction of the building, known as the “Western Addition” in modification CBA-2521-I. The main purpose of this modification is to allow the hospital to maintain its current total number of beds (202 beds). After the renovation and addition, however, each bed will be located in a single-occupancy room instead of the existing double-occupancy rooms. Thus, the reason for constructing the additional three stories is to provide private occupancy patient rooms. Under current regulations, newly constructed hospital patient rooms must be designed for private (*i.e.*, single) occupancy. Tr. 37.

The planned changes to the hospital will add a total 47,435 square feet, comprised of 26,010 square feet of new construction and 21,355 square feet of renovation (within the current unfinished “shell” of the third floor of the emergency services wing on which the three new floors will sit), according to Petitioner’s Statement of Operations (Exhibit 3(a)).

Because no patient beds will be added and Montgomery General Hospital is currently sufficiently staffed, the additional three stories of hospital bed space will require no new nursing staff. The hours of operation also will not change for the hospital with this addition. Exhibit 3(a). One or



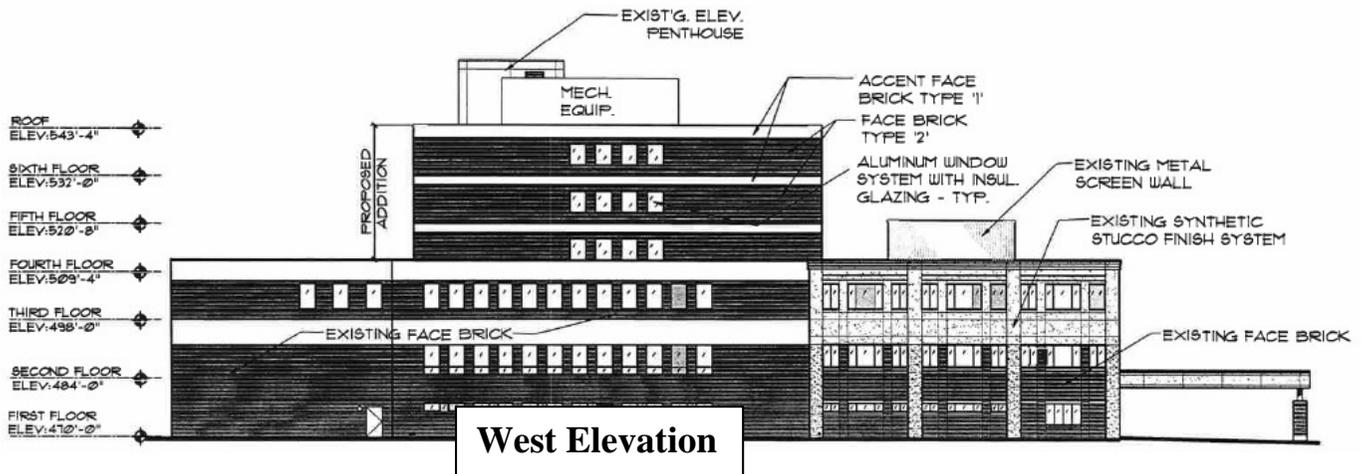


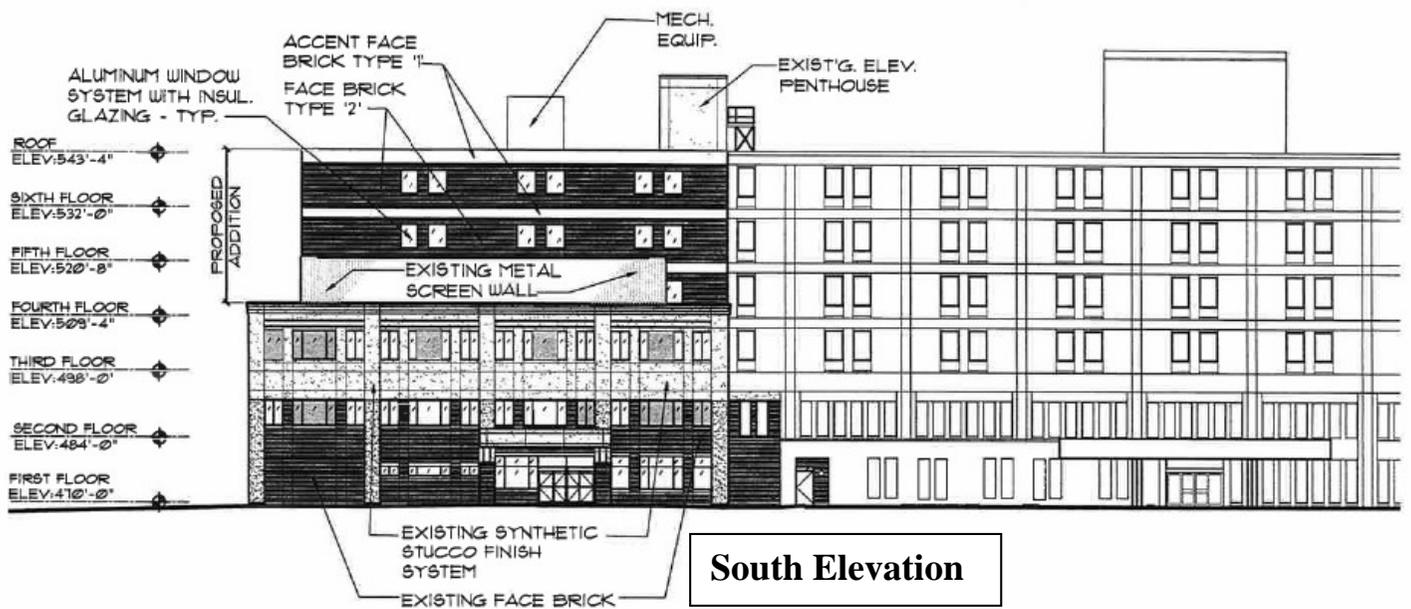
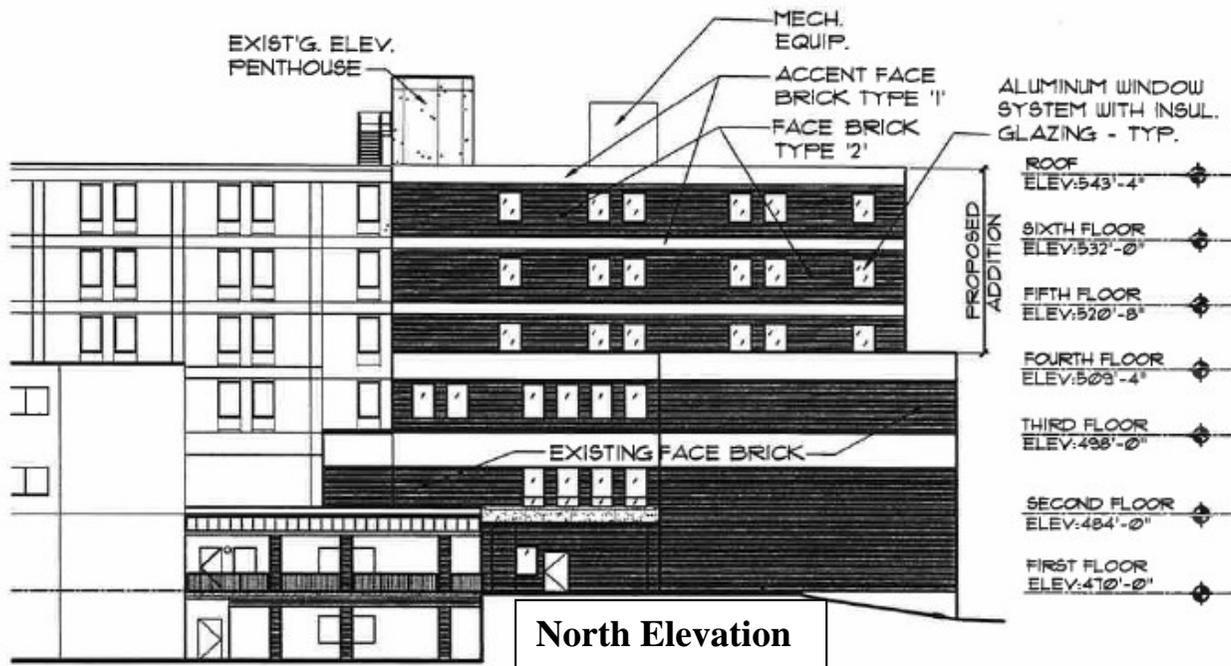
#### **GENERAL NOTES:**

1. Existing topography by LSA and others, boundary prepared by LSA: 2' contour interval.
2. Domestic water, sewer, fire protection and electrical service will be supplied by connections to the existing public lines within Prince Philip Drive.
3. Proposed Use: Hospital expansion.
4. The existing helipad is an elevated structure.
5. Utility Providers:
  - a. Water & Sewer: WSSC
  - b. Gas: Washington Gas Light Co.
  - c. Electric: PEPCO
  - d. Telephone: Verizon
6. Existing Water & Sewer Service Categories: W1 / S1
7. Existing Zoning: RE-2, R-200 and R-60
8. No subdivision of this property is proposed.
9. This property lies within the Olney Master Plan
10. There are no designated historic sites associated with this property.
11. Previous special exception cases: S-640, S-343, S-327, CBA-2521, CBA-2521 A-H, CBA-2979, BAS-511, BAS-1920, BAS-1921, BAS-3278, CBA-2521-1
12. 100-Year floodplain delineations shown hereon are from Site Grading Plan for Parking Expansion, Hospital Expansion Phase II, by PRC Toups dated 2/12/79 and from M-NCPPC floodplain mapping for James Creek Tributary J-5, Sheet J5-1.
13. Stream buffer delineations shown hereon are in accordance with current M-NCPPC guidelines.  
 Watershed: James Creek/Hawlings River/Patuxent River  
 Stream Class: IV / IV-p

DEVELOPMENT STANDARDS		
Special Exception Standards - Sect. 59-G-2.31	Required/Allowed	Provided
Minimum Area	5 Acres	Main Campus: 27.19 ac.
		Other campus parcels: 19.27 ac.
		Total Provided: 46.46ac
Minimum Frontage	200'	927.10'
Building Height	145' Maximum	Western addition: 73' to top of elevator cores
Building Setback	No closer to a lot line than a distance equal to the building height when adjacent to land which is in a single family zone or use and in all other cases no less than 50' from a lot line.	327'
EAST CAMPUS		
Parking	1 space/1,000 sq. ft. floor area = 378,355 sq. ft./1,000 = 379 spaces	
	1 space/resident physician (15 ea.) = 15 spaces	
	Adequate reserved space for visiting physicians (17 ea.) = 17	
	1 space/3 employees on major shift = 452 employees/3 = 151 spaces	
	5 spaces/1000 sq. ft. for medical office use 116,200 sq. ft./1000 x 5 = 581 spaces	
Total Spaces/East Campus	Required: 1143 spaces	Provided: 1181 spaces
WEST CAMPUS		
	Thrift Shop - 2.5 spaces/1000 SF 2000 SF x 2.5 = 5 spaces	
	POB 3 and POB 4 5spaces/1000 sq. ft. for medical office use 120,000 sq. ft./1000 x 5 = 600 spaces Less: Parking waiver = -101 spaces	
Total Spaces/West Campus	Required: 504	Provided: 504
Total Parking	Required: 1647	Provided: 1685

Petitioner also supplied elevations of the proposed addition (Exhibit 5(f)):





Petitioner’s architect, James Wilmot, testified that Petitioner planned to use the same materials as previously used for buildings on the campus to tie it into the architectural context of the existing campus, “and it does that very well.” Tr. 40. He added that the brick material which will be used in the addition and the architectural character seem to fit well in the neighborhood now, and this addition will not change that. Tr. 40.

Technical Staff agreed (Exhibit 13, p. 10):

As has been the case with the previously approved modifications to the hospital, the proposed modification complements the existing structures on the main campus in terms of scale, massing design and function. The building associated with the proposed modification would be well-related to the surrounding area. . . .

## **2. Landscaping, Lighting and Signage:**

### **Landscaping:**

Montgomery General Hospital already has significant landscaping. The landscape plan (Exhibit 20) does not add any new landscape features (Tr. 26), and it is therefore not reproduced in this report.

### **Lighting:**

There was no evidence presented that external lighting will be added to the site as a result of this addition. A photometrics study (Exhibit 5(b)), was filed and Technical Staff stated, with regard to lighting (Exhibit 13, p. 12):

A photometric study was submitted with the application to show that the proposed modification meets the lighting requirement. The lighting plan adequately and efficiently covers the main vehicular access to the site, as well as the parking and loading areas, in order to create a safe vehicular and pedestrian environment.

Staff also found that there would be no objectionable glare or illumination, and that the requirements of Zoning Ordinance §59-G-1.23(h) have been satisfied. Exhibit 13, pp. 11 and 12.

The Hearing Examiner does not find the submitted photometric plan helpful in determining off-site effects because the photometric readings do not extend to the property lines; however, given the location of the proposed addition in the center of the East campus; the fact that no new external lighting has been proposed; and Technical Staff's evaluation, the Hearing Examiner finds that the proposed addition will not violate lighting standards in the Zoning Ordinance.

**Signage:**

The final item in this section concerns signage. Todd Cohen, Petitioner's Director of Special Projects, testified that there would be no new signage as part of this modification. Tr. 20.

**3. Transportation and Parking:****Transportation:**

Petitioner's transportation planner, Craig Hedberg, testified that he did not have to do a traffic study since there will be no increase proposed in hospital beds. As a result, there will be no increase in traffic projections associated with this application. Tr. 42. The additional cleaning staff may not be assigned during the peak traffic periods, and even if they were, the addition of one or two maintenance people in peak periods would have a de minimis impact on traffic. Tr. 43.

In Mr. Hedberg's opinion, the transportation network surrounding the property is adequate to accommodate any conceivable additional traffic that would be generated by this proposed use. Tr. 43-44. There would also be no impact on the safety of either vehicular or pedestrian traffic from this proposed addition. Tr. 44. There will be no change in vehicular or pedestrian circulation on the campus because the addition is merely a vertical add-on.

Petitioner's attorney, Jody Kline, Esquire, indicated that the east campus (*i.e.*, the main campus) is already platted, so it does not have to go through subdivision for this petition, although subdivision will be required on the west campus, which is not affected by this application. Tr. 45-46.

Technical Staff agreed with Mr. Hedberg, stating (Exhibit 13, pp. 6-7):

Transportation planning staff has indicated that Adequate Public Facility (APF) Review for the proposed modification does not require a traffic study since the proposed expansion of the hospital building will not generate any new peak hour trips during the typical weekday morning (6:30 – 9:30 a.m.) and evening (4:00 – 7:00 p.m.) peak periods.

The Transportation Planning Staff recommended the following condition, which has been included, in substance, in the Hearing Examiner's recommendations in Part V of this report:

The applicant must limit addition of new space at the hospital related to this special exception modification request to 26,010 square feet. The number of patient beds at the hospital must remain at 202.

Based on this record, the Hearing Examiner finds that Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) are satisfied without the need for a traffic study, and that site circulation remains safe and adequate at this time.

Parking:

The only issue in this case was created by Petitioner's plan for parking, as presented by its original site plan for this modification (Exhibit 4), which was challenged in the Technical Staff report (Exhibit 13, pp. 8-10). Technical Staff concluded that, as presented, there was "an existing deficit of at least 202 parking spaces based on the parking needs of the entire hospital campus." Exhibit 13, p. 10. However, Staff noted (Exhibit 13, p. 10):

The overall parking requirement for the hospital complex will be comprehensively addressed in the hospital campus plan, which will include a future multi-level parking structure for the West Campus.

Petitioner's counsel, Jody Kline, Esquire, addressed this issue at the beginning of the hearing, indicating that he would be submitting a recalculation of the parking spaces on the hospital campus. He asked that the record remain open for that purpose. Tr. 5-10.

Petitioner did submit revised parking plans, and after some exchanges with Technical Staff, ultimately submitted a description of the parking on the campus that satisfied Staff. The final parking description is contained in the Development Standards printed on the final special exception site plan (Exhibit 30(a)), and reproduced on page 12 of this report. The parking description indicates that 1143 spaces are required for the East Campus and 504 are required for the West Campus, yielding a total

requirement of 1,647 spaces. The Plan provides for 1181 spaces on the East Campus and 504 spaces on the West Campus, yielding a total of 1,685 parking spaces, well above the minimum required.

Technical Staff responded with the following e-mail to the Hearing Examiner (Exhibit 31):

1. I received the revised plan today, October. 27, 2010, for MGH with the revised parking schedule. Based on the data provided by the applicant for the purposes of this application (CBA-2521), the revised parking schedule meets the parking requirement for the hospital (the east and west campuses).
2. As I mentioned previously, unless the plan shows square footages for each building depicted on the plan and identifies the uses in each one of those buildings, it is not possible for staff to quantify the actual parking needs of the hospital and make an accurate determination on whether or not the parking needs for the entire hospital campus are met. However; this level of detailed inventory of present and projected parking needs, number of parking spaces, square footages of buildings and types of uses are matters that would be better addressed when the Hospital prepares its Campus Plan.

Staff's suggestion that they will further evaluate parking at a later date based on the plan to be filed for the entire hospital campus seems sensible to the Hearing Examiner. Based on Technical Staff's current evaluation, the Hearing Examiner finds that "the revised parking schedule meets the parking requirement for the hospital," at this juncture.

#### **4. Environmental Issues:**

Technical Staff reported (Exhibit 13, pp. 7-8) that a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #42001195E was recertified for the site, which is in the Hawlings River subwatershed of the Patuxent River basin. Stream buffers and areas of 100-year floodplain are on-site, and the entire site is within the Patuxent River Primary Management Area (PMA).

#### **Forest Conservation:**

The site's exemption #42001195E from the Montgomery County Forest Conservation law was recertified on February 8, 2007. A Planting Plan was approved in January 2010 to expand an existing Category 1 Conservation Easement on the north side of the site as a condition of approval in

CBA-2521-I. The required planting was completed in the autumn of 2009, per the approved Planting Plan.

Petitioner's civil engineer, Edward Wallington, testified that the easement created for forest conservation and the resulting planting were part of a proffer associated with the previous case because the helipad and some other existing features were (and still are) within the stream valley buffer. To offset that condition, additional planting was put in place, but it was not done to meet the forest conservation legislation. Tr. 30-31.

Stormwater Management:

Petitioner has an approved storm management concept plan. Because Petitioner proposes just adding three levels on top of an existing building and will not be increasing impervious area, no new requirements for storm water management will be imposed. Tr. 31-32. As stated by Staff (Exhibit 13, p. 8): "Revisions to the existing approved stormwater management plan are not required for modification to an existing building."

Based on this record, the Hearing Examiner finds that there are no environmental concerns raised by this modification petition.

**D. The Master Plan**

The hospital site is subject to the 2005 Olney Master Plan. The Master Plan does not recommend any changes to existing zoning (RE-2, R-200 and R-60), and the subject use is permissible by special exception in those zones. Since the instant petition concerns modification to a special exception which already exists, the existing hospital is presumed to be in conformity with the Master Plan. Technical Staff found that the proposed addition would be in accord with the Master Plan (Exhibit 13, p. 6):

The proposed modification on the West Campus [*sic*]<sup>3</sup> is consistent with the vision and recommendations of the 2005 Olney Master Plan. The master plan recognizes the central role Montgomery General Hospital plays in Olney. The Plan notes that the hospital is the largest employer in the area and that the facility is expected to grow approximately 10 percent over the next 10 years.

Although the plan focuses commercial growth in Olney on the mixed-use Town Center and discourages any rezoning or special exception petitions that are outside the Town Center, the Plan states that “future expansion of Montgomery General Hospital should be supported on its main campus as well as on the vacant site across the street from the main campus.” . . .

There is no contrary evidence, and the Hearing Examiner finds that the proposed modification is consistent with the Olney Master Plan.

### **E. Community Reaction**

There has been no opposition in this case, and indeed, no response whatever from the community. Technical Staff also reports, “No objections or concerns have been raised by the adjoining neighbors or others regarding the proposed three-story addition.” Exhibit 13, p. 6.

### **III. SUMMARY OF THE HEARING**

Petitioner called four witnesses at the hearing, Todd Cohen, Director of Special Projects for Montgomery General Hospital; Edward Wallington, a civil engineer; James Wilmot, an architect; and Craig Hedberg, a traffic engineer. There were no opposition witnesses. At the beginning of the hearing, Petitioner’s counsel, Jody Kline, Esquire, indicated that he would be submitting a recalculation of the parking spaces on the hospital campus, and asked that the record remain open for that purpose. Tr. 5-10. Mr. Kline also indicated that Petitioner accepted Technical Staff’s definition of the general neighborhood. Tr. 11.

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<sup>3</sup> Technical Staff clearly meant to say, “East Campus,” since that is the location of the proposed addition.

1. Todd Cohen (Tr. 12-23):

Todd Cohen testified that he is the Director of Special Projects for Montgomery General Hospital. He described the proposed expansion (Tr. 13-14):

. . . The project on the west tower is a patient tower. It's focused on the emergency department, bringing outpatient diagnostic services to the front of the house closer to parking spots. More of that outpatient feel. These are typically programs that have been tucked away either on the wards or in the back of the house. The building itself, obviously it's primary use is the emergency department as I said, and some of the diagnostic functions.

But the third floor of the structure is shelled and that's what's at discussion for today is in-filling that with 25 beds. It's all private rooms. The market drives that. The standard of care drives that. And so we're proposing to fill in the third floor with 25, again, 25 private rooms and then immediately above that pedestal, if you will, add a three story structure that's only shelled space. That's driven primarily by the CON [*i.e.*, Certificate of Need] process in terms of in-filling that space.

Mr. Cohen indicated that the expansion will be an extension of the existing patient tower. It will be made of the same materials and will look the same. It will also raise the height to match other existing hospital buildings. Tr. 16-17. He explained the expansion using rendered versions of the proposed elevations (Exhibit 18).

Mr. Cohen further testified that the additional three stories of hospital bed space will require no new nursing staff. The hours of operation also will not change for the hospital with this addition. One or two additional housekeepers may be required because there will be additional space to clean. Tr. 19-20. There would be no new signage as part of this modification. Tr. 20.

According to Mr. Cohen, nothing in the proposed expansion would create any adverse conditions. Tr. 22.

2. Edward Wallington (Tr. 24-33):

Edward Wallington testified as an expert in civil engineering. He explained the special exception site plan and landscape plan. The landscape plan (Exhibit 20) does not add any new landscape features (Tr. 25-26).

Mr. Wallington testified that Technical Staff asked Petitioner, at time of application, to update or reconfirm the forest conservation exemption status of the project. The NRIFSD in the record is just a reconfirmation of what the existing environmental features are, and with that, Technical Staff reconfirmed that Petitioner is exempt from forest conservation regulations. The easement that has been created for forest on the previous case, and the planting that they have done was part of a proffer associated with the previous case. The helipad and some other existing features are within the stream valley buffer. So to offset that condition, additional planting was put in place, but it was not done to meet the forest conservation legislation. Tr. 30-31.

In light of the fact that Petitioner proposes just adding three levels, Technical Staff reconfirmed the NRIFSD, and did not impose any new requirements. In terms of storm water management, the same holds true. Petitioner has an approved storm management concept. It actually constructed those facilities before, and in checking with Staff, the additional three levels of building did not warrant any amendment or any additional storm management requirements. In light of the fact that it's just going vertical, Petitioner would not be increasing impervious area. Tr. 31-32.

Mr. Wallington further testified that public facilities are currently available to serve this use in terms of sanitary, sewer, water main, power and so forth, and are adequate for the additional three levels of improvement. Tr. 32. In his professional opinion, nothing about the proposed use would have an adverse effect on health, safety, or welfare of people on the campus or in the surrounding area. Tr. 32.

### 3. James Wilmot (Tr. 33-40):

James Wilmot testified as an expert in architecture. He indicated that under current regulations (the Health Planning Commission's 2006 minimum guidelines for health care construction), newly constructed hospital patient rooms must be designed for private (*i.e.*, single) occupancy. Tr. 36-37.

Mr. Wilmot further testified that Petitioner planned to use the same materials as previously used for buildings on the campus to tie it into the architectural context of the existing campus, “and it does that very well.” Tr. 40. He added that the brick material which will be used in the addition and the architectural character seem to fit well in the neighborhood now, and this addition will not change that. Tr. 40.

4. Craig Hedberg (Tr. 41-47):

Craig Hedberg testified as an expert in transportation planning and traffic engineering. Mr. Hedberg indicated that he did not have to do a traffic study since there will be no increase in beds, and there is thus no increase in traffic projections associated with this application. Tr. 42. The additional cleaning staff may not be assigned in the peak periods, and even if they were, the addition of one or two maintenance people in peak periods would have a de minimis impact. Tr. 43.

In Mr. Hedberg’s opinion, the transportation network surrounding the property is adequate to accommodate any conceivable additional traffic that would be generated by this proposed use. Tr. 43-44. There would also be no impact on the safety of either vehicular or pedestrian traffic from this proposed addition. Tr. 44. There will be no change in circulation on the campus.

[Mr. Kline indicated that the east campus (*i.e.*, the main campus) is already platted so it does not have to go through subdivision, although subdivision will be required on the west campus, which is not affected by this application. Tr. 45-46.]

#### **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in

others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c)(4) of the Zoning Ordinance. At the beginning of this report, we noted that because the proposed modifications would expand floor area by more than 7,500 square feet, under Zoning Ordinance §59-G-1.3(c)(4)(A), the Board may require that the underlying special exception be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, but only if it finds that the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. Otherwise, the inquiry must be limited to discussion of those aspects of the special exception use that are directly related to the proposed modifications.

Thus, the threshold issue in this case, established by Zoning Code §59-G-1.3(c)(4), is whether the proposed modifications, when considered in combination with the underlying special exception, would change the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

The overall use will, of course, remain a hospital under Zoning Code §59-G-2.31. The facilities that are proposed are consistent with those normally expected for a hospital. The overwhelming weight of the evidence also supports the testimony of Petitioner's architect, James Wilmot, that this modification would not reduce the compatibility of the hospital with its neighborhood. Tr. 41. The Hearing Examiner agrees and so finds. The proposed modification merely adds three stories to an already existing building; it will not increase the footprint of the building; it

will not result in the highest building on campus; it will not increase the number of patient beds; it will not increase the number of nursing staff; and it will not adversely affect traffic or parking. It thus will have little, if any, negative impact on the neighborhood. It certainly will not have substantial adverse effects on the surrounding neighborhood; on the contrary, it will have the beneficial effect of adding more single-bed hospital rooms to the area. Given these circumstances, Zoning Ordinance §59-G-1.3(c)(4)(A), does not permit the Board to require that the underlying special exception be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26. We therefore address only the proposed modification.

As discussed in the following pages, based on the testimony and evidence of record, the Hearing Examiner concludes that the Petitioner will continue to meet both the general requirements for special exceptions and the specific requirements spelled out in Zoning Ordinance §59-G-2.31 for hospitals, as long as Petitioner complies with the conditions set forth in Part V, below.

#### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. 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.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff has identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with hospitals. Characteristics of the proposed modification that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modification that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff enumerated the following inherent characteristics of hospitals (Exhibit 13, p. 11):

- A large, high-bulk physical plant, with some visual impact on its surroundings;
- hospital operations running round the clock, seven days per week;
- a large staff; a large number of patients and visitors;
- physician offices affiliated with the hospital,
- a significant amount of traffic and parking commensurate with the size of staff and patient body;
- a certain amount of operational noise from e.g. air conditioning systems;
- a large amount of bio and other waste which must be carefully disposed-of;
- a significant amount of external lighting needed for safety; and
- Emergency helipad.

Technical Staff noted that “[t]he primary characteristic associated with this modification is a slight increase in building density relative to existing development on the hospital campus.” Exhibit 13, pp. 11-12. Staff found that the proposed addition is not likely to result in adverse operational characteristics such as more traffic to the site or objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity. Staff concluded that there would be no non-inherent impacts,

and that “the inherent impacts associated with this application are not sufficient to warrant a denial of the special exception petition.” Exhibit 13, p. 12.

The Hearing Examiner agrees that the proposed modification would not cause any non-inherent impacts. It is merely the vertical expansion of a pre-existing building, using compatible materials, and without any significant increase in employees, patients or visitors. As such, its physical and operational characteristics are all necessarily associated with a hospital use, and there are no adverse effects created by unusual characteristics of the site.

Given the absence of any non-inherent impacts, the modification petition must be granted, and it is irrelevant that there may be some inherent impacts. Zoning Ordinance §59-G-1.2.1 instructs us that “Inherent adverse effects alone are not a sufficient basis for denial of a special exception.” Thus, although the Hearing Examiner reaches the same end point as Technical Staff, he disagrees with the above-quoted sentence from the Staff report suggesting that even in the absence of non-inherent effects, the impacts of inherent effects should be weighed to determine whether they are sufficient to warrant denial.

## **B. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner’s written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

### **Sec. 59-G-1.21. General conditions:**

(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.*

Conclusion: Hospitals (Zoning Code §59-G-2.31) are permitted as special exception uses in the RE-2, R-200 and R-60 Zones by virtue of Zoning Code §59-C-1.31(d), and the use already exists in this case.

- (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.*

Conclusion: As described in Part IV. C., below, the proposed modification would comply with the standards and requirements set forth for the use in Code §59-G-2.31.

- (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 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.*

Conclusion: The subject property lies within the area analyzed by the 2005 Olney Master Plan. The Master Plan does not recommend any changes to existing zoning (RE-2, R-200 and R-60), and the subject use is permissible by special exception in those zones. Since the instant petition concerns modification to a special exception which already exists, the existing hospital is presumed to be in conformity with the Master Plan. Thus, the question is whether the proposed addition is also consistent with the Master Plan. That issue is addressed directly in the Master Plan, which provides (p. 17) that it supports MGH as the major employer in Olney, and specifically:

“Future expansion of Montgomery General Hospital should be supported on its main campus as well as on the vacant site across the street from the main campus.”

The Hearing Examiner agrees with the conclusion of Technical Staff that the application is in conformance with the *Olney 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 or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: On this issue, Technical Staff states (Exhibit 13, p.13):

With the recommended conditions, the proposed modification will be in harmony with the general character of the neighborhood and will not adversely affect surrounding properties or the general neighborhood. The hospital has been at the same location for over thirty years and has had over 30 special exception modifications.

In sum, this use has co-existed in harmony with the neighborhood for many years, and the modification proposed in this petition will not change that relationship. The evidence at this stage also supports the conclusion that the public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy. Petitioner’s civil engineer, Edward Wallington, testified that public facilities are currently available to serve this use in terms of sanitary sewer, water and, power, and they are adequate for the additional three levels of improvement. Tr. 32.

- (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.*

Conclusion: The evidence supports the conclusion that the requested modifications would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, for the reasons stated in response to the previous general condition.

- (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.*

Conclusion: The subject property has been improved with this hospital since about 1969. There is no evidence that the proposed modification will cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity. On the contrary, the evidence is that it will not add to the traffic or have any other adverse effect on the community. As stated by Technical Staff (Exhibit 13, p. 13),

Given the prevailing characteristics of the development and uses surrounding the site, it is not anticipated that the proposed three-story addition would cause 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 Hearing Examiner so finds.

- (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 recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The Hearing Examiner finds that the proposed modification will not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely. Moreover, as stated above, this special exception use is consistent with the

recommendations of the applicable Master Plan, and therefore, under the terms of this provision, it does “not alter the nature of an area.” The modification to MGH will not, by dint of number, scope, or intensity, change the predominantly residential character of the neighborhood or alter it adversely.

- (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: The evidence supports the conclusion that the proposed modification would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. The added three stories will enable the hospital to provide a better level of care by making more private patient rooms available, and will have no adverse effect on any of the listed individuals.

- (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.*
- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, by 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 special exception application was submitted.*

Conclusion: The special exception modification will not require approval of a preliminary plan of subdivision. As such, the adequacy of public facilities must be determined by the Board of Appeals. Technical Staff reports that the property is currently served by sewer and water services that are adequate to serve the proposed improvement. Exhibit 13, pp. 14-15. Mr. Wallington also testified that public facilities are currently available to serve this use in terms of sanitary sewer, water, and power, and they are adequate for the additional three levels of improvement. Tr. 32.

Transportation planning staff's review of the proposed three-story addition indicates that the granting of the requested special exception would not have an adverse effect on the nearby road system. According to Transportation planning staff, the APF review for this special exception modification request did not require a traffic study under the *Local Area Transportation Review (LATR)/Policy Area Mobility Review (PAMR) Guidelines* since the proposed expansion of the main hospital building will not generate any new peak-hour trips during the typical weekday morning (6:30 – 9:30 a.m.) and evening (4:00 – 7:00 p.m.) peak periods. Petitioner's transportation planner, Craig Hedberg, agreed. Tr. 43-44. Based on this record, the Hearing Examiner finds that the subject property would continue to be served by adequate public facilities.

(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*

Conclusion: According to Petitioner's transportation planner, Craig Hedberg, because there will be no change in circulation on the campus from this proposed addition, there would be no

impact on the safety of either vehicular or pedestrian traffic. Tr. 44. There is no contrary evidence, and the Hearing Examiner accepts this finding.

### **C. Specific Standards: Hospitals**

The specific standards for hospitals are found in Zoning Ordinance § 59-G-2.31. The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the proposed modifications would be consistent with these specific standards, as outlined below.

#### **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;*

Conclusion: The hospital already exists, and has been at this site for many years without creating a nuisance. The proposed modification will add three levels to an existing building, with no increase in patients or nursing staff, and therefore with little or no increase in traffic and parking. As discussed previously in this report, the Hearing Examiner finds that the proposed change will not create a nuisance from any of the enumerated factors.

*that such use will not affect adversely the present character or future development of the surrounding residential community;*

Conclusion: The best evidence that the hospital expansion will not be detrimental to development of the surrounding residential community is the Master Plan's support for such an expansion, as previously discussed. It is on a large campus, which insulates it from the residential community, and it promotes development by providing needed hospital services.

*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:*

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

Conclusion: The East Campus, where the new addition will be located, is itself 27.19 acres, and it is part of the overall MGH campus which consists of 46.46 acres. Both of these areas exceed the minimum area requirements.

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

Conclusion: The proposal complies with this requirement. The property has 1,707 feet of frontage along Brook Farm Drive and 927 feet of frontage along Prince Philip Drive, according to Technical Staff. Exhibit 13, p. 17.

*(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.*

Conclusion: Technical Staff reports that the proposal satisfies this requirement. The applicant's site plan shows that the proposed addition is set back 327 feet from the lot line. Exhibit 13, p. 17.

*(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.*

Conclusion: The proposed addition does not require an increase in the number of parking spaces. Issues relating to parking were discussed in Part II. C. 3 of this report. As indicated therein, Technical Staff ultimately approved Petitioner's current parking statement, subject to later revision when the full campus master plan is submitted. Exhibit 31.

Based on this record, the Hearing Examiner finds that the parking is adequate for this site, and that appropriate landscaping and screening have already been provided.

*(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.*

Conclusion: The special exception site plan and related documents have been reviewed by Technical Staff, and modified in accordance with their suggestions. The plans were recommended for approval by Technical Staff and the Planning Board.

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

Conclusion: The building height for the proposed modification is a maximum of 73 feet, well within the 145 foot maximum height. Exhibit 13, p. 18.

*(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.*

Conclusion: This subsection was repealed in Zoning Text Amendment 10-11, effective October 25, 2010 (Ordinance No. 16-55). In any event, the hospital already exists, and this provision is therefore inapplicable to this modification petition.

#### **D. General Development Standards §59-G-1.23**

**(a) Development Standards.** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: In addition to the other general and specific standards set forth above, “*Special exceptions are subject [under Code § 59-G-1.23(a)] to the development standards of the applicable zone where the special exception is located [in this case, RE-2, in which*

Zone the East Campus is located] *except when the standard is specified in Section G-1.23 or in Section G-2.*”

The following table was provided by Technical Staff demonstrating compliance with applicable development standards (Exhibit 13, p. 8).

<b>Development Standard</b>	<b>Required (current)</b>	<b>Proposed/Existing</b>
Minimum Lot Area 59-G-2.31 (1)	5 ac	East(main) Campus: 27.19 ac West Campus: 14.61 ac Misc Parcels.....4.66 Total: 46.46
Minimum lot Frontage 59-G-2.31 (2))	200 ft	927.10 ft
Minimum Building Setback: 59-G-2.31 (3)	a distance equal to the height of that portion of the building, where the 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.	327 ft
Maximum Building Height 59-G-2.31 (6)	145 ft	73 ft

**(b) Parking requirements.** *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: The parking requirements for this proposal were discussed in Part II. C. 3 of this report. Based on the evidence discussed therein, the Hearing Examiner finds that Petitioner has complied with parking requirements.

**c) Minimum frontage.** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

Conclusion: Not applicable.

- (d) **Forest conservation.** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: Environmental issues are discussed in Part II. C. 4 of this report. As noted therein, Environmental Planning Staff determined that the site's exemption from the Montgomery County Forest Conservation Law in #42001195E was recertified on February 8, 2007. A Planting Plan was approved in January 2010, to expand an existing Category 1 Conservation Easement on the north side of the site as a condition of approval in CBA- 2521-I. The required planting was completed in the autumn of 2009, per the approved Planting Plan. Exhibit 13, p. 10.

- (e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: This section is inapplicable because the subject site is not within a special protection area, and therefore a water quality plan is not required. Petitioner's stormwater management concept plan was approved by the Department of Permitting Services, and is not affected by the proposed modification. Exhibit 13, p. 8.

(f) **Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: As discussed in Part II. C. 2 of this report, Petitioner has not proposed any new signs for this modification.

(g) **Building compatibility in residential zones.**

*Any structure that is constructed, reconstructed or altered 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.*

Conclusion: The use in this case is institutional, and it will not look residential; however, its appearance will be appropriate. As stated by Technical Staff (Exhibit 13, p. 10), “. . . the proposed modification complements the existing structures on the main campus in terms of scale, massing design and function. The building associated with the proposed modification would be well-related to the surrounding area.” The Hearing Examiner agrees and so finds.

h. **Lighting in residential zones**

*All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

- (1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*
- (2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: As discussed in Part II. C. 2. of this report, no new lighting is proposed as part of this modification.

**59-G-1.26. Exterior appearance in residential zones.**

*A structure to be constructed, reconstructed or altered 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 consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.*

Conclusion: The proposed modification complements the existing structures in terms of scale, massing, design and function, as discussed above.

In sum, it is clear from the record that the proposed modification will not change the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected and will create no non-inherent adverse impacts. The Hearing Examiner therefore recommends that the Board of Appeals grant the modification petition, with the conditions suggested in the final section of this report.

**V. RECOMMENDATION**

Based on the foregoing analysis and a thorough review of the entire record, I recommend that Petition No. CBA-2521-K, for modification of the existing special exception held by Montgomery General Hospital, Inc., and located at 18101 Prince Phillip Drive, Olney, Maryland, to permit a three-story addition on top of the existing Western Addition (*i.e.*, the Emergency Room Wing) on Petitioner's East Campus, be GRANTED, as conditioned below:

1. The 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 this report.
2. All terms and conditions of the approved special exception remain in full force and effect, except as modified in the Board's order granting this modification request.

3. The addition of newly constructed floor space at the hospital under this modification is limited to 26,010 square feet, and Petitioner is also permitted to renovate 21,355 square feet of floor space within the current unfinished “shell” on the third floor of the emergency services wing. The total number of patient beds (202) must not be exceeded.
4. The maximum number of nursing staff and the hours of operation remain unchanged.
5. Petitioner must comply with the special exception site plan (Exhibit 30(a)) and the Landscape Plan (Exhibit 20).
6. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: December 3, 2010

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner