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

Matthew J. Bell	Adrian Hagerty	Jacqueline Schultz
Laura Lynn Bergfeld	Scott Harvey	Mark Douglas Vogt
Frank G. Bossong IV	Matthew J. Leaken	Dany Westerband
Gene Anthony Corapi	Ryland L. Mitchell, III	Martin Wells
John Daniel Coventry	Jane Pryzgocki	Douglas M. Wrenn

For the Petitioner

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Erin Gerard, Esquire
Counsel for the Petitioner

Board of Appeals Case Nos. S-274-D and A-6254 (OZAH Referral Nos. 08-31 and 08-32)

* *

Maryann Brondi	Marilyn Mazuzan
Alan Ehrlich	Virginia A. Miller
Daniel Keen	Jerome Morenoff

In Support of the Petition

* *

Martin Klauber, Esquire
People's Counsel for Montgomery County
Partially in Support and Partially in Opposition

* *

Amy Shiman	Jean Ann Dorough	Kenneth Doggett
Bob Deans	Howard Sokolove	

For the Huntington Terrace Citizens Association in Opposition
Norman G. Knopf
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Kate Cameron Atkinson	Wayne Goldstein	Robert Resnik
Jeff Baron	Greg Harris	Amy Royden-Bloom
Stuart Borman	Leslie Hildebrand	Robert Sievers
Jerome Collins	Margaret Hilton	Susan Snyder
Margot Cook	Galina Knopman	Francis May Ulmer
John Farier Cooper	Jeffrey Kopp	Mitchell Weber
Robert Cope	Susan Nancy Labin	Bob Wisman
Jay Davies	David Mangurian	Michael Wohl
Arielle Grill		

In Opposition to the Petition

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Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. SUMMARY

Current Zone and Use:	R-60 Zoning, site of Suburban Hospital.
Proposed Modification:	Major hospital expansion involving a request for abandonment of one block of Lincoln Street, construction of a large hospital addition over the Lincoln Street right-of-way, construction of a large parking garage at the corner of Southwick Street and Old Georgetown Road, and significant changes to vehicular and pedestrian circulation on and around the special exception site.
Community:	Support from many members of the larger community who support Suburban's desire to expand to provide better health care services. Strong opposition from some members of the local community as represented by the Huntington Terrace Citizens' Association.
MNCCPC:	The Montgomery County Planning Board and its Technical Staff recommend approval of the petition.
Hearing Examiner:	The Hearing Examiner recommends a remand of the petition to give the Hospital the opportunity to present a revised plan that will be compatible with the neighborhood and consistent with the applicable master plan.

Despite great regret at the prospect of more process in a case that has already seen considerably more than its share, the Hearing Examiner recommends a remand of the present petition. The choice was between a remand and outright denial; the evidence does not support approval of the modification as proposed due to inconsistency with the applicable master plan and incompatibility with the neighborhood. An outright denial would be contrary to the public interest in supporting an important health facility. Accordingly, this report identifies with some specificity elements of the proposed modification that the Hearing Examiner finds inconsistent with the standards for approval, and sets forth parameters which, in the Hearing Examiner's view, the Hospital should apply in crafting a revised application if this one is remanded.

If the Board of Appeals remands the case, the Hearing Examiner urges the Board to consider the parameters for a revised petition set forth in this report, and to state in its opinion whether the Board agrees with those parameters. This would provide Suburban with helpful guidance as it considers options and alternatives. The undersigned further recommends that if the case is remanded, the hearing examiner assigned to this case on remand set limits on the number of hearing days at the

outset, to avoid a protracted hearing process like the one to date, which has been costly for both sides, and resulted in a large, unwieldy collection of evidence containing vastly more detailed information than was needed to create a complete record. The undersigned also recommends that no additional evidence be admitted, including through cross-examination, regarding the feasibility of alternatives to whatever revised expansion plan the Hospital may prepare. Such evidence was of marginal relevance during these proceedings, and further exploration of alternatives on remand would serve no purpose. The Huntington Terrace Citizens Association was permitted to make its case on alternatives once, and that is enough.

II. STATEMENT OF THE CASE

Petition S-274-D, filed March 26, 2008, requests modification of the existing special exception for Suburban Hospital ("Suburban" or the "Hospital"), located at 8600 Old Georgetown Road, Bethesda, Maryland to permit a significant expansion of the Hospital's facilities.[1] The special exception site is located in an R-60 Zone and currently occupies approximately ten acres of property on the west side of Old Georgetown Road. It is divided by Lincoln Street, a two-lane public road; approximately 7.1 acres of the current special exception site (known as Lot 15, Block 15, Huntington Terrace Subdivision) lie south of Lincoln Street and about 2.9 acres (known as Lot 32, Block 8, Huntington Terrace Subdivision) are north of Lincoln Street. *See* Ex. 111 at 9; Ex. 29(a). In addition to these ten acres, the Hospital owns about five acres of land that are contiguous to the current special exception site but are not presently part of the special exception or Hospital operations. This property is occupied by single-family homes used as rental housing.

[1] The special exception application was filed concurrently with variance application A-6254 because one of two proposed versions of a parking garage would require a variance. For the reasons outlined in Part III.B.2, the Hearing Examiner finds that the record does not support the grant of the requested variance, particularly when the application itself demonstrates that an alternative garage can be built without the need for a variance. To avoid confusion concerning which garage is under consideration, and to avoid needlessly adding to a lengthy report, this report will address the variance request and the garage design for which it was sought only in Part III.B.2. The remainder of the report will address the special exception modification request with the garage design that does not require a variance, referred to as the "alternate garage".

The Hospital has petitioned Montgomery County to abandon the block of Lincoln Street that divides its property, from Old Georgetown Road to Grant Street, which would allow ownership of the underlying land to revert to Suburban. The County has conducted a hearing on the proposed abandonment, but no recommendation has been made by the hearing officer to the County Executive, or by the County Executive to the County Council, which will be responsible for the final decision on the abandonment. Based on information provided by Council staff and the parties to this case, it appears that the Council does not intend to consider the abandonment request until the Board of Appeals (the "Board") has taken action on the present modification request. *See* Ex. 53. Accordingly, the Board's consideration of this application will have to assume that the requested road abandonment will be granted, if the modification is approved, and any approval will have to be conditioned accordingly.

The Hospital proposes to demolish the 23 single-family homes on the property it owns that is not currently part of the special exception site, and combine all of its contiguous property ownership with 36,126 square feet of abandoned Lincoln Street right-of-way to create a new special exception site containing approximately 15.2 acres of land known as Lots 1-A, 2 - 5, 6-A, 7-A, 8-A, 9-A, 10 - 13 and 15 of Block 15, Huntington Terrace Subdivision and Lots 7, part of Lot 8, 12-17, 20, 21, 27 and 32 of Block 8, Huntington Terrace Subdivision. *See* Ex. 111 at 9; Ex. 29(a); Ex. 26 at 3. This 15.2-acre area is referred to in this report as the "site," the "subject property" or the "proposed special exception site."

Technical Staff of the Maryland-National Capital Park & Planning Commission ("MNCPPC") reviewed the present petition and, in a report dated September 15, 2008, recommended approval with six conditions relating to forest conservation requirements, approval of the Hospital's road abandonment petition, limits on the square footage of new construction and number of employees and patient beds, site plan requirements, traffic impact mitigation and adequate public facility review. *See* Ex. 49. Staff found that the proposed expansion and modernization of the Hospital would be in harmony with the general character of the neighborhood, given adjustments that were made to the initially submitted plans to improve the project's design and neighborhood compatibility, while reducing

environmental impacts. *See* Ex. 49 at 1. Staff made the following comments about future potential expansion, although these were not incorporated in a proposed condition of approval (Ex. 49 at 2):

> Staff would not support further assembly of parcels or the removal of houses beyond the two-block area within Grant Street, McKinley Street, Southwick Street, and Old Georgetown Road that now comprises the hospital grounds. Staff believes this two-block area should be described and restricted under this modification as the Hospital's maximum expansion limits. Any further acquisition of homes beyond the maximum expansion limits for purposes of expanding or improving hospital health services would not be supported.

Staff also provided supplemental information, in response to questions from the Hearing Examiner, on November 19 and 20, 2008. See Exs. 116-117.

At its regular meeting on September 25, 2008, the Montgomery County Planning Board voted 3 to 2 to recommend approval based on Staff's analysis, with three additional conditions, excerpted below from Exhibit 60:

1. The applicant must improve McKinley Street within the 10-foot right-of-way dedication along the north side of McKinley Street, between Old Georgetown Road and Grant Street.

2. The applicant must increase the height of the garage to accommodate the approximately 105 surface parking spaces now proposed east of Grant Street. The Board would support approval of a variance for the garage, if necessary to satisfy the minimum setback requirement from Old Georgetown. Additional tree planting and landscape buffering must be provided along the east side of Grant Street.

3. The two-block area generally between McKinley Street, Grant Street, Southwick Street, and Old Georgetown Road must be identified as the Hospital's maximum expansion limits, unless modified in an approved and adopted master or sector [plan.].

The Planning Board's recommendation letter states that the majority of the Board was of the opinion that the proposed modernization and expansion of the Hospital would be in harmony with the general character of the neighborhood, given some adjustments that were made to the initially submitted plans, and with the conditions of approval proposed by Technical Staff and the Board. *See* Ex. 60 at 2. The Board suggested that neighborhood compatibility would be improved by the three conditions it added, and noted that abandonment of Lincoln Street will require the applicant to improve McKinley Street between Old Georgetown Road and Grant Street. The Hearing Examiner notes that

the Planning Board did not go as far as its Staff in recommending a limit on future expansion; where Staff proposed to make the designated two-block area a permanent expansion limit, the Planning Board recommended the two-block area as a temporary expansion limit, to be potentially changed via an amended master or sector plan.

The Planning Board members opposed to this application "expressed the view that removal of the 23 homes would have serious destabilizing effect[sic] on the neighborhood; that the hospital expansion could be accomplished without removal of the 23 homes; and that the application does not satisfy the hospital special exception requirements." Ex. 60 at 2. The Board members who opposed the application also "saw the physician offices as a commercial encroachment into the neighborhood, and questioned why the offices could not be accommodated within the Bethesda Central Business District. " *Id.*

On April 18, 2008, the Board of Appeals ("Board") scheduled a public hearing in this matter for October 6, 7, 14 and 17, 2008, to be conducted by a hearing examiner from the Office of Zoning and Administrative Hearings. On August 28, 2008, the Huntington Terrace Citizen's Association ("HTCA"), represented by counsel Norman Knopf, filed a motion to dismiss the subject modification and variance application or, in the alternative, defer the hearings until after a decision had been made on the abandonment. *See* Ex. 40. This resulted in two postponements of the hearing; while the Hearing Examiner denied the motion to defer the hearing on September 24, 2008, only the Board had the authority to decide a motion to dismiss, and during this period the Board lacked sufficient members eligible to vote on this matter. The Board ultimately denied the motion to dismiss by Resolution dated November 12, 2008 and effective the next day. By notice dated October 31, 2008, the Hearing Examiner rescheduled the public hearing to begin on November 17, 2008, continuing as needed on November 18 and December 8, 12, 16 and 18. It quickly became apparent that the initial estimate of six hearing days would not be enough. Due to a large number of witnesses and extensive cross-examination, the hearing extended through July 2009, with sessions on the following 34 dates:

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	

The 34 hearing days resulted in over 7,000 pages of transcript and 447 exhibits. Following the last hearing day, the record was held open until November 13, 2009 to permit the parties to file closing statements and proposed conditions in writing. Due to the sheer volume of evidence, the Hearing Examiner by Order extended the time for submission of her report several times, from December 14, 2009 to June 18, 2010.

III. BACKGROUND

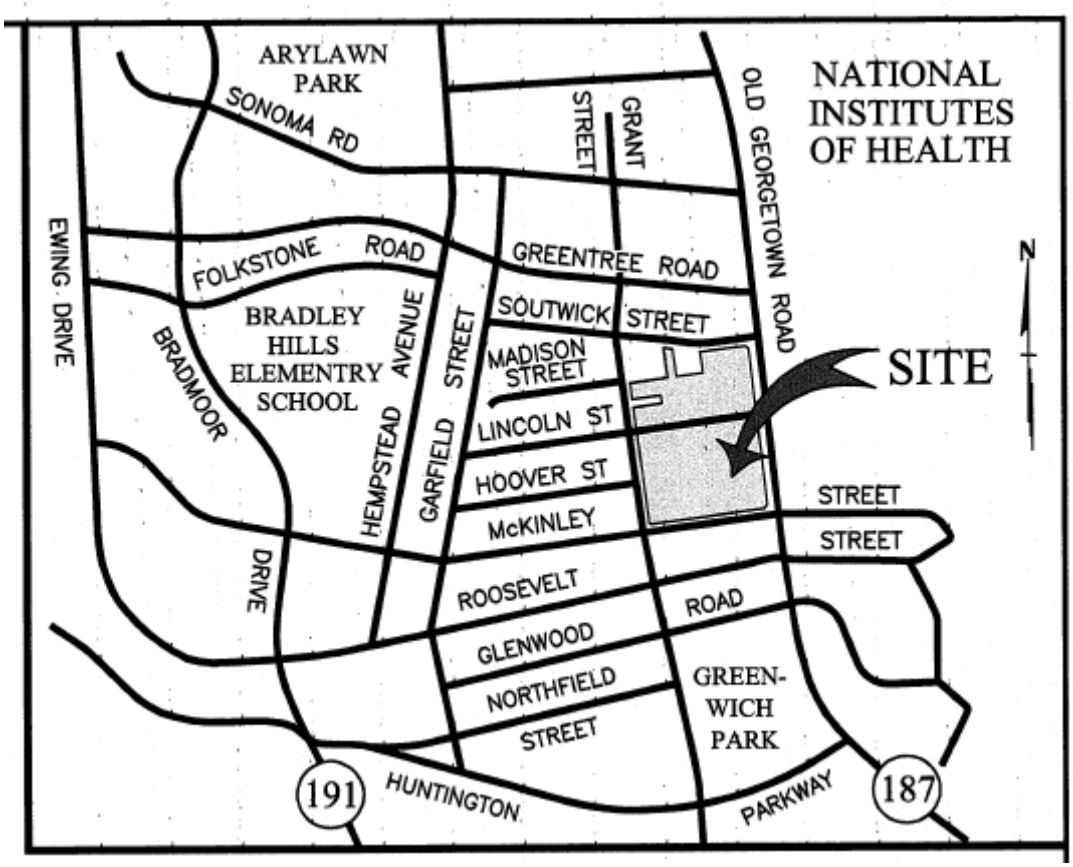
For the convenience of the reader, background information is grouped by subject matter.

A. The Subject Property and Neighborhood

The proposed special exception site contains approximately 15 acres of land on the west side of Old Georgetown Road, occupying most of a two-block area from McKinley Street on the south to Southwick Street on the north and from Old Georgetown Road on the east to Grant Street on the west. The site is classified under the R-60 Zone. About ten acres of the site constitute the current grounds of Suburban Hospital, containing a 228-bed acute care hospital operating in a multi-story building ranging from two to seven stories in height, with a rooftop helipad, a two-story parking garage, a two-story administrative building and ten surface parking lots totaling 462 parking spaces distributed throughout the site. The remaining five acres contain 23 single-family homes on individual lots facing McKinley Street, Lincoln Street and Southwick Street.

The general location of the site is shown on the area map on the next page.

Area Map, Excerpted from Ex. 73(ddd)



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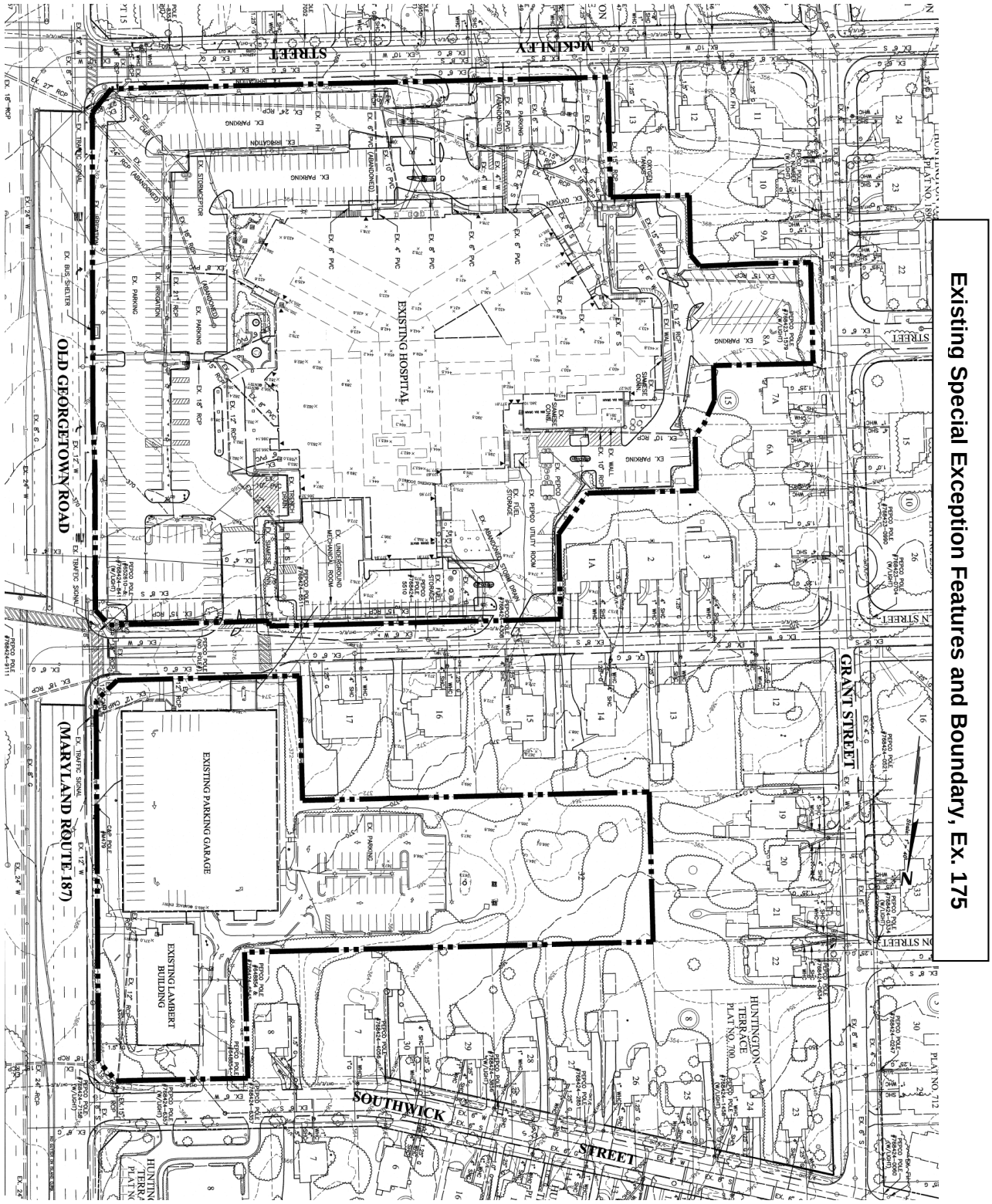
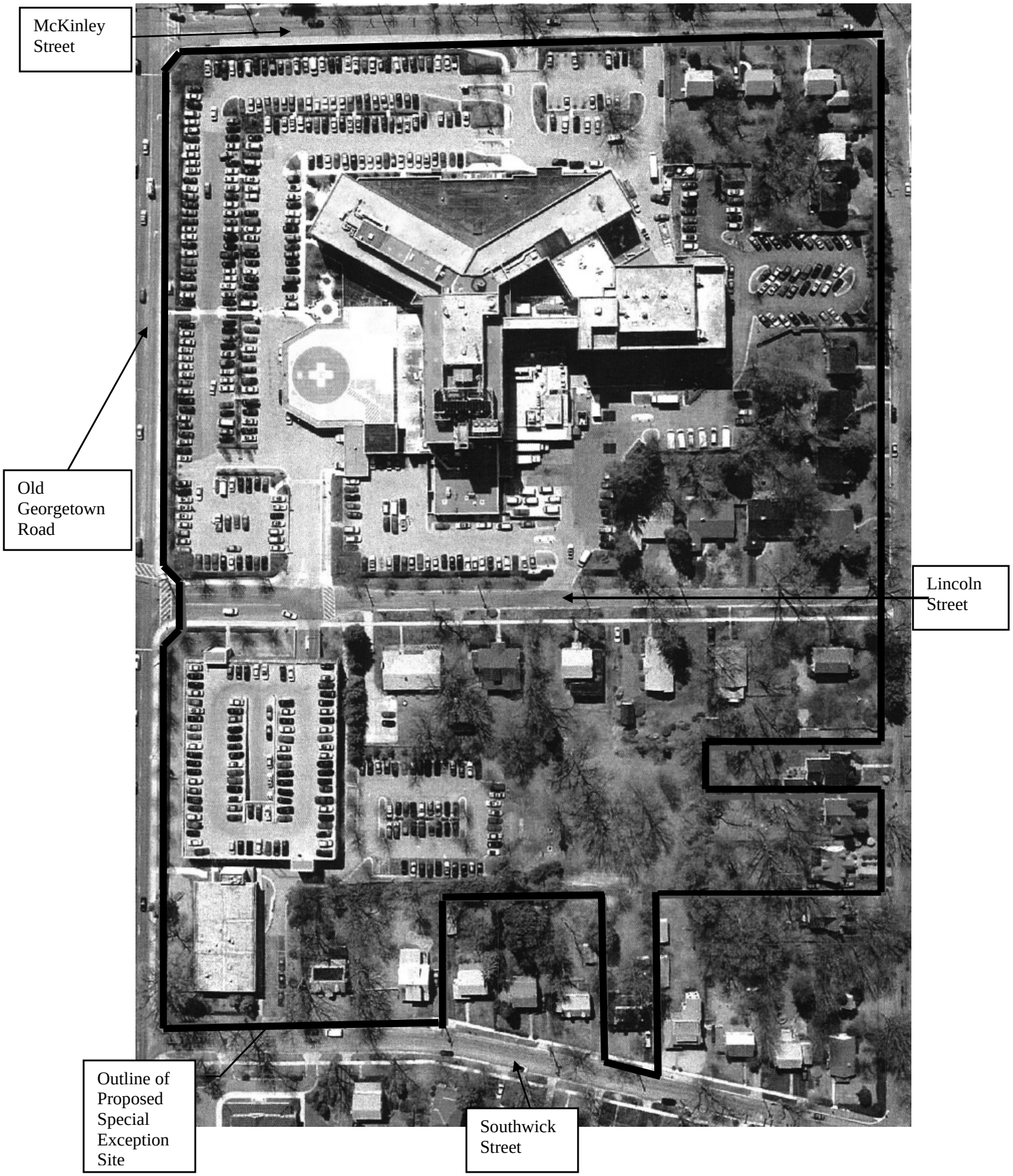
The existing conditions drawing reproduced below depicts the boundaries of the current special exception site. The proposed new special exception boundaries are shown on the aerial photograph on the next page.



Existing Conditions Aerial Photograph with Outline of Proposed Special Exception Boundary, Ex. 138



The subject property is generally flat, sloping away from the center at slopes of zero to eight percent. It contains no streams, wetlands, floodplain, forest, or rare, endangered or threatened species. The site has 24 specimen trees and 15 large trees in various locations, mostly on lots associated with rental houses. The Environmental Planning Division of the MNCPPC has recommended efforts to save ten of these trees in conjunction with the proposed Hospital expansion.

To the east, the proposed special exception site borders Old Georgetown Road, a divided major highway with six lanes. Across Old Georgetown Road is the National Institutes of Health ("NIH"), a very large federal facility with multiple large, institutional buildings. NIH is a very significant presence in the area due the size of its site, the bulk and institutional appearance of its buildings, prominent night lighting and a tall, black metal fence that encloses the entire site.

To the south, the proposed special exception site borders McKinley Street, a two-lane street that currently has a Hospital entrance and exit. Across McKinley Street from the Hospital are one-and-a-half to two-story single-family residential structures, about half of which are used as residences. The corner lot facing Old Georgetown Road and next three houses facing McKinley Street operate as medical office buildings. *See* Wrenn testimony, Tr. Dec. 16, 2008 at 14. The Hospital owns three houses on the south side of the block: the third house facing McKinley Street and the last two houses before the corner lot at McKinley and Grant.[2] *See* Ex. 220.

To the west, the proposed special exception site is irregular in shape. Most of the site boundaries abut Grant Street, a two-lane street lined with one-and-a-half to two-story single-family homes. The Hospital owns all of the homes on the east side of Grant between McKinley Street and Lincoln Street, and all but two of the homes on the east side of Grant between Lincoln and Southwick. *See* Ex. 220.

The proposed special exception site is also irregular in shape to the north, along Southwick Street, where the hospital owns one residential lot in the middle of the block, one at the southeast

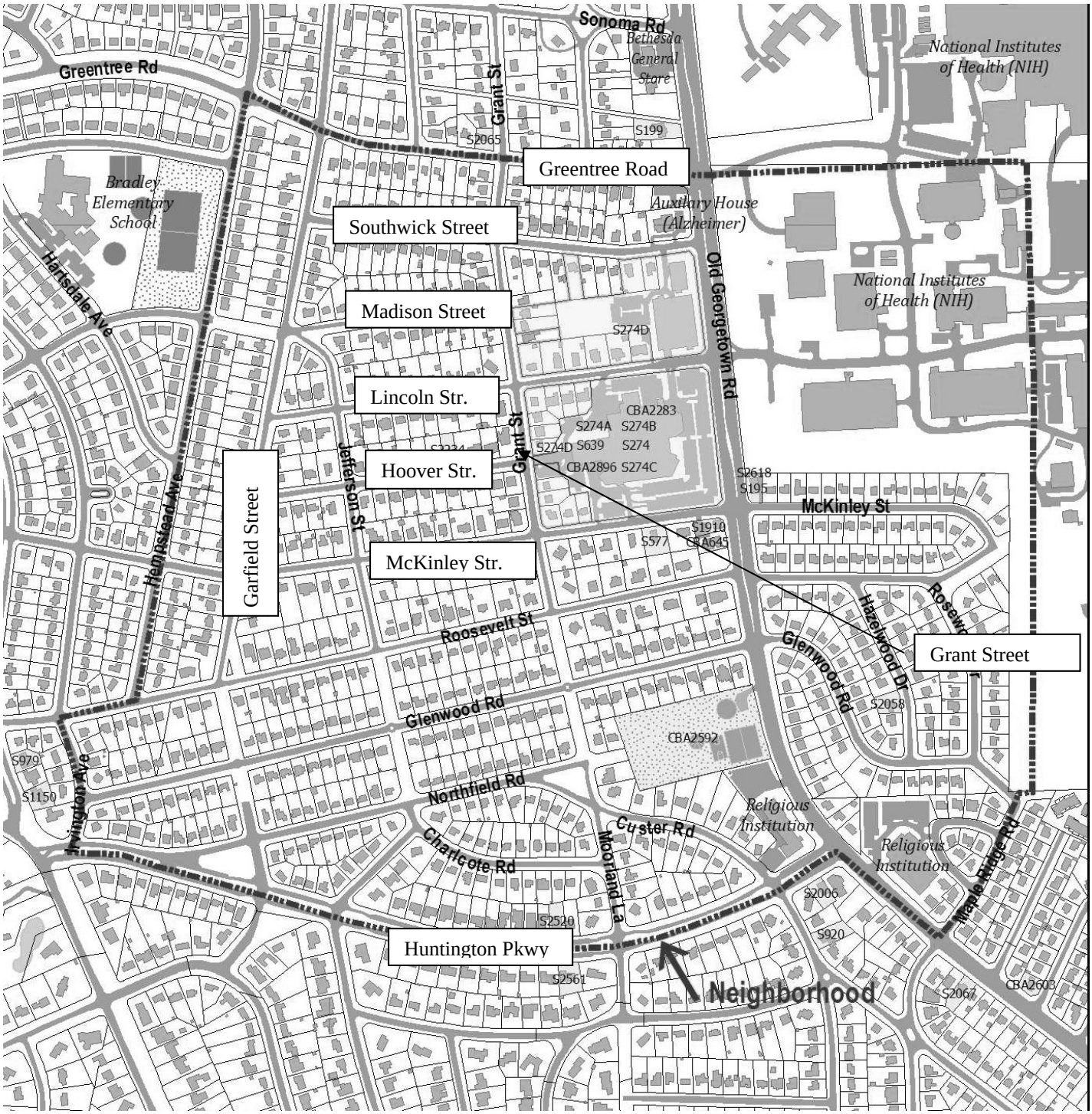
[2] Petitioner's land planner, Douglas Wrenn, testified that all three of the lots used as medical offices are owned by the same physician, but this is contradicted by Exhibit 220, a map that the Hospital submitted identifying its property ownership in the immediate area. The Hearing Examiner considers the map, which clearly shows that the Hospital owns the third house from the corner facing McKinley, to be more reliable than the testimony.

corner of Southwick and Grant, and a series of lots at the southwest corner of Southwick Street and Old Georgetown Road.[3] The rest of the northern boundary abuts the side and rear yards of one-and-a-half to two-story single-family homes on the south side of Southwick Street. The north side of this block is occupied entirely by one-and-a-half to two-story single-family homes. The Hospital owns the two lots on that side closest to Old Georgetown Road. It operates a group home for people suffering from Alzheimer's Disease, known as Auxiliary House, on the corner lot. *See* Ex. 24 at 4.

Technical Staff and Petitioner's land planner described the general neighborhood of the site as an area bound by Greentree Road to the north, a line going midway through the NIH campus to Maple Ridge Road on the east, Huntington Parkway on the south, and Hempstead Avenue/Irvington Avenue to the west. This area is depicted on the map on the next page. Petitioner's land planner, Douglas Wrenn, testified that Greentree Road is an appropriate demarcation point to the north because it is a through street providing connectivity to the larger community, which is different in character from local roads within the Huntington Terrace community, such as Madison and Lincoln. *See* Tr. 12-16-08 at 101-102. When asked on cross-examination whether similar logic would argue for placing the western neighborhood boundary at Old Georgetown Road, instead of continuing farther west onto NIH property, Mr. Wrenn undercut his own credibility by first stating that he did not know whether Old Georgetown Road carries more traffic than Greentree Road, before reluctantly conceding that it probably does. Given that Old Georgetown Road is a six-lane divided highway and Greentree Road has only two lanes, it is manifest that the former carries more traffic than the latter by a wide margin, and that Old Georgetown Road is clearly different in character from the neighborhood streets within Huntington Terrace.

[3] The lot at the corner of Southwick Street and Grant Street is not proposed as part of the special exception site.

Neighborhood Map from Staff Report, Ex. 145



The HTCA argued that the neighborhood should be limited to the Huntington Terrace community, from Greentree Road on the north to Old Georgetown Road on the east, Roosevelt Street on the south and Garfield Street to the west. *See* Tr. April 27 at 24; Ex. 318. HTCA Board Member

Jean Ann Dorough backed this up with several arguments: realtors recognize Huntington Terrace as distinct from other nearby subdivisions or neighborhoods, and use that as a marketing tool; Suburban's real estate appraiser, Ryland Mitchell, considered Huntington Terrace distinct from the next subdivision to the north; Huntington Terrace does not have good connectivity with adjoining neighborhoods because it has three locations where the street grid is interrupted by pedestrian paths, and the only way to reach Huntington Parkway is to leave Huntington Terrace; and children who live in Huntington Terrace are assigned to the Walt Whitman High School cluster, which commands a real estate premium, while children in the Sonoma neighborhood on the other side of Greentree Road are in the Walter Johnson High School cluster. *See id.* at 30-33.

The HTCA argued that the relevant neighborhood for this case cannot extend across the busy lanes of Old Georgetown Road to include the fenced-off NIH campus. Ms. Dorough noted that area residents cannot access the NIH campus without going through a security gate, even to walk to the Metro, unless they have an employee or visitor pass, and that NIH would not be affected by the proposed modification in a way to similar to Huntington Terrace. *See id.* at 36-39. She stated that Huntington Terrace residents have little contact with residents in the residential area across Old Georgetown Road that Technical Staff included in the "neighborhood," except through the NIH Citizen Liaison Council. *See id.* at 41-42.

Kenneth Doggett, a land use expert who testified on behalf of the HTCA, argued that it is ludicrous to include NIH in the definition of "community" for this application, because it is separated from the hospital by the six-lane boundary of Old Georgetown Road. *See* Tr. June 8 at 41-42. He considers the boundary proposed by HTCA to be reasonable, noting that one could expand it a bit, but not to the other side of Old Georgetown Road. *See id.*

In the Hearing Examiner's view, delineating a general neighborhood for purposes of special exception review should be based on the area reasonably likely to be affected by the proposed development. This is based more on proximity, roads and geographic features than on what area operates as a "community" in terms of human interaction. The Hearing Examiner accepts Technical

Staff's neighborhood delineation, for the most part, despite the weakness of Mr. Wrenn's credibility. The portion of NIH fronting on Old Georgetown Road must be included in the general neighborhood because it is directly across the street from Suburban, and any land use so situated can be expected to face some kind of impact from a major hospital expansion. Nonetheless, NIH's size and deep setbacks from Old Georgetown Road, as well as the high level of activity on its own site, make it unlikely that such impacts would be significant. The focus of this case in terms of neighborhood impact must be on the surrounding residential communities. In this regard, the Hearing Examiner agrees that the small residential area off of Old Georgetown Road just south of NIH should be included in the general neighborhood; some of the homes are within sight and sound of the Hospital, and all are close enough to be affected by an increase in the level of activity and traffic. The Hearing Examiner also extends the general neighborhood two blocks farther north than Technical Staff's suggestion, to Sonoma Road, to include roughly the same amount of area to the north of the Hospital as to the south.

Mr. Wrenn characterized the Hospital as "located within an institutional corridor between the Capital Beltway (I-495) and the Central Business District of Bethesda." Ex. 26 at 3. He described the general area as a network of neighborhoods interspersed with significant institutional uses, NIH dominant among them. *See* Tr. 12-16-08 at 228-30. Mr. Wrenn supported this view with a map that identified the sites of 36 institutional uses (NIH, churches, schools, parks, the Hospital, foundations and government installations) stretching from north of the Capital Beltway to south of River Road (a distance of roughly 3.5 miles), and from east of the NIH campus to west of Fernwood Road, a distance of about two miles.[4] *See* Ex. 150. He based his opinion that the proposed modification would be compatible with the neighborhood in part on his observation that Suburban's site is similar in size to other institutional sites in the broad area he described as an "institutional corridor." *See* Tr. 12-16-08 at 51. The Hearing Examiner sees little relevance to the number or size of institutional uses within an area of seven to eight square miles around the Hospital site, an area whose size far exceeds both the area where the proposed modification would likely have any noticeable adverse impacts, and any reasonable definition of the "general neighborhood." Moreover, only in an extreme case (like NIH)

could the sheer size of an institutional site be determinative of its compatibility with surrounding residences. Other factors such as building size and location, site layout, landscaping, topography, level of activity, traffic and noise play much larger roles in a compatibility determination than whether the Hospital site is similar in size to nearby schools, churches, parks and other institutional uses that are entirely different in the nature of their structures, activities and impacts.

The general neighborhood can be more fairly characterized as predominantly single-family residences on small lots in the R-60 Zone, with a significant institutional presence along Old Georgetown Road: NIH, the Hospital and two religious institutions near the corner of Huntington Parkway and Old Georgetown Road.[5] *See* Staff Report at 7. There are also several special exceptions in the neighborhood, including The Women's Club of Bethesda at the corner of Sonoma Road and Old Georgetown Road, an accessory apartment at Greentree Road and Grant Street, a home occupation offering private music lessons at Grant Street and Garfield Street, a non-resident medical practitioner on McKinley Street between Grant Street and Old Georgetown Road, and two non-resident medical practitioners on Old Georgetown Road near McKinley Street. *See* Ex. 26 at 4; Ex. 29(a). All of these operate in structures that are residential in their main use and/or their appearance.

B. The Existing Hospital and Proposed Expansion

Suburban Hospital has been operating at the subject site since 1943. *See* Ex. 111. Its core services are emergency, trauma, cardiac, neurosciences and stroke, oncology and orthopedics. *See id.* It is the only designated trauma center in Montgomery County and one of only nine trauma centers in Maryland. This means that Suburban is responsible and certified to provide advanced care 24 hours per day, and that the Emergency Medical System transports trauma patients to Suburban regardless of their location or proximity to another hospital. *See id.* As explained by Suburban's Director of Trauma Services, a trauma is an injury that has the potential to cause significant disability or death, which is

[4] The Hearing Examined derived these distances by scaling them off on Exhibit 150.
[5] Exhibit 145 identifies a special exception (CBA 2592) on a site of significant size adjacent to one of the churches, but the nature of the use is not reflected in the record.

different from a typical emergency-department patient. *See* Tr. 12-15-08 at 24. In a given year, Suburban treats over 40,000 emergency room patients and over 1,500 trauma patients. During 2009, Suburban became part of the Johns Hopkins Health System. Johns Hopkins has indicated that it fully supports Suburban's proposed expansion plan. *See* Ex. 313.

Suburban proposes to create a unified "campus" within the two block area bounded by Old Georgetown Road, McKinley Street, Grant Street, and Southwick Street. Within this campus it proposes to tear down 23 single-family rental homes that it owns, a small Hospital office building called the Lambert Building and its existing parking garage, and build a large addition to the hospital building and a new, larger parking garage.[6]

Appendix A to this report, page 2, contains an aerial photograph that has been color-washed to indicate the Hospital's property ownership. The Hearing Examiner has added black lines to show the outlines of the current and proposed special exception sites. The sections below describe the Hospital's reasons for seeking this modification and the elements of the proposed expansion.

1. Background: Need for Expansion

Suburban's current facilities were constructed in four primary phases between 1956 and 1979, when the last major clinical addition was added. Hospital testimony established persuasively that all useable space in the existing facility is being fully utilized, and that the Hospital has taken many steps to increase the number of patients it can serve without increasing the physical size of the Hospital building. *See* Tr. 11-7-08 at 9; Tr. 4-3-09 at 83. These steps include decreasing the average length of stay in the Hospital and moving non-acute clinical and administrative functions to off-site locations, such as radiation oncology, outpatient surgery, audiology (hearing services), infusion (drug therapy such as chemotherapy), physical therapy, occupational therapy, addiction treatment, accounting and billing. *See* Tr. 11-17-08 at 102-103; Ex. 111 at 29. The Hospital does not intend to bring any of these

[6] The Hospital originally proposed to expand its existing garage, not to tear it down and replace it. The combination of the height and location of the original garage proposal would have required a variance from applicable setback requirements. At the request of Technical Staff, the Hospital presented an alternate garage design that does not require a variance. This report provides only the briefest information about the original garage due to the Hearing Examiner's conclusion in Part III.B.2 that the variance necessary to permit it cannot be granted. The analysis therefore focuses on the alternative garage.

services back to the subject site if the proposed expansion is approved. *See id.* at 103-104. The Hospital has stopped offering some services for space reasons, including a skilled nursing facility, invtiro fertilization, a blood collection site and on-site laundry. *See* Ex. 111 at 30. At this point, the Hospital cannot identify any other services that could be moved off-site, and finds that it has reached the limit of what can be accomplished through renovation alone. *See id.* at 106; Ex. 111 at 31.

Suburban's representative at the hearing, Chief Operating Officer Gene Corapi, described changes in the population being served that drive the need for an expansion:

- A 23% increase in Montgomery County's population from 1990 to 2006.
- An increase in the percentage of county residents age 65 and over from 29% to 38% during the same period.
- County population is expected to grow by 10% in the next ten years.
- A 27% increase in admissions at Suburban from 1990 to 2007.
- A 46% increase in Suburban's Emergency Department volume from 1990 to 2007.
- A 61% increase in Suburban's Trauma Department volume from 1990 to 2007.

See Tr. 11-17-08 at 93; Ex. 111 at 21-24, citing US Census Bureau for non-Hospital figures.

Mr. Corapi also cited changed regulatory requirements that drive the need for an expansion:

- State regulations increasing the number of air exchanges required and requiring private patient rooms in all new hospital construction.
- Revisions to infection control standards by the Center for Disease Control and Prevention.
- Increased requirements for physical separation due to patient privacy standards under the Health Insurance Portability and Accountability Act.
- Additional space requirements to promote accessibility under the Americans with Disabilities Act.
- Revisions to egress and fire protection requirements under the Life Safety Code.

See Tr. 11-17-08 at 97-98; Ex. 11 at 25.

Finally, Mr. Corapi cited operational changes driving the need for expansion:

- Technological advancements in medical science such as CT scanning and Magnetic Resonance Imaging (MRI) machines, image-guided surgery and surgical robots, all of which require additional equipment space.

- Safety and infection control changes requiring more separation of spaces in areas with high infection risk.
- Focus on efficient layouts to enhance patient care and accommodate caregivers, both nurses and family members.

See Tr. 11-17-08 at

In 2005, the Hospital hired an architect to conduct an assessment of Hospital facilities, as well as consultants to assess land planning and engineering implications, and a traffic engineer to conduct parking, circulation and traffic studies. *See* Tr. 11-17-08 at 107. The Hospital's architect, Adrian Hagerty, identified deficiencies in size, access, parking, lack of physician office space, building systems and infrastructure, floor-to-floor heights, ability to accommodate current medical technology, surgical layout/size/adjacencies, nursing units layout, and loading area. *See* Ex. 115 at 3-15. His assessment was based on industry standards and on Maryland requirements found in the 2006 "Guidelines for Design and Construction of Health Care Facilities" (the "Hospital Guidelines").[7] *See* Tr. 11-7-08 at 254-56, 260-61. Each area of deficiency is discussed briefly below.

a. Size Deficiencies

Mr. Hagerty identified several size-related deficiencies, as summarized in the table below. He explained that this table compares Suburban to similar hospitals with 200 to 300 beds, not to top facilities like academic medical centers. *See* Tr. 11-17-08 at 262.

Size Deficiency Table, from Ex. 114 at 9

Mr. Hagerty provided additional, more detailed information about size deficiencies:

- Emergency department exam rooms measure 85 to 90 square feet per bed, compared to an industry standard of 150 to 160 square feet per bed.
- Patient rooms ("nursing units" in the table above) average 110 square feet per bed, compared to an industry standard of 310 square feet per bed.
- Suburban has a high percentage of semi-private rooms. These rooms are not permitted in new construction under current guidelines, have the potential for patient-

[7] The Maryland Department of Health and Mental Hygiene requires hospital facilities to satisfy the requirements of the 2006 version of the Guidelines, rather than the previously adopted 2001 version, although the Code of Maryland Regulations has not been officially updated to reflect the 2006 version. *See* Ex. 395(a).

to-patient infection transmission, limit patient privacy, do not have enough space for new technologies, and offer very limited space for family members.

- Most operating rooms at Suburban (other than those renovated in the last two years) measure about 380 square feet, compared to an industry standard of 650 square feet and an "absolute minimum" of 600 square feet.

See Tr. 11-17-08 at 270-75; Ex. 111 at 10-12.

Mr. Hagerty noted that today's shorter hospital stays increase the importance of having family members spend time at the hospital, learning how to care for the patient, so they can continue their care at home. The size of the existing rooms makes this very challenging. He explained that Suburban proposes to build its new rooms at a "family-centered care" size, which he considers to be the industry standard, although the Hospital Guidelines permit a smaller size. *See* Tr. 11-17-08 at 271. An excerpt from the Hospital Guidelines submitted into the record indicates that all new patient rooms must be single rooms and have at least 160 square feet of space. *See* Ex. 395(a) at 40.

Mr. Hagerty's and Mr. Corapi's testimony about the need for larger, private patient rooms was supported by testimony from Jackie Schultz, a registered nurse and Senior Vice President of Patient Care at Suburban.

b. Access and Parking Deficiencies

In 15 years as a healthcare architect, having worked on more than a hundred projects, Mr. Hagerty has never seen another facility with as much activity occurring in such a small area as Suburban's main entrance/emergency entrance. *See* Tr. 11-17-08 at 231. He testified that it raises patient privacy issues to have emergency room patients in an unstable condition right next to people coming to visit a hospital patient. Private vehicles coming to the emergency department can use the same entrance as ambulances, creating potential conflicts. The helipad is so close, sitting on top of the main entrance/emergency entrance that the entrance has to be cordoned off when a helicopter arrives or departs. In addition, people who use the Hospital parking garage north of Lincoln Street have to cross Lincoln, a public street, to get from the garage to the Hospital. Mr. Hagerty considers all of these to be serious deficiencies. *See id.* at 213-234; Ex. 111 at 3.

Suburban currently has a parking structure north of Lincoln Street with 268 spaces, and surface lots north and south of Lincoln Street with a total of 462 spaces. Mr. Hagerty and Mr. Corapi observed that drivers often have to circulate between the garage and the various lots looking for parking, leaving the campus and re-entering, and sometimes patients even miss appointments because they cannot find parking and eventually give up. *See* Tr. 11-17-08 at 114, 234-36; Ex. 111 at 4.

c. Lack of On-Site Physician Office Space

Mr. Hagerty, Mr. Corapi and other Hospital witnesses consider the lack of on-site physician office space at Suburban to be a deficiency. They noted that Suburban is the only hospital in Montgomery County without on-site physician office space. Mr. Corapi testified that the lack of on-site physician office space "critically impacts emergency and trauma" by limiting the number of physicians who will take calls for the Emergency Department. Tr. 11-17-08 at 117. He added that offering on-site physician offices would make it more likely that the best doctors will want to practice at Suburban.

Mr. Corapi's testimony was echoed by Dr. Danny Westerband, Director of Trauma Services, who testified that with traffic increasingly difficult, it has become a problem to have doctors traveling to Suburban from Germantown or Gaithersburg or Silver Spring in an emergency. *See* Tr. 12-15-08 at 20. He explained that a trauma center is required to have a number of physicians, nurses and technicians available at all times. Some must be on site, and other must be available within 30 minutes. *See id.* at 28-31. Doctor Westerband noted that because doctors are so specialized these days, the Emergency Department has to have multiple specialists available to provide coverage. The County is not seeing a lot of new doctors coming to the area, so the pool of emergency department physicians is smaller than it used to be. *See id.* at 20. Dr. Westerband testified about a call he received recently at his off-site office about a patient in the intensive care unit, whose tracheotomy tube (an airway placed in the throat for a patient having trouble breathing) had come out. *See id.* at 22-23. Dr. Westerband made it to the Hospital in ten minutes from his office 2½ miles away, but stated that if he had been on site, the situation would have been resolved in three minutes. He added that there are multiple such emergencies that can be addressed quickly by an on-site physician. He and other trauma physicians

go to the hospital on an emergency basis to see patients with complications about seven to ten times a week. *See* Tr. 12-15-08 at 65. In his view, having physician offices close by, even in downtown Bethesda, is not the same as having them on-site. *See id.* at 47-48.

Many opposition witnesses questioned whether Suburban "needs" on-site physician office space, arguing that this is something the Hospital desires, but which is not necessary and should not be imposed on the neighborhood. They argued that there is plenty of space for medical offices in the Bethesda CBD, a short distance from the subject site, so the additional building capacity, parking spaces and traffic should not be drawn to this site. This issue will be discussed further under Compatibility, Part III.K.

d. Deficiencies in Building Systems/Infrastructure, Floor-to-Floor Ceiling Heights and Ability to Accommodate Current Medical Technology

Mr. Hagerty described problems with the building systems and infrastructure as the most challenging deficiency, because they can't be modified. *See* Tr. 11-17-08 at 242-43. For example, the structural columns in the existing hospital building are spaced too closely together to allow the architects to design the large, contiguous spaces that are necessary, with today's medical standards, for operating rooms and complex diagnostic imaging procedure rooms. *See id.* The building also has mechanical and electrical systems that do not meet current Building Code requirements and cannot be corrected. For example, some patient rooms have fan coil units for cooling, which do not filter the air to modern standards. This problem can't be fixed because of inadequate floor-to-floor heights, which vary from as low as 10 feet 8 inches to 12 feet. *See id.* at 244. Current standards for a healthcare facility call for 14 to 16-foot floor-to-floor heights, to accommodate modern mechanical systems and technologies such as larger air ducts, plumbing for medical gases, computer equipment, ceiling-mounted medical equipment, fire suppression systems and air handlers. *See id.* at 243-46, Ex. 111 at 7. Suburban's existing facility cannot be modified to accommodate certain up to date medical technologies such as MRI-guided surgery, which requires much greater floor loading capability than what exists in the current building. *See* Tr. 11-17-08 at 239. This means that a surgeon removing a tumor at Suburban has to complete the surgery, close up the patient and then go back for an MRI the

next day to see whether the whole tumor is gone, rather than being able to see an MRI during the surgery and avoid having to re-open the patient if he or she missed something. *See id.* at 249-50. Mr. Hagerty considers MRI-guided surgery state of the art at this point, not standard of care, but he believes it is the direction healthcare is going. *See id.* at 250-51. He mentioned patient lifts in patient rooms as another example of technology that is extremely difficult to accommodate in the existing Hospital building due to physical constraints, but is very valuable in patient care, particularly with the population getting heavier.

e. Deficiencies in Surgical Layout/Size/Adjacencies

Mr. Hagerty identified a number of deficiencies in the layout of the surgical facilities, in addition to their small size:

- Inadequately sized and awkwardly shaped operating rooms that cannot accommodate modern medical, heating and air conditioning ("HVAC"), electrical or information technology equipment.
- A poor location on the fifth floor, not proximate to the Emergency Department, trauma bays, radiology or sterile processing, all of which are located on the first floor.
- An ineffective layout consisting of a long, narrow configuration on four separate wings, significant distances between operating rooms and recovery rooms, and the lack of a sterile core throughout (an area through which sterile personnel and equipment can pass to enter operating rooms).
- Inadequate staff space and support space.

See Tr. 11-17-08 at 275-276; Ex. 111 at 7, 13. Mr. Hagerty considers it a huge deficiency that emergency room patients who need surgery have to go up five floors on an elevator, even though it is a dedicated elevator. *See* Tr. 11-17-08 at 276. Opposition parties presented evidence that there are other hospitals where the operating rooms are not on the same floor as the emergency department, but those hospitals are not trauma centers. Testimony from Dr. Westerband and from Mark Douglas Vogt, an attending anesthesiologist at Suburban, emphasized that having operating rooms on the same floor as the Emergency Department would improve patient outcomes. *See id.* at 11-12, 80-82. As Dr. Westerband testified, it makes a huge difference to be able to move from trauma bay to operating room in three to five minutes, in situations when minutes matter. *See id.* at 11-12.

f. Deficiencies in Nursing Unit Layout

Two of Suburban's four nursing units (wings with patient rooms) have an old design with patient rooms on both sides side of a corridor and staff areas at either end. Mr. Hagerty maintained that the industry standard today is a more efficient layout known as a "racetrack" design, with patient rooms arranged along the four sides of a shorter, wider corridor. *See* Tr. 11-17-08 at 277-78; Ex. 111 at 14. This design places the staff space and materials in the middle of a ring of patient rooms, so nurses can get to all the rooms quickly.

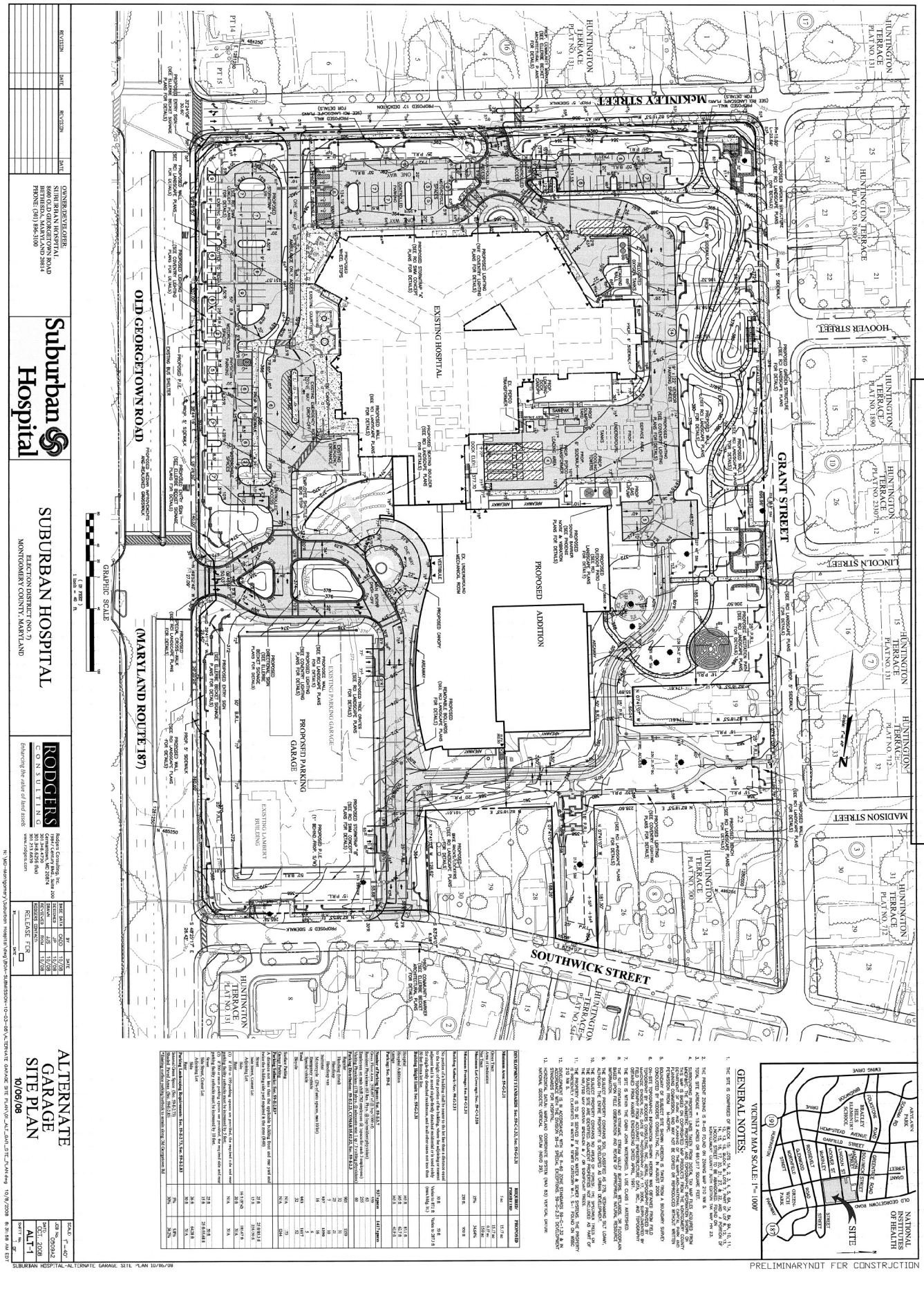
g. Loading Area Deficiencies

Mr. Hagerty found that the loading dock is difficult to access; significantly undersized; does not provide proper separation between incoming and outgoing materials; and uses a service delivery drive combined with parking, causing conflicts and safety concerns. *See* Tr. 11-17-08 at 278; Ex. 111 at 15.

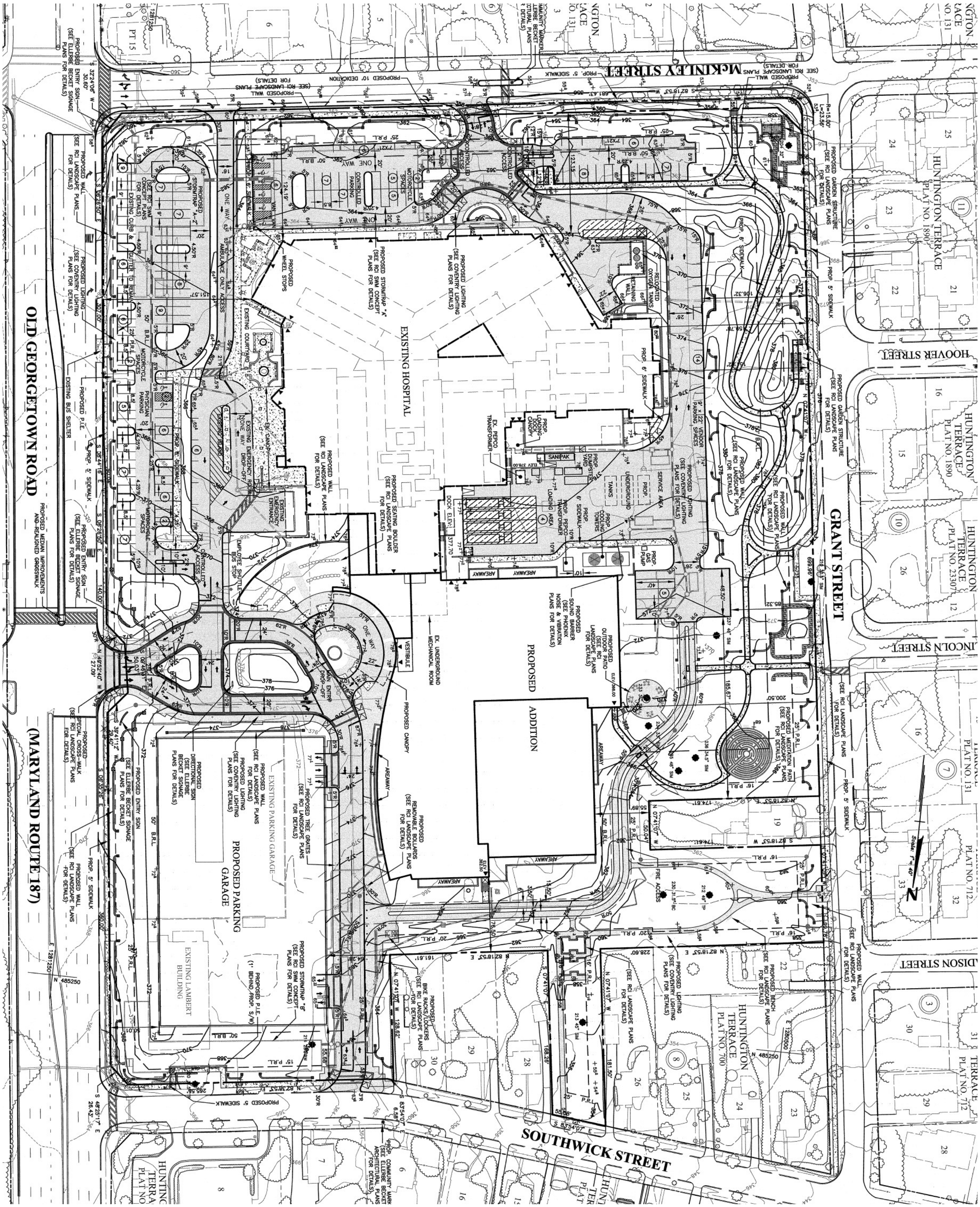
2. Proposed Expansion

Suburban proposes to tear down the 23 houses it owns on McKinley Street, Lincoln Street and Southwick Street, as well as its existing office building (the Lambert Building) and parking garage, and construct a large addition to its existing hospital building and a new, larger parking garage. The expansion plan also includes changes to vehicular access and circulation and extensive gardens along Grant and Southwick Streets. The site plan is reproduced in full on the following page and in parts, at a larger scale, on the pages that follow. The plan shown is the "Alternate Garage Site Plan," which depicts the alternate garage, rather than the original garage. I have used this plan because in my view, the variance needed for the original garage cannot be granted. Therefore, if any plan is approved, it must include the alternate garage. An illustrative campus plan depicting the site plan in color is provided in Appendix A at 3. It is easier to see on the illustrative plan both the vehicular circulation pattern and the extensive pedestrian paths proposed throughout the Hospital campus.

Site Plan, Ex. 73(ddd)
(full name: Alternate Garage Site Plan)



Site Plan, Ex. 73(ddd) (graphics only)



Site Plan, Ex. 73(ddd), Development Standards Table

DEVELOPMENT STANDARDS Sec. 59-C-1.32, Sec. 59-G-2.31	REQUIRED/ PERMITTED	PROPOSED
Minimum Area: 59-G-2.31	5 ac	15.17 ac
Gross Tract		15.17 ac
Area of Dedication		0.17 ac
Net Tract		15.0 ac
Maximum Lot Coverage: Sec. 59-C-1.328	35%	34.64%
Minimum Frontage: Sec. 59-G-2.31	200 ft.	950 ft
Building Setback: Sec. 59-G-2.31		
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.	50 ft Varies to 87.1 ft (max. bldg. ht.)	50 ft Varies to 287.3 ft
Building Height Limit: Sec. 59-G-2.31		
Hospital	145 ft	87.1 ft
Hospital Addition	145 ft	62.7 ft
Garage	145 ft	45.9 ft
Parking: Sec. 59-E		
Number of Parking Spaces: Sec. 59-E-3.7	**937 spaces**	**1417 spaces**
Gross Floor Area (558,697 sf @ 1sp/1000 sf)	559	
Resident Physicians (63 Res. Phys. @ 1sp/resident physician)	63	
Employees on main shift (763 employees @ 1space for each 3 employees)	255	
Visiting Physicians (178 phys. @ adequate rate: 1 sp / 3 visiting physicians)	60	
Parking Distribution: 59-E-2.23, COMAR 05.02.02, Sec. 59-E-2.3		
Regular	905	1359
Handicap (total)	32	31
Handicap	25	21
Handicap van	7	10
Subtotal	**937**	**1390**
Motorcycle (2% of auto spaces, max 10/lot)	16	16
Emergency vehicle		6
Special vehicle		5
Total	**953**	**1417**
Bicycle	32	52
Surface Parking	N/A	173
Garage Parking	N/A	1244
Parking Setbacks: Sec. 59-E-2.83*		
A distance not less than the applicable building front and rear yard and twice the building side yard required in the zone (R-60)		
Street	25 ft	25 ft/85.3 ft
Side Street, Corner Lot	15 ft	25ft/50 ft
Adjoining Lot		
Side	16 ft (8'x2)	185.67 ft
Rear	20 ft	N/A
(1) if 150 to 199 parking spaces are provided, the required side and rear parking facility setbacks must be increased by 5 feet;	N/A	N/A
(2) if 200 or more parking spaces are provided, the required side and rear parking facility setbacks must be increased by 10 feet.		
Street	25 ft	50 ft
Side Street, Corner Lot	15 ft	25 ft/55.68 ft
Adjoining Lot		
Side	26 ft	64.28 ft
Rear	30 ft	N/A
Parking Landscaping Requirements: Sec. 59-E-2.73, Sec. 59-E-2.83		
Internal Green Space (Sec. 59-E-2.73)	5%	9.8%
Shaded Paved Areas (Sec. 59-E-2.83)	30%	30.2%

The three main components of the proposed expansion plan will be discussed in turn: the hospital addition, the garage and the open space.

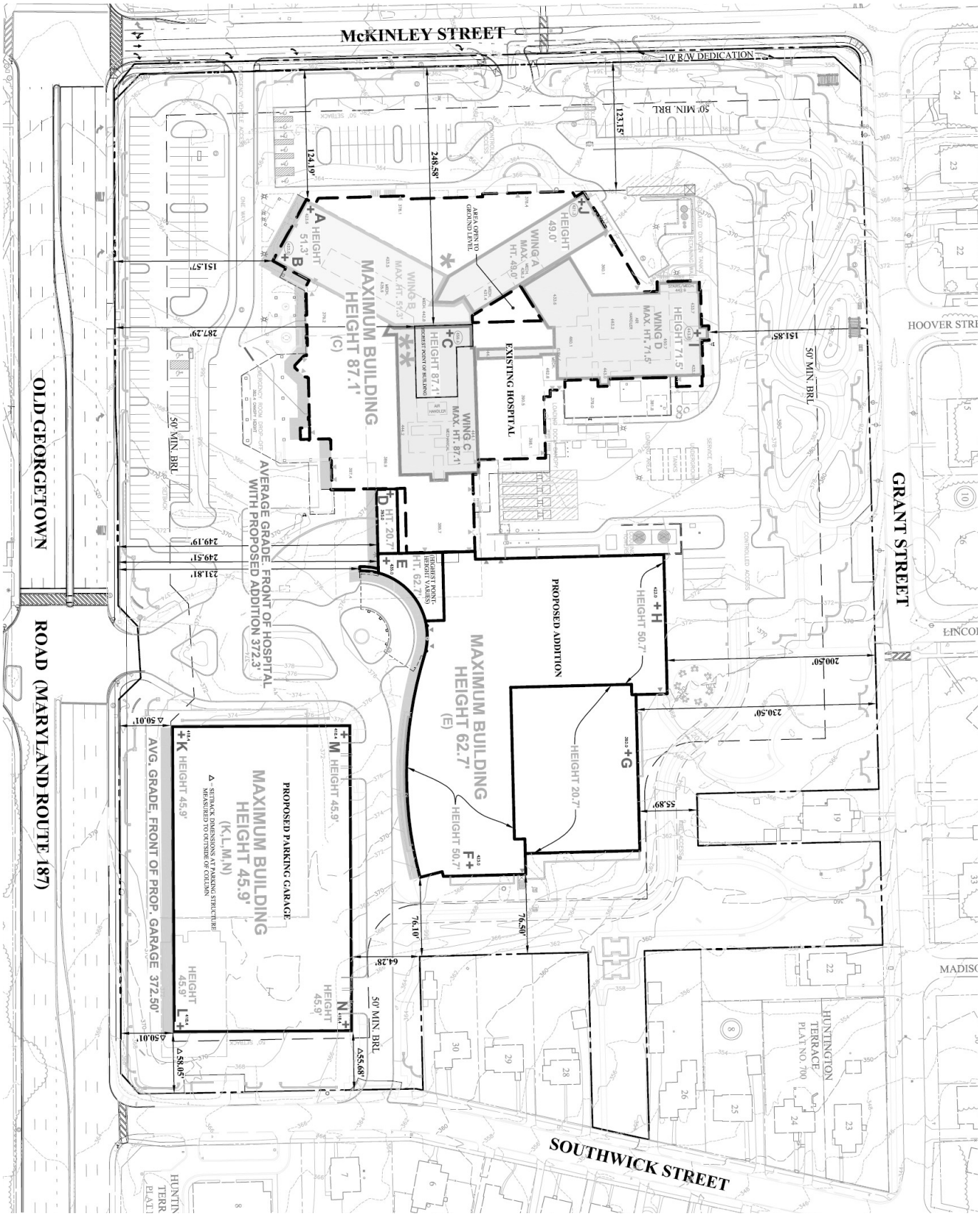
a. Hospital Addition

The proposed hospital addition has a floor area of 235,597 gross square feet. Its shape is irregular, with rough dimensions of 275 feet on the south, 310 feet on the east, 215 feet on the north and 280 feet on the west.[8] As shown on the Building Height and Setback Exhibit on the next page, different parts of the building are proposed with different heights. The maximum height would be 62.7 feet, for a small portion of the building around the main entrance. The bulk of the addition would be 50.7 feet in height. A rectangular area measuring roughly 120 feet by 160 feet would be 20.7 feet in height. This lower height serves two functions: it provides access to natural light for patient rooms on the upper floors of the addition (a requirement of the Hospital Guidelines), and it reduces the scale of the building for some of the closest homes on Grant and Southwick Streets.

The addition would be set back approximately 56 feet from the nearest residential property line (a property for which Suburban obtained a purchase option during the course of the hearing), 76 feet from the property lines of the three closest homes on Southwick Street, 249 feet from Old Georgetown Road and 200 feet from Grant Street. The height and setback exhibit below displays these relationships. On the following pages are tables taken from the same exhibit, which identify in some detail the building heights at various points on the existing hospital building and the proposed addition, as well as some relevant development standards.

[8] The Hearing Examiner derived these figures by scaling them off on Exhibit 263(b).

Alternate Garage Building Height and Setback Exhibit, Ex. 263(b), graphics only



Alternate Garage Building Height and Setback Exhibit, Ex. 263(b), Development Standards, Maximum Building Heights Table and Notes

DEVELOPMENT STANDARDS	Permitted/ Required	Proposed
Minimum Area (59-G-2.31(1))	5 ac	15.2 ac
Minimum Frontage (59-G-2.31(2))	200 ft	950 ft
Building Setback (59-G-2.31(3))		
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.	50 ft	50 ft min
Building Height Limit (59-G-2.31(6))		
Hospital	145 ft max	87.1 ft
Garage	145 ft max	45.9 ft

MAXIMUM BUILDING HEIGHTS			
Building	Point	Roof Elev.	Ground Elev.	Building Height (ft.)
Existing Hospital	C	459.4	372.3	87.1
Proposed Addition	E	435.0	372.3	62.7
Proposed Parking Structure	K,L,M,N	418.4	372.5	45.9

* ELEVATIONS CRITICAL TO HEIGHT AND SETBACK REQUIREMENT DETERMINATION ARE SHOWN HEREON. NOT ALL INTERMEDIATE ELEVATIONS WITHIN THE HEIGHT AND SETBACK LIMITATIONS ARE INDICATED.

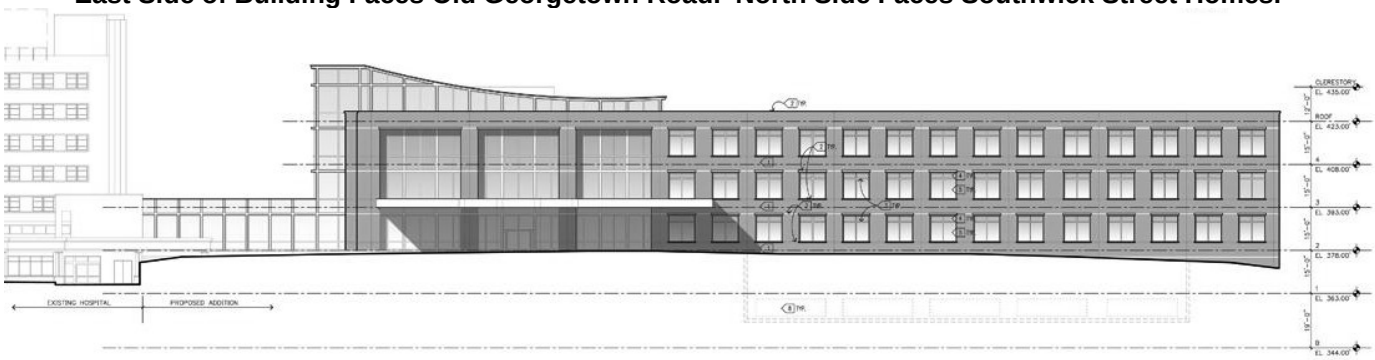
** HIGHEST POINT OF BUILDINGS ARE IDENTIFIED. ELEVATIONS OF ROOFTOP EQUIPMENT SHOWN DO NOT RESULT IN INCREASED BUILDING HEIGHT

Alternate Garage Building Height and Setback Exhibit, Ex. 263(b), Building Height Tabulations for Setback

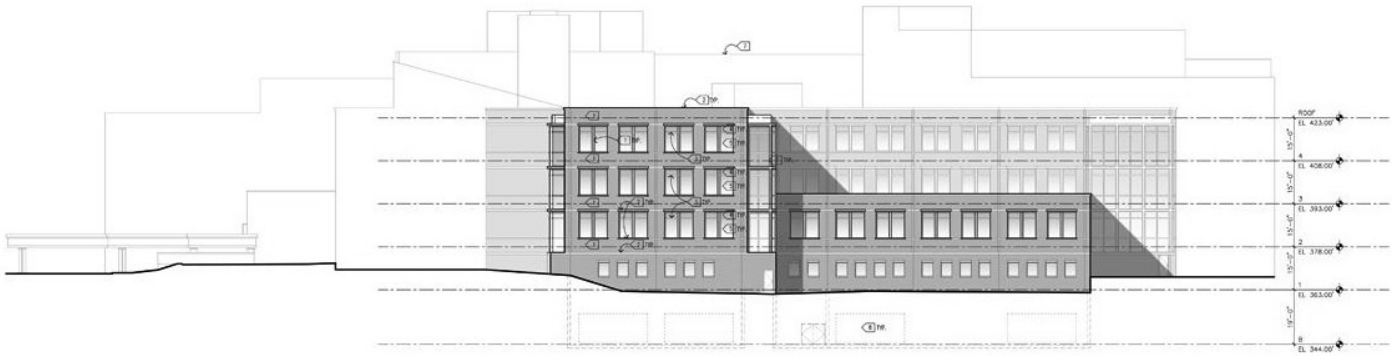
BUILDING HEIGHT TABULATIONS FOR SETBACK			
Hospital Building			
Point	Roof Elev.	Ground Elev.	Building Height (ft.)
A	423.6	372.3	51.3
B	423.6	372.3	51.3
C	459.4	372.3	87.1
D	393.0	372.3	20.7
E	435.0	372.3	62.7
F	423.0	372.3	50.7
G	393.0	372.3	20.7
H	423.0	372.3	50.7
I	443.8	372.3	71.5
J	421.3	372.3	49.0
Parking Structure			
Point	Roof Elev.	Ground Elev.	Building Height (ft.)
K	418.4	372.5	45.9
L	418.4	372.5	45.9
M	418.4	372.5	45.9
N	418.4	372.5	45.9

The exterior design planned for the addition may be seen on the elevations that follow. An artist's rendering of the proposed main entrance drive is provided in Appendix A at 7.

Hospital Addition East and North Building Elevations, from Ex. 114 at 53
East Side of Building Faces Old Georgetown Road. North Side Faces Southwick Street Homes.

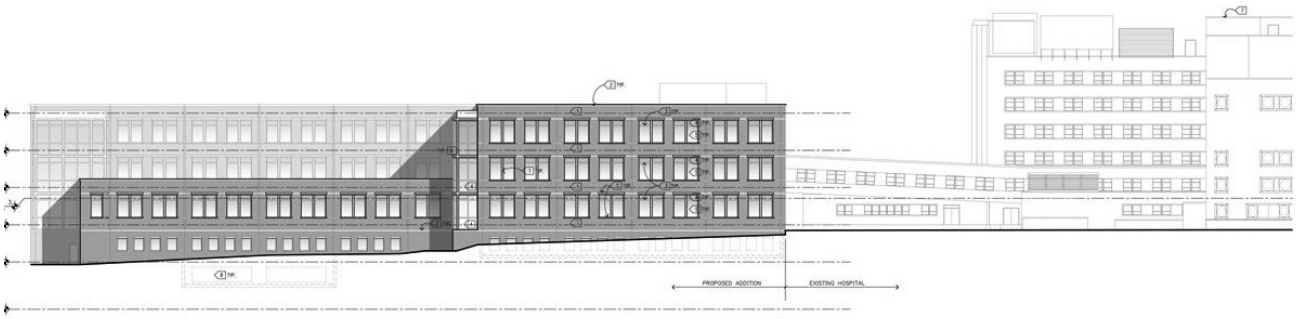


EAST ELEVATION

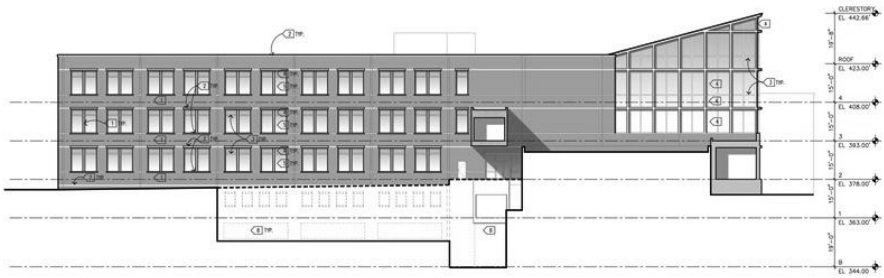


NORTH ELEVATION

Hospital Addition West and South Building Elevations, from Ex. 114 at 54
West Side of Building Faces Grant Street. South Side Faces Existing Hospital.



WEST ELEVATION



SOUTH ELEVATION

The Hospital's consultants have broken down the square footage of the hospital addition into three parts: "standard of care" space, hospital expansion space, and physician office space. The standard of care space represents the square footage considered necessary to bring the Hospital into conformance with current healthcare standards by improving and properly sizing existing facilities and required services, e.g. making most patient rooms private and expanding the size of operating rooms. *See* Ex. 25 at 2. The hospital expansion space represents square footage intended to accommodate future growth. The physician office space is space within the hospital addition that would be dedicated to physician offices. *See id.* The following tables, excerpted from Exhibit 142(a), show the various square footages:

Existing Buildings

Building	Size
Lambert Building	17,000 sq. ft.
Main Hospital	323,100 sq. ft.

Building Addition

Area	Size
Standard of Care Expansion	134,996 gross sq. ft.
Additional Hospital Space	76,996 gross sq. ft.
Physician Office Space	38,000 gross sq. ft.
Total Addition Area	235,597 gross sq. ft.

The building addition would increase the percentage of private rooms from 51 percent to 83 percent, and give the Hospital the flexibility to increase its bed capacity by 56, from 238 to 294. *See* Ex. 114 at 50. The expanded Hospital is also expected to have an increase in employees, as shown in the following tables (excerpted from Exhibit 142(a)):

Current Employees

Current total employees	1,682
Current full time/regular part-time employees	1,400
Employees on day shift (7-3)	635
Employees on evening shift (3-11)	290
Employees on night shift (11-7)	108
Total physicians with privileges	400
Avg. Hospital-based physicians on day shift	55

Proposed Employees

New full-time equivalent employees[9]	260
New employees on day shift (7-3)	128
New employees on evening shift (3-11)	59
New employees on night shift (11-7)	22
New resident physicians on day shift	8

The driving factor in the size of the building footprint is the Hospital's goal to have approximately 77,000 square feet on one floor in the addition, to accommodate the Surgery Department layout recommended by its architects. The chief architect, Mr. Hagerty, explained that the addition footprint should accommodate several elements that he considers essential to meet the Hospital's needs. The most important of these is that the various surgical areas -- operating rooms, post-anesthetic care units (PACUs), and Phase II recovery rooms – be adjacent to one another. This requirement comes from the Hospital Guidelines, which specify that in new construction, "at least one door to [the PACU] shall provide access directly from the surgical suite without crossing public hospital corridors," and "at least one door shall access the PACU without crossing unrestricted corridors of the hospital." *See* Tr. 11-18-08 at 7; Ex. 395(b) at 79. Thus, the PACU has to have direct access to the surgical suite and the Phase II recovery area has to have direct access to the PACU.

Mr. Hagerty explained that most post-operative complications are related to infection that happens during surgery, so infection control is extremely important. The Hospital Guidelines specify that the surgical suite must be divided into three designated areas: unrestricted, semi-restricted and restricted. *See* Ex. 395(b) at 77. Street clothes are permitted in the unrestricted area and traffic is not limited. The semi-restricted area is to include support areas such as storage for clean and sterile supplies, and corridors leading to the restricted areas. Traffic is limited to authorized personnel and patients, and personnel are required to wear surgical attire. The restricted area includes operating rooms, the sterile core and scrub sink areas. *See* Ex. 395(b) at 77.

[9] Full-time equivalent employees represent the approximate number of full-time employees required to operate the Hospital seven days per week, 365 days per year.

The surgical suite is proposed with the following spaces:

Surgical Suite Spaces, from Ex. 114 at 29 and testimony

Unit	Square Feet
Surgery/Operating Rooms	27,250
Pre-op, used both to prepare patients for surgery and for stage two recovery, when patient is awake but not ready to go home or to an inpatient bed.	10,100
PACU, used for immediate post-surgery recovery with patients under very close observation.	9,850
Staff support and changing space for staff to prepare for sterile environment.	7,500
Decontamination area for soiled goods after surgical procedures.	250
Storage area, size set by Hospital Guidelines.	2,000
Circulation between facilities, requiring eight-foot corridors so two beds can get past one another in any emergency.	7,155
Waiting room, so surgeons can update family members	1,500
Total	65,605

Mr. Hagerty stated that a sterile processing unit, a huge room with high tech dishwashers that sterilize the instruments, would normally be located on the same floor with the operating rooms. In this case, to save space he put it one floor below, with direct access to the sterile core of the surgical suite through two elevators, one for clean items and one for dirty. *See* Tr. 11-18-08 at 30-31.

Mr. Hagerty opined that the surgical suite needs to be roughly square to minimize the distance from the PACU to the farthest operating room. He explained that if a patient in the PACU has a crisis and has to go back to the operating room, staff wants that distance to be as short as possible to ensure a safe transfer. *See id.* at 34. The desired shape and the square footage requirements together led to the recommended footprint, which measures about 300 feet by 230 feet.

The addition has to connect to the existing building, with several important factors to take into account (Tr. 11-18-08 at 36-43; Ex. 114 at 32):

- Keep the mass of the building as far away from residences as possible
- Must maintain patient care services without interruption 24/7 throughout construction. Hospital cannot shut down any part of existing facilities during construction.
- Cannot block windows into patient rooms, where natural light is required. Some patient rooms will remain in existing building, so addition cannot block those windows.
- Must satisfy setbacks and building coverage limit.

- Building addition needs to be connected to existing support functions for safe patient flow and improved functionality
- Parking and access points should be close to Old Georgetown Road and away from the neighborhood.

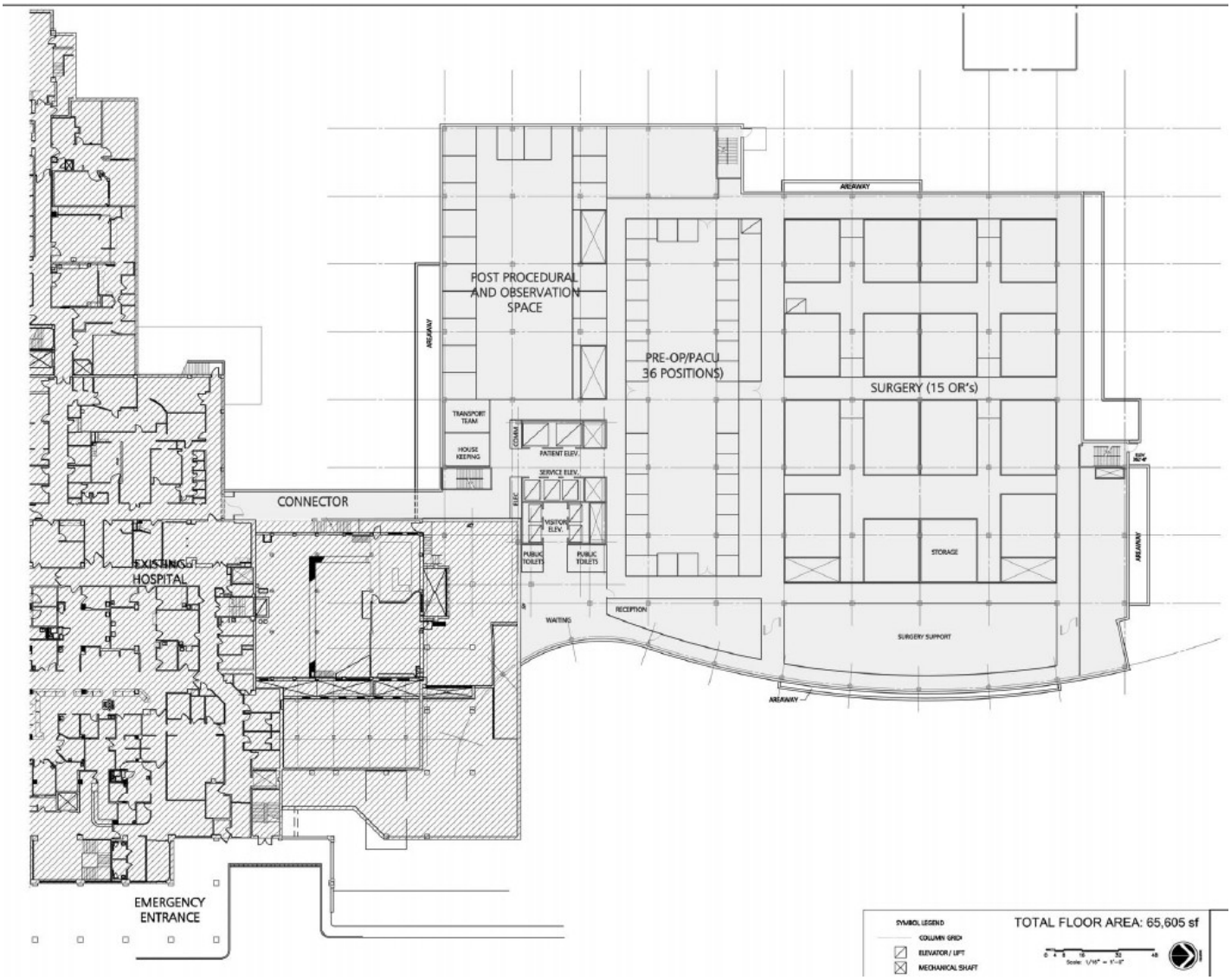
As Mr. Hagerty described it, having determined how much space the addition would need, he set out to find a place for it on the site. *See* Tr. 11-18-08 at 41-44.; Ex. 114 at 33-37. He found that the block of space they need doesn't fit south of the existing hospital building because it would block windows and lack proper adjacencies. There is not enough space on the west side, where it would violate setbacks and place the addition too close to residences. Northwest of the existing building he found that an addition would be too close to residences, violate setbacks, block the loading dock, and lack proper adjacencies, plus it would still require closing Lincoln Street. East of the existing building there is not enough space for the footprint Mr. Hagerty considers necessary without violating setbacks and coverage requirements, and blocking the Hospital entrance and part of Old Georgetown Road. Construction on the east side of the existing building also would require an interim main/emergency entrance, which Mr. Hagerty does not consider feasible.

On the north side of the existing building, Mr. Hagerty found that the addition would not fit unless they made use of hospital-owned land on both sides of Lincoln Street. That brought his team to what he described as an "aha" moment, when they realized that closing the first block of Lincoln Street and unifying the hospital campus was the only solution to recommend. *See id.* at 46. As he described it, this location provides sufficient space for the Hospital to maintain operations in lower Montgomery County. It allows direct access from the addition to the Emergency Department, curing an important deficiency for the trauma center. It allows the addition to comply with setback and coverage requirements by removing hospital-owned houses. It allows traffic circulation to be contained on campus by directing traffic to Old Georgetown Road (the Hearing Examiner notes that most, but not all hospital traffic would use the Old Georgetown Road driveway). The garage is placed as close to Old Georgetown Road as setbacks permit, with the smallest possible footprint and just enough access corridor between garage and addition to meet fire emergency requirements and allow cars in and out.

The recommended plan separates emergency room traffic from other traffic, moving some of the congestion away from the emergency entrance and helipad. It creates a separate access point for emergency ambulances and resolves other circulation and access deficiencies. *See id.* at 42-52; Ex. 114 at 40-42.

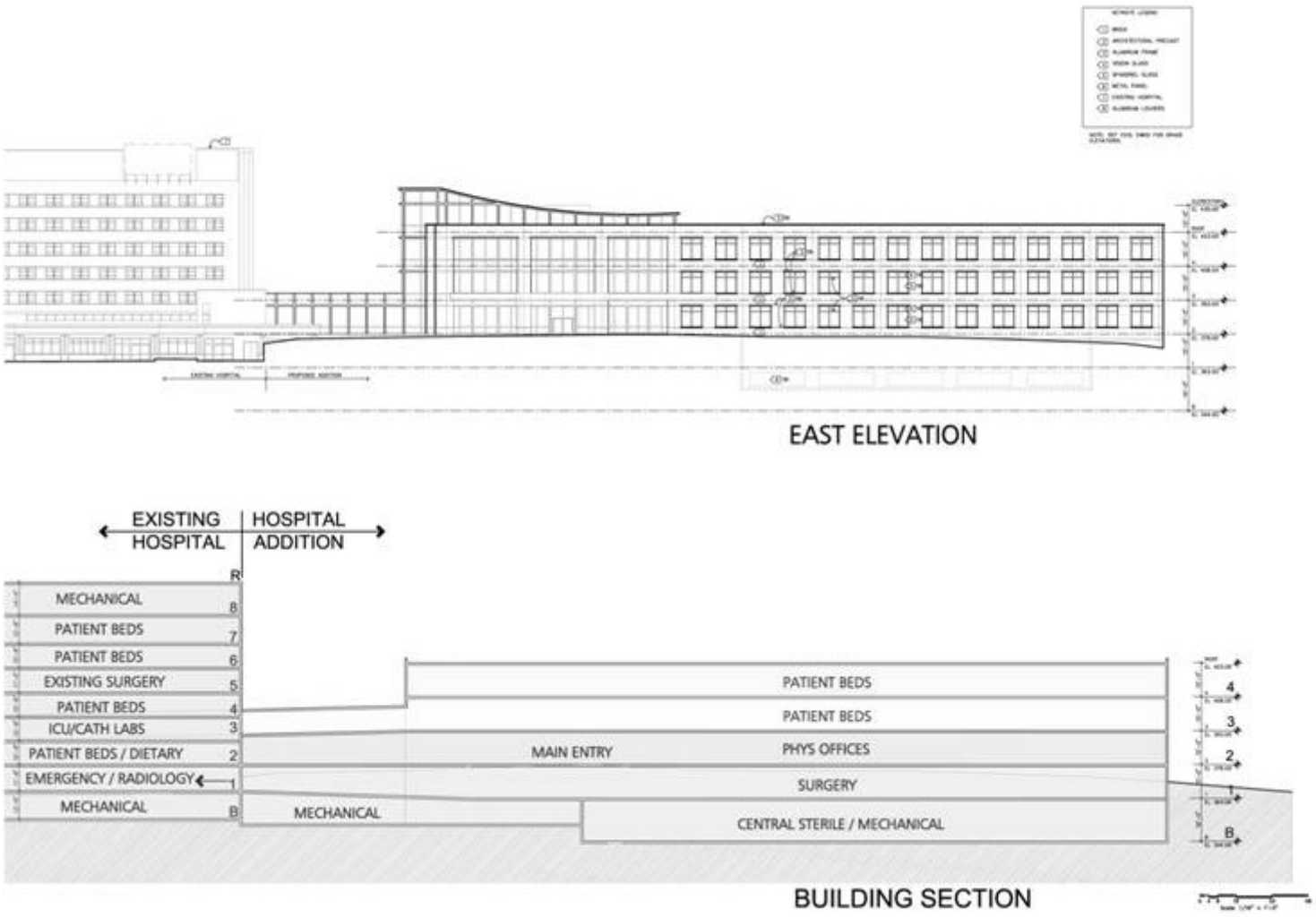
The proposed surgical suite floor plan (on the first floor, to provide a same-floor connection to the Emergency Department in the current building) is shown below.

First Floor Plan, Ex. 7(e)



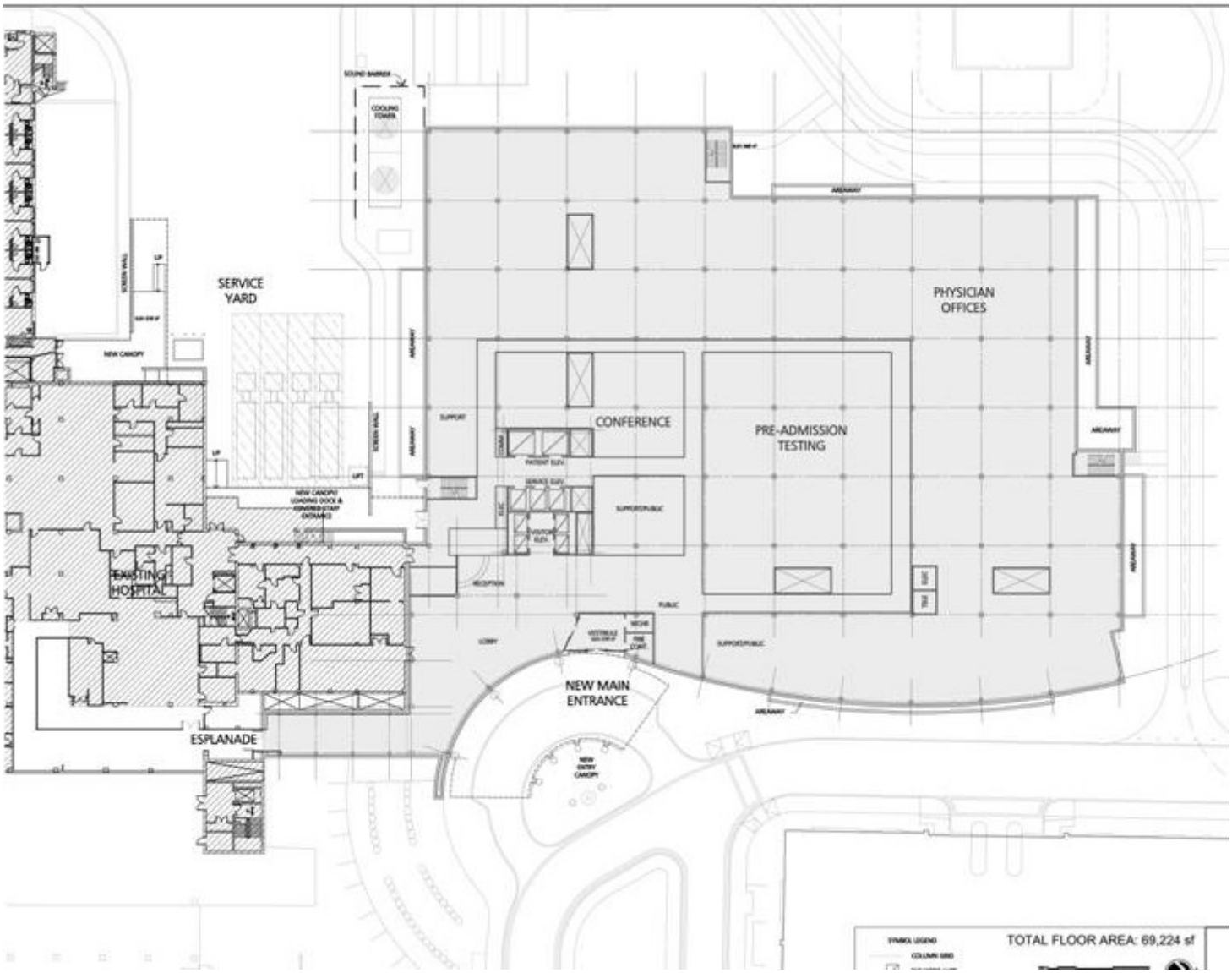
In addition to the surgical suite, the addition is proposed to house two floors of patient beds arranged in an L-shape on the top two floors; mechanical equipment sharing the cellar space with sterile processing; and on the ground floor for easy way-finding, patient check-in, physician's offices and other functions such as meeting spaces. Mr. Hagerty noted that mechanical equipment normally would go on the roof or on a mini-floor above surgery, but putting it in the cellar reduces neighborhood noise impacts. The mechanical systems were designed with the air intake on the neighborhood side and the outflow on the Old Georgetown Road side, to minimize noise impacts. The elevation drawing below shows the relationship between functions on each floor of the existing hospital building and the connections and functions proposed in the addition.

East Elevation and Section, Ex. 115

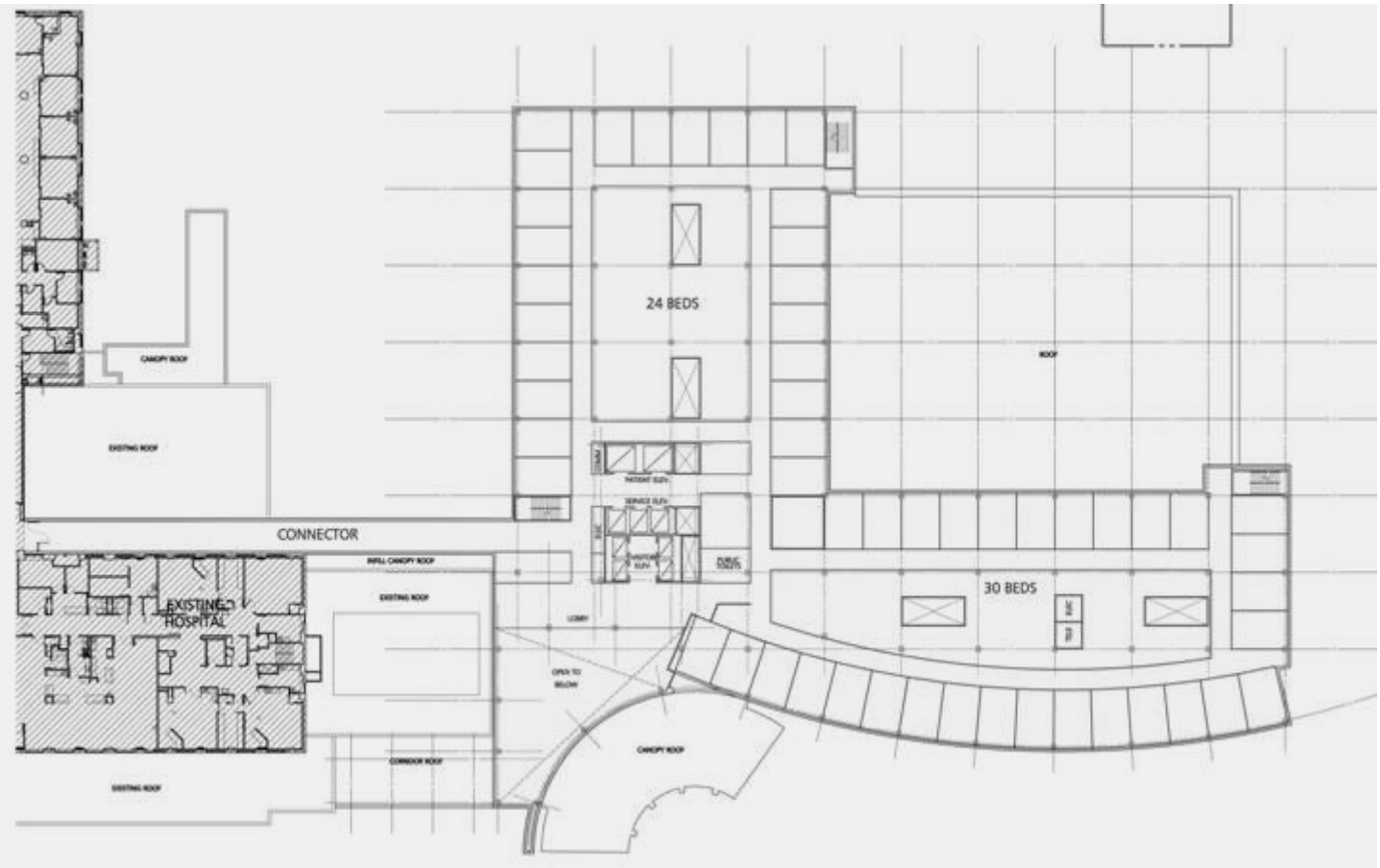


Below is a floor plan for the second floor, which is the ground floor with the new main entrance. Following that is a floor plan for the third floor, housing patient beds. The plan for the fourth floor is substantially the same as the third floor.

Second Floor Plan, from Ex. 114 at 47



Third Floor Plan, from Ex. 114 at 48



b. Garage

The Hospital originally proposed an addition to its existing parking garage to provide the additional parking desired as part of this modification. The original garage design would have allowed continued use of the existing garage during construction of the garage addition and the hospital addition. It would have resulted in a garage with linear dimensions of approximately 300 feet by 185 feet,[10] two levels below grade, one level partially below grade and seven levels above grade. *See* Ex. 154; Staff Report at 4. The original garage design was 68.3 feet in height for most of its length, with a step-down in height for the last 55 feet before Southwick Street. A 55-foot strip along Southwick Street was 38.3 feet in height at its east end, closest to Old Georgetown Road, and 33.3 feet in height at its west end, closer to Grant Street.

[10] Scaled off by the Hearing Examiner on Ex. 154.

The original garage design would yield 1,196 parking spaces. *See* Ex. 431(j). The combination of its height and its location would require a variance. Under Section 59-G-2.31, all buildings on the site of a hospital special exception must be set back from lot lines by at least 50 feet. In addition, the distance from any lot line must be at least as great as the height of that portion of the building, if the adjoining land is zoned for single-family detached homes. Because roadways take on the zoning of adjacent land, Old Georgetown Road can be considered residentially zoned. Accordingly, the specific standards for the special exception require a 68-foot garage to be set back at least 68 feet from the front lot line. The location proposed for the garage is 50 feet from the Hospital's Old Georgetown Road property line, requiring a variance from the specific standards for the use.

The Zoning Ordinance permits the Board to grant a variance if it finds, among other things, that:

> By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of [the Zoning Ordinance] would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

Code § 59-G-1.31(a).

The Hospital argued that a variance is justified because its irregular northern property line creates constraints in the placement of new buildings. *See* Tr. 12-16-08 at 26-27; Ex. 443(a) at 23-25. Mr. Wrenn testified that the logical place for the garage is close to Old Georgetown Road, where most vehicles will access the site, but the irregular property line forces the garage closer to Old Georgetown Road than the standards for the use allow. On cross-examination, Mr. Wrenn acknowledged that the location proposed for the hospital addition, not just the irregular property line, prevents the garage from being pushed back farther from Old Georgetown Road. *See id.* at 166.

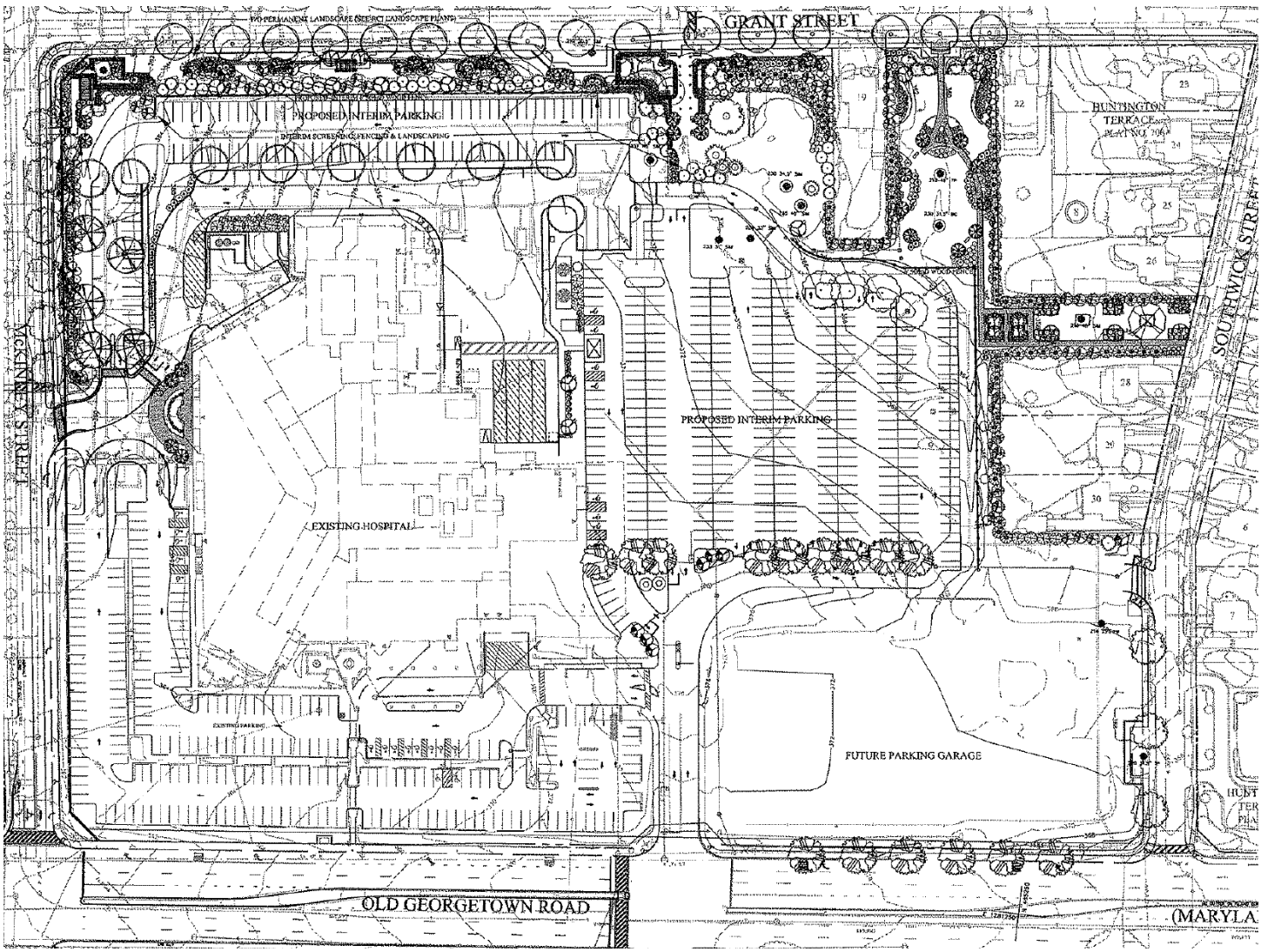
The Hearing Examiner found the argument in favor of a variance entirely unpersuasive. The Hospital's difficulty in siting the garage 18 feet farther back from Old Georgetown Road is due to its choices regarding the size of the garage and the size and location of the hospital addition. These are constraints created by the Hospital's design choices, not by extraordinary situations or conditions peculiar to the site. Moreover, the fact that the Hospital has proposed an alternate garage that does not

require a variance is *prima facie* evidence that a variance is not needed to accomplish the Hospital's goals. In the Hearing Examiner's view, the requested variance cannot be granted.

The Hospital proposed an alternate garage at the urging of Technical Staff. The alternate garage, which is shown on all of the plans and drawings reproduced in this report, would not require a variance. It would be in the same location as the original garage, with the same footprint, i.e., the same length and width. It uses a more efficient design that allows the builders to go deeper underground, so it can produce more parking spaces in a significantly shorter structure. The alternate garage as shown on all of the exhibits presented during the hearing has a height of 46.8 feet and a total of seven floors, two of them underground. This garage would provide a total of 1,244 parking spaces. At the very end of the hearing, on rebuttal, Mr. Corapi presented a memorandum from Mr. Hagerty stating that the height of the garage could be lowered further by putting more of it underground and reducing the number of spaces slightly. *See* Tr. 7-24-09 at 89-90; Ex. 431(j). The shorter alternate garage would be 35.3 feet in height and provide 1,176 spaces, only 20 fewer than the original garage design. *See* Tr. 7-24-09 at 89; Ex. 431(j). The Hospital continues to believe that the taller alternate garage would be compatible with the neighborhood, and there is some concern that at the busiest times of day and busiest times of year people may have trouble finding parking, but the new garage and circulation pattern will greatly improve overall parking access, so they think they can manage with the shorter alternate garage. *See* Tr. 7-24-09 at 90. Mr. Corapi noted that the shorter alternate garage will result in a higher construction cost because of increased below-grade parking. He stated that the Hospital will bear that cost if the Hearing Examiner considers it necessary to recommend a height reduction for the garage, and stressed that reducing the height of the garage will not jeopardize the viability of the expansion plan, whereas the Hospital believes that reducing physician office space or continuing satellite parking – two other alternatives discussed during the hearing as ways of reducing the size of the garage – would. *See* id. at 91. If the Board decides to grant the present modification, the Hearing Examiner recommends that the plan be approved with the shorter alternate garage, at 1,176 spaces, to limit the visual impact of the structure on neighboring residences.

The alternate garage would occupy the sites of the existing garage and the Lambert Building, both of which would have to be torn down before construction could begin. To provide for on-site parking during construction of the new garage, the Hospital proposes to build an interim surface parking lot on the ground area intended for the hospital addition. The interim parking lot would come quite close to adjacent homes on Southwick, within 35 to 40 feet of the property lines, and would be surrounded by a fence and landscaping. *See* Ex. 235(c). The location and size of the proposed interim parking lot may be seen on the drawing on the next page. The interim parking lot is expected to provide 735 parking spaces, so the total on-site parking would be roughly the same as it is now (currently there are 730 spaces between the garage and surface lots). *See id.*

Interim Parking Composite Landscape Plan, Ex. 235(c)



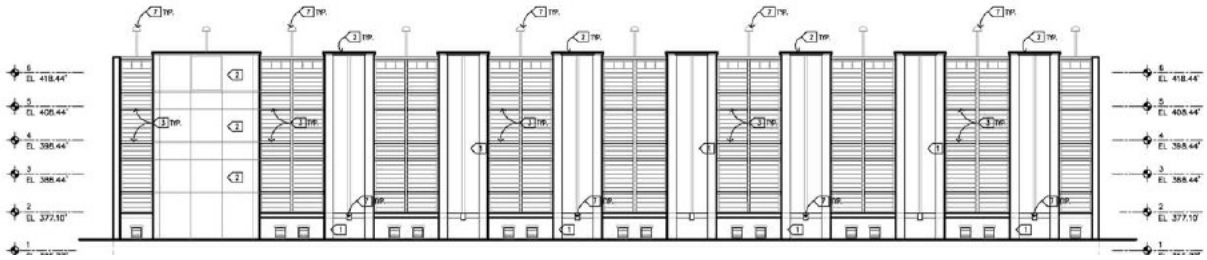
The Hospital presented extensive testimony and other evidence about the appearance of the proposed alternate garage. Mr. Hagerty testified that the exterior walls would alternate between brick panels and louvered sections, with the louvers tilted at an angle to allow air circulation while reflecting light back into the garage. He noted that the lighting inside the garage would be designed to illuminate the drive aisles most brightly, with decreasing levels of lighting as one moves toward the edges of the garage. Mr. Hagerty acknowledged that a very small amount of light might be visible from outside the garage, but stated that it would be no more than a glow. He contrasted this with the existing garage, which has vertical louvers that are very unsuccessful at keeping light in. A photograph of the existing garage follows. A representation of the proposed garage showing the interior lighting pattern and the louvers is provided in Appendix A at 33.

Mr. Hagerty was also questioned about lighting on the top level of the garage, which of course would be open. Mr. Hagerty stated that the top level would have pole lighting, but the lights would be installed towards the center of the garage, about 140 feet from the edges. *See* Tr. 3-23-09 at 66. He observed that due to the height of the garage, the location of the light poles and a low parapet wall planned for the top level, the angle of vision for a person standing on the ground would not allow anyone to see the light until he or she was at least three properties away. *See id.* at 66-67. At that distance, one would see just a bit of a glow at each fixture. He noted, moreover, that while the garage stair tower would have glass walls (intended to help with safety and way-finding), it would face the Hospital, and would be blocked from view from neighboring residences by the parking garage building. Mr. Hagerty acknowledged that the top few feet of the stair tower could be visible from residences because the stair tower is taller than the rest of the garage by a few feet, but he emphasized that those top few feet will be wrapped in an opaque glass, to avoid lighting spillover.

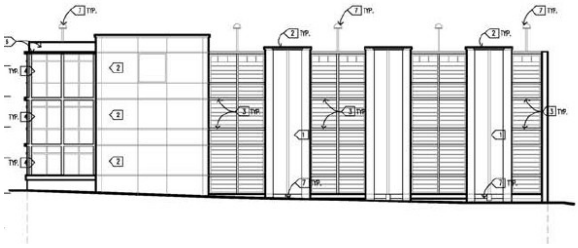
Exterior elevations for the alternate garage are reproduced below. The landscaping shown on the elevations is not accurate. The landscaping actually proposed around the garage involves layers of plantings, as described in Part III.G above. Appendix A at 8 contains an artist's rendering depicting the view of the garage from farther west on Southwick Street. Unfortunately, the artist depicted such a

heavy growth of trees and other plant material that it is difficult to assess what the garage would look like upon construction, when new plantings have not yet grown to a substantial size.

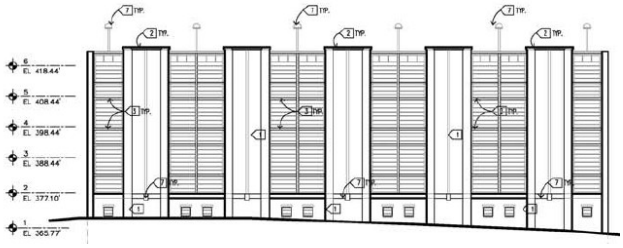
Alternate Garage Design Exterior Elevations, from Ex. 260(f)
(landscaping shown is generic, not based on submitted landscape plans)



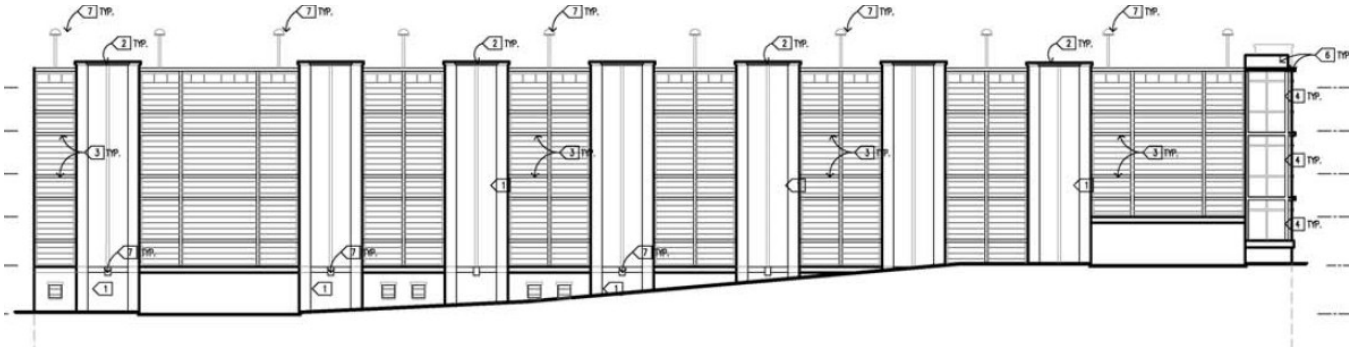
East Elevation, Facing Old Georgetown Road



South Elevation, Facing Existing Hospital



North Elevation, Facing Southwick Str.



West Elevation, Facing Grant Street

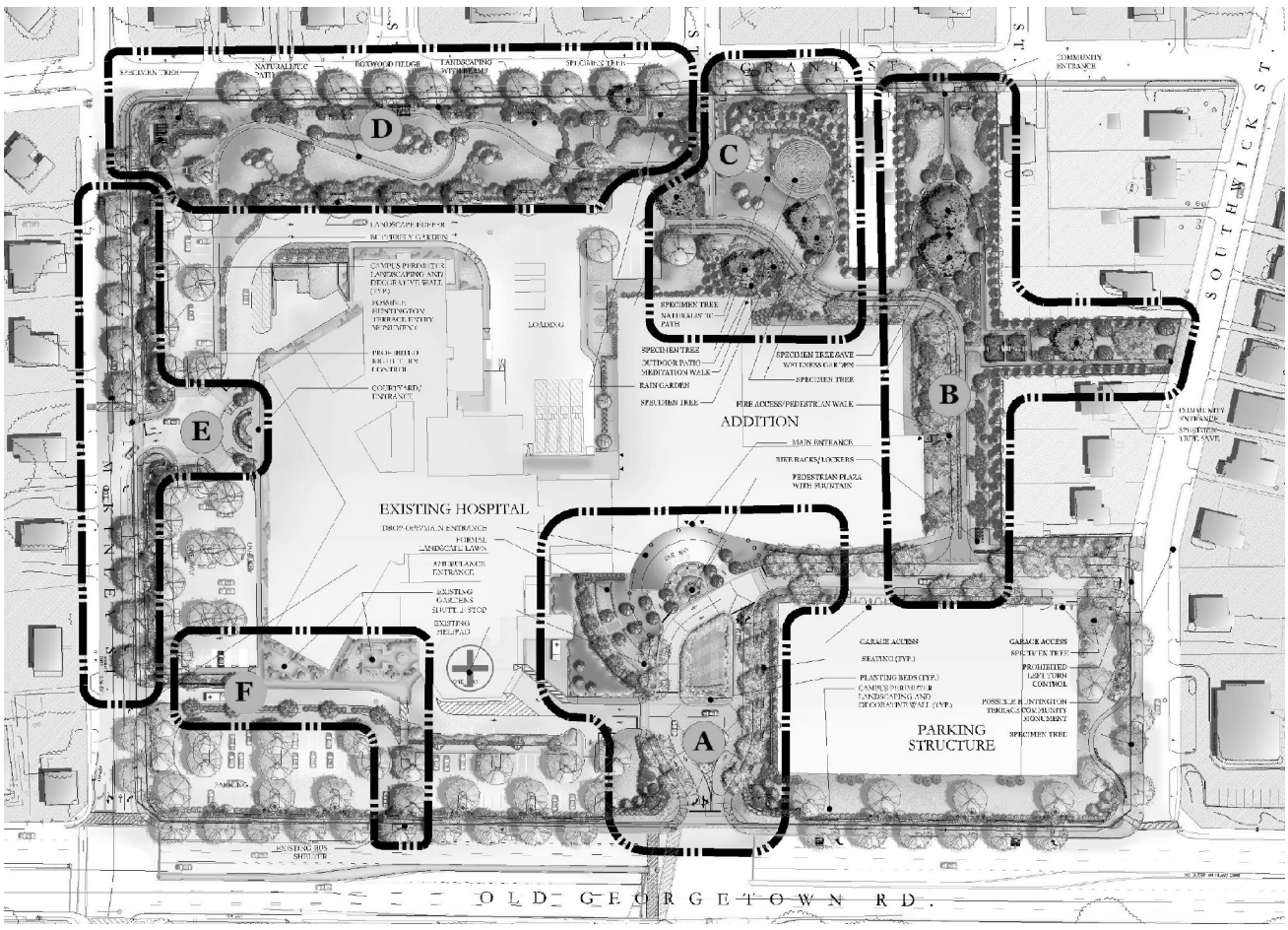
c. Open Space

The Hospital proposes extensive gardens and open spaces as part of its expansion. Most of the gardens would be located on the sites of the 23 rental houses Suburban proposes to remove. In

some cases the gardens would incorporate existing mature trees. In all cases they would include extensive, well-planned landscaping. The Hospital's architect, Matthew Leakan, testified in great detail on both direct and cross examination about the types of plantings proposed, their visual properties, in some cases their longevity, and their expected sizes at planting and various stages of maturity. *See* Tr. 3-9-09, 3-13-09, 3-20-09. He emphasized that all of the proposed buffer plantings are multi-layered, with small plants, bushes, ornamental trees, deciduous trees and in some locations evergreens. Another feature that is common to all the gardens is a low, decorative brick wall planned to mark the edge of the hospital campus on all sides.

The proposed plans provide for six garden areas, as shown on the plan that follows. Each is described briefly following the plan, and may be seen in more detail and in color in Appendix A, pages 9 to 14.

Garden Plan, Ex. 73(ee)



A. The Ellipse

The Ellipse is the area surrounding the proposed main entrance on Old Georgetown Road, occupying in part former Lincoln Street right-of-way. It includes a tree-lined streetscape, lawn areas, a decorative fountain and adjacent gardens, benches, street lighting and sidewalks. Environmentally friendly design features include shaded walkways, an employee shuttle bus stop and full cut-off light fixtures to reduce light pollution. *See* Ex. 73(ff).

B. The Pedestrian Promenade

The Pedestrian Promenade is located west of the proposed garage, between the hospital addition and Southwick Street. It occupies two lots that are currently in residential use, one fronting on Southwick Street and one on Grant Street. The Promenade is comprised of two gardens, the Wellness Garden and the Healing Garden. *See* Ex. 73(gg). The Wellness Garden occupies a lot that fronts on Grant Street. It includes an entrance from Grant Street, two specimen trees to be saved, seating areas and a "balance path" – a low, raised walkway that can be used for physical therapy. The Healing Garden, also known as a "sensory garden," occupies a Southwick Street lot. It contains an entrance from Southwick Street, a 45-inch Silver Maple to be saved, and the main feature, a raised planter bed with integrated benches where people can experience some interesting plants like scented herbs or plants with a texture, such as lamb's ear. *See* Ex. 73(gg), Tr. 3-9-09 at 177-79. This sensory garden would be surrounded by pavers and accessible to people in wheelchairs or with disabilities. *See id.*

C. The Relaxation Garden

This garden is located between the proposed addition and Grant Street, occupying a lot that is currently residential and part of the Lincoln Street right-of-way. It contains a patio furnished with a table and chairs, a "serenity garden" with seating, and a "Meditation Walk" – a labyrinth, built low to the ground, designed as a quiet place for meditation and tranquility. *See* Ex. 73(hh). It also contains four specimen trees to be saved.

D. The Grant Greenway

This garden stretches along Grant Street from the current Lincoln Street to McKinley Street, separating Grant Street from the access drive to the Hospital's loading dock. It contains manicured lawns, flowering plants, open spaces with pathways, and layers of bushes and trees, some on a berm, designed to filter views of the campus buildings and parking from the neighborhood. The Grant Greenway includes a brick wall along the eastern edge of the garden, which varies in height but is six feet tall at some points, as a means of reducing noise impacts from hospital activities. It also includes features with environmental benefits such as a rain garden and a butterfly garden. Following the verbal descriptions of the six gardens is a drawing that depicts a cross-section view from Grant Street to the existing Hospital building, to compare what currently stands between the houses on the west side of Grant and the Hospital with what will stand there if the present modification is approved. *See* Ex. 73(ii)

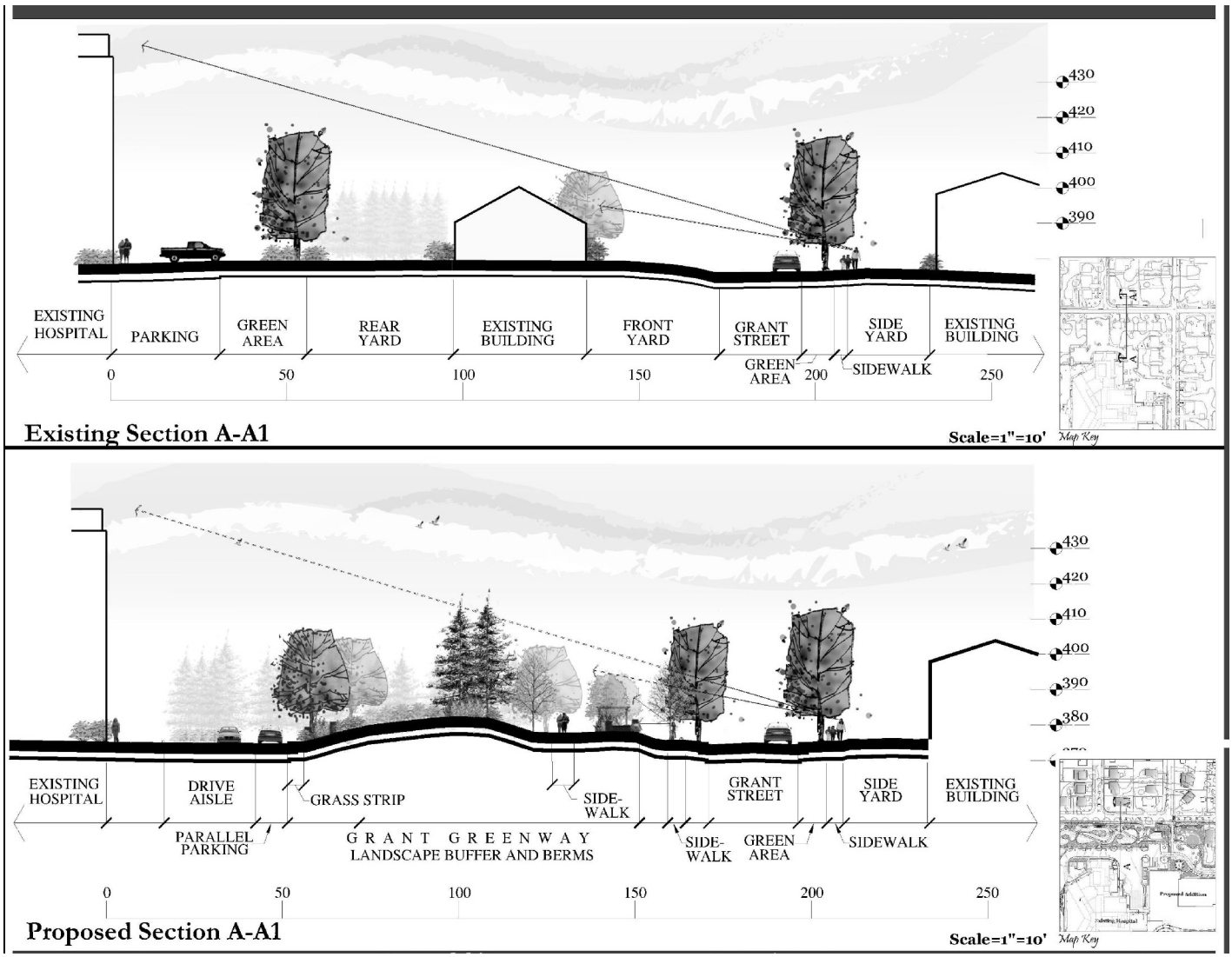
E. McKinley Walk

This is a vary narrow garden that stretches along McKinley from the Grant Greenway to the proposed ambulance entrance. It separates the houses on the south side of McKinley from hospital parking lots. It contains a sidewalk and layered bushes and trees, including evergreens near the western driveway. See Ex. 73(jj).

F. Old Georgetown Gardens

These are two small existing gardens located just south of the main/emergency entrance, outside the emergency waiting room and the physicians' entrance. They contain seasonal plantings, decorative seating and sculpture, and were described as heavily used and successful spaces that create a precedent for other green spaces on the hospital campus. *See* Ex. 73(kk).

Campus Principle: Compatible Edges, Ex. 73(oo)
Cross-section View from Grant Street House on Right to Existing Hospital on Left



C. Master Plan

The subject property is within the area covered by the *1990 Bethesda-Chevy Chase Master Plan* (the "Master Plan"), of which the Hearing Examiner takes official notice. This section will summarize relevant provisions of the Master Plan and the analyses provided by Technical Staff, Suburban and the HTCA. It is important to bear in mind, in considering master plan compliance and all legal issues in this case, that this is a petition for modification, not for a new special exception. The task at hand is to evaluate the impact of the modification, i.e., to assess the changes that the proposed expansion would make compared to the existing hospital operation, not compared to a theoretical blank

slate. Suburban does not seek to introduce a hospital into a residential neighborhood, but to expand and update an existing hospital that has been part of the neighborhood for over sixty years.

1. Relevant Master Plan Provisions

The following text from the "Notice to Readers" at the beginning of the Master Plan deserves attention, given that this plan was adopted 20 years ago:

> Master plans generally look ahead to a time horizon of about 20 years from the date of adoption, although it is intended that they be updated and revised about every ten years. It is recognized that the original circumstances at the time of plan adoption will change over time, and that the specifics of a master plan may become less relevant as time goes on. Any sketches or site plans in an adopted plan are for illustrative purposes only, and are intended to convey a general sense of desirable future character rather than any specific commitment to a particular detailed design.

The area within the master plan boundary is shown on the map below (Master Plan at 13):

The Master Plan's "key land use policy" is "a reconfirmation of the existing residential character and zoning of the Planning Area." Master Plan at 1. Its goals are stated as follows (Master Plan at 2):

1. Perpetuate and enhance the high quality of life which exists in the Bethesda-Chevy Chase Planning Area.
2. Achieve a level of future employment development that is in balance with a high quality of life and the transportation capacity of the Planning Area.
3. Provide for a balanced housing supply so that persons of varying income levels, age[sic], backgrounds, and household characteristics may find suitable housing appropriate to their needs.
4. Protect the high quality residential communities throughout the Planning Area as well as the services and environmental qualities that enhance the area.
5. Achieve a significant shift of new travel from auto to transit and other mobility alternatives.
6. Protect the natural resources and environmental qualities of the Planning Area.
7. Contribute to a strong sense of community and help reinforce community cohesion.

The Master Plan states that its "major goal" is "to protect the high quality of life, the residential character, and the natural environment throughout the area." Master Plan at 3. The Plan makes a number of recommendations applicable to the entire planning area, including:

- Reconfirm the existing single-family land use and zoning (R-60, R-90 and R-200) as appropriate for the major portion of the Bethesda-Chevy Chase Planning Area. . . .
- Endorse the maintenance and enhancement of residential communities through a program of Green Corridors along major highways.
- Provide guidelines for locating special exceptions that discourage concentrations of office-related special exceptions but support those related to child, elder, and health services, and other community-serving needs.

Master Plan at 3.

The Master Plan makes the following recommendations specific to the part of the planning area that includes the Hospital (Master Plan at 3):

> Along Old Georgetown Road and in the adjacent communities, the Plan seeks to retain the residential character and discourage certain types of special exception approvals. Major recommendations include:
>
> 1. Discourage approval of additional special exceptions except those that are community-serving, which includes child day care, elderly care and housing, group homes, accessory apartments, home occupations, and hospice care. This recommendation is due to the cumulative effect of existing extensive special exception activity within that area.
>
> 2. Apply design and landscaping guidelines in review of special exception petitions to maintain and encourage a quality appearance and residential character along the corridor.

The Master Plan's goals continue with the following areawide land use objectives (Master Plan at 29)

1. Maintain residential character along major highways through a Green Corridors policy.
2. Discourage concentrations of office-related special exceptions, while supporting those related to child and elder services, and other community-serving uses.
3. Support the current use of large land users, but endorse housing as the primary alternative use if they are ever redeveloped.
4. increase housing choice by allowing townhouse development where compatibility criteria can be achieved.

The following special exception guidelines are also stated in the Master Plan, with the explanation that the plan "seeks to provide guidelines that will protect residential areas while also attempting to meet important social needs." Master Plan at 31.

1. Avoid excessive concentration of special exception and other nonresidential land uses along major highway corridors. Because sites along these corridors have better visibility for business uses, they are more vulnerable to overconcentration. Of particular concern are office uses, which should be discouraged and are better located in areas with commercial zoning, such as the Bethesda CBD. It is also important to minimize uses that might degrade the safety and capacity of the highway by creating too many access points and conflicting turning movements.

2. Avoid over-concentration of commercial service or office-type special exception uses in residential communities. These include . . . medical or dental clinics, medical or professional offices, and philanthropic organizations. The Plan does not discourage home occupations that meet Zoning Ordinance criteria. Areas which may be most vulnerable are near employment centers and along major highways.

3. Protect major highway corridors and residential communities from incompatible design of special exception uses. In the design and review of special exceptions, the following guidelines should be followed, in addition to those stated for special exception uses in the Zoning Ordinance:

    a. Any modification or addition to an existing building to accommodate a special exception use should be compatible with the architecture of the adjoining neighborhood and should not be significantly larger than nearby structures.

    b. Front yard parking should be avoided because of its commercial appearance; however, in situations where side or rear yard parking is not available, front yard parking should only be allowed if it can be landscaped and screened adequately.

4. Support special exception uses that contribute to the housing objectives of the Master Plan . . . [such as] elderly housing and group homes that are compatible with nearby land uses . . . [and] accessory apartments.

> 5. Support special exception uses that contribute to the service and health objectives of the Master Plan. . . . In general, the Plan endorses provision of child day care, group homes, elder day care, and nursing homes. It is important to meet health needs through hospital services and hospice centers that are appropriately sized to be compatible with surrounding neighborhoods.

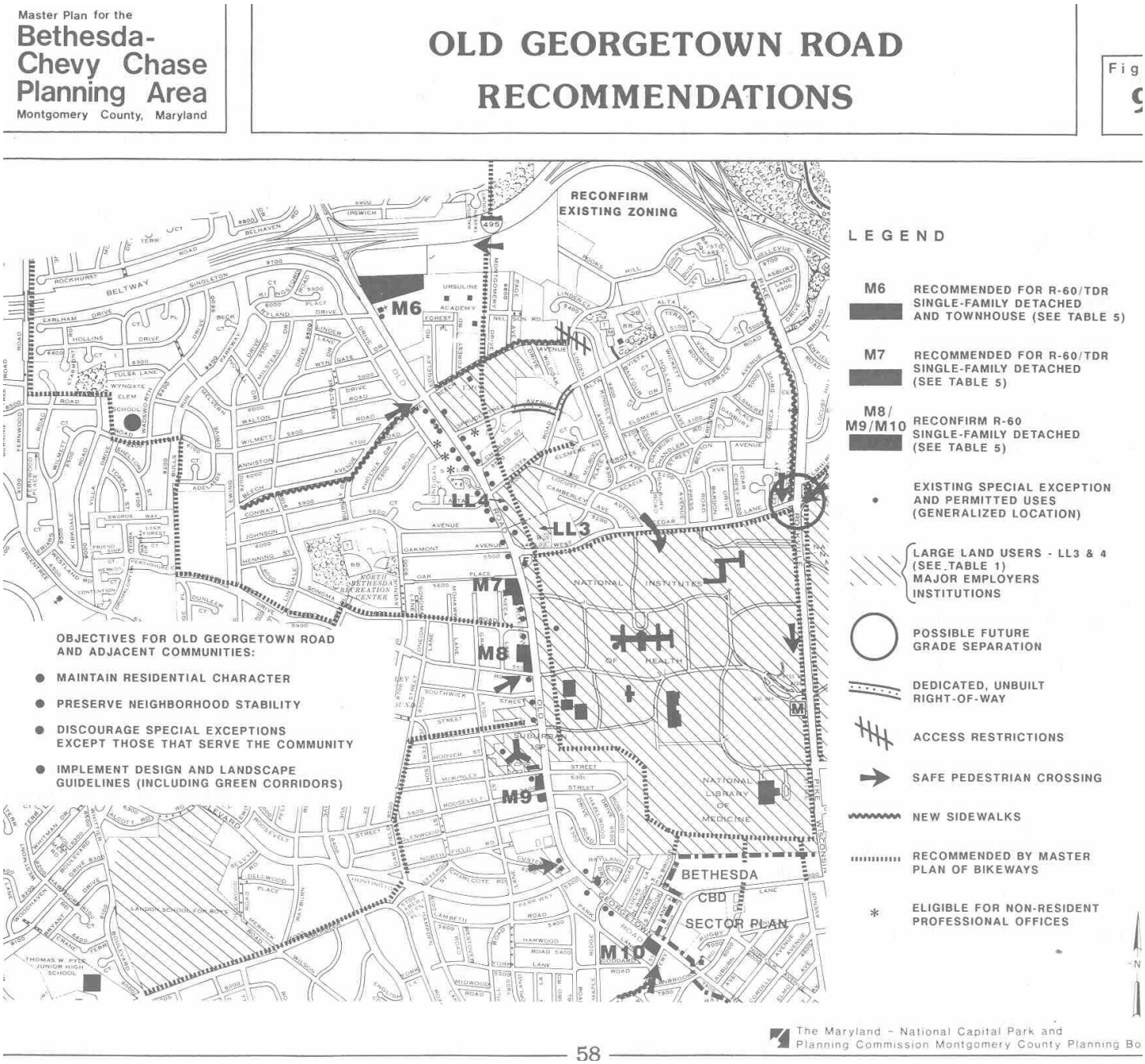
Master Plan at 31, 33.

The Master Plan considers several major Federal properties in the Mid-Bethesda area and identifies other large land uses including two country clubs, three large private schools and Suburban. Master Plan at 51. The plan states that "[a]ny change in use on these properties, including any expansion proposals, should be reviewed in the context of the impact it will have on the adjacent communities and also within the guidelines of the master plans for the Federal facilities." Master Plan at 51, 57 (text separated by large table). The Master Plan offers specific land use and zoning recommendations for some of the large land uses, but not for Suburban.

A section of the Master Plan entitled "Old Georgetown Road Plan" covers the first row of properties fronting or adjoining Old Georgetown Road as well as eight communities adjacent to it, as shown on Master Plan Figure 9 on the next page, reproduced from page 58 of the Master Plan:

As described in the Master Plan, Old Georgetown Road is a major highway into the Bethesda Business District, serving as an important commuter link and an attractive gateway. The plan notes that a significant number of special exceptions have been approved along Old Georgetown Road from Glenbrook Road (several blocks south of Suburban) to I-495 (several blocks north of Suburban). These special exceptions have "allowed the conversion of houses to commercial and service uses and construction of nonresidential buildings." Master Plan at 57. After considering a range of possible recommendations, the Master Plan recommended discouraging further special exceptions not only along Old Georgetown Road but in the adjacent communities, except for community-serving uses.

Master Plan Figure 9



The plan acknowledges that between McKinley Street (on the Hospital's southern boundary) and Beech Avenue (a few blocks north of the Hospital) little residential use remains along Old Georgetown Road, which is lined with special exceptions, institutional uses (including Suburban and NIH) and non-resident professional offices. Master Plan at 59-60. The Master Plan found that the area was already over-concentrated with special exceptions, many in buildings that did not maintain the

character of the surrounding residential community. The plan considered it "critical that further special exception activity be discouraged so that the residential character of the road will not be more adversely affected." Master Plan at 60. The plan identified certain special exception uses "which do serve the needs of the local community" and have "relatively minimal" impacts on the residential character of the area, suggesting that petitions such as these should proceed on a case-by-case basis. Master Plan at 60. Child day care, elderly care and housing, group homes, accessory apartments, home occupations, and hospice care are listed as examples of community-serving special exceptions. *See id.*

The Master Plan discourages the assemblage of developed properties for special exception purposes. *Id.* More specifically, "[a]s a further means of preserving residential scale and character of the Old Georgetown Road area, this Master Plan discourages the assemblage of both improved and unimproved lots and discourages the demolition of existing residential structures for the purpose of constructing a large building that is not in keeping with the residential character of the area." *Id.*

The Master Plan promulgated design and landscape guidelines to help maintain and encourage a high-quality appearance and residential character, as well as to mitigate traffic noise. The guidelines emphasize trees, promoting the concept of Old Georgetown Road as a tree-lined boulevard following the plan's Green Corridors Policy. *See id.* at 61. This policy calls for maintaining and enhancing vegetation along roadsides and in medians of major highway corridors, and limiting the extension of nonresidential land uses in major highway corridors outside of designated high-density areas such as the Bethesda CBD. Master Plan at 61, 30-31. The Green Corridors Policy also includes design guidelines: placing a landscaped buffer between curb and sidewalks, placing trees in medians and along curbs, and screening front yard parking. *Id.* at 30.

The Master Plan's landscape and design guidelines for special exceptions apply most directly to uses in residential structures, but still merit some consideration:

- ♦ eliminate paved front yards by placing parking in the rear with adequate screening;
- ♦ limit special exceptions to existing structures or minor additions that add no more than 50 percent of the square footage of the existing building;
- ♦ ensure that the architecture of additions is consistent with existing structures;

- provide screening and buffering for adjacent properties;
- keep lighting and signs within Zoning Ordinance limits;
- restrict business hours to lessen impact on nearby residences; and
- where possible, consolidate driveways to serve two property owners and/or provide access from a side street to reduce curb cuts along Old Georgetown Road.

See id. at 61.

2. Technical Staff Analysis and Findings

The Staff Report, compiled by MNCPPC's Development Review Division with input from other MNCPPC divisions, recommends approval of the requested modification. *See* Staff Report at 1. As noted in Part II above, the Staff Report does not support further assembly of parcels or the removal of houses beyond the two-block area within Grant Street, McKinley Street, Southwick Street and Old Georgetown Road, arguing that this two-block area should be established under this modification as the Hospital's maximum expansion limits. The Planning Board recommended a condition of approval establishing this two-block area as the Hospital's maximum expansion limits unless expanded in an approved and adopted master plan.

The body of the Staff Report cites the following elements of the Master Plan: (i) its general objective to avoid an over-concentration of special exceptions along major highways and in residential neighborhoods; (ii) its emphasis on design in avoiding incompatible special exceptions; (iii) its support for special exceptions that contribute to its service and health objectives; (iv) its recognition that it is important to meet these needs through hospital services and hospice centers that are appropriately sized to be compatible with surrounding neighborhoods; (v) its lack of support for the assemblage of parcels or removal of houses for special exception purposes; and (vi) its recognition that special exceptions are assessed on a case-by-case basis. *See* Staff Report at 7-8.

The Staff Report acknowledges that the Community-Based Planning Division, which holds the responsibility within MNCPPC for writing and interpreting master plans, recommended denial of the proposed modification on grounds that it is inconsistent with the Master Plan. *See id.* at 8. The Staff Report nonetheless recommends approval of the present petition, although it does not actually find that

the proposal is consistent with the Master Plan. The closest Staff came to such a finding is the following statement: "It is not unequivocal from the guidelines that the hospital expansion is inconsistent with the Master Plan's special exception objective." Staff Report at 15. This lukewarm endorsement of the proposed modification is based on several points: the Master Plan supports special exceptions that contribute to its service and health objectives; the plan recognizes the importance of meeting these needs through hospital services and hospice centers that are appropriately sized for compatibility with surrounding neighborhoods; the proposed modification would not result in an addition greater than 50 percent of the size of the existing hospital building, consistent with Master Plan guidance calling for only "minor" building additions; Suburban is not specifically addressed in the Master Plan; and the proposed modification includes important roadway improvements that are consistent with the Master Plan, such as rebuilding sidewalks and improving pedestrian crosswalks along Old Georgetown Road. *See id.* at 7-8, 14-15.

The Community-Based Planning Division considers the proposed expansion plan unacceptable and recommends denial. *See* Staff Report Attachment 7 at 1. This conclusion is based on Master Plan provisions that discourage the removal of homes for special exception uses and encourage the protection of neighborhoods from further encroachment of special exception uses except for those serving a local community need. *See id.* Community-Based Planning Staff found that the proposed expansion would encroach on the neighborhood by removing a number of homes and eliminating a local street, and considered it questionable whether or not the proposed expansion serves a "strictly local community need." *Id.*

Community-Based Planning reviewed pertinent sections of the Master Plan regarding preservation of residential character along Old Georgetown Road, as well as its specific language discouraging the assembly of property and demolition of residential structures "for the purposes of constructing a large building that is not in keeping with the residential character of the area." *See id.*, second page, quoting Master Plan at 60. Community-Based Planning provided the following general analysis of hospital expansion issues:

> Hospital expansion in the county is an on-going issue since land is often expensive and location is critical to service areas. Other hospitals located in residential areas in Montgomery County have faced similar situations. The Adventist Hospital in Takoma Park decided, after serving the community for 100 years, that the existing site did not satisfy their long-term needs and that the issues associated with the expansion were not easily negotiated. They found a new site in the eastern county and are in the process of seeking special [exception] approval.[11] In that instance the new site does not physically affect any residential community.
>
> The case of Holy Cross Hospital is comparable to Suburban Hospital. The issue was such that the Forest Glen Master Plan made specific recommendations regarding the expansion including a recommendation that Holy Cross Hospital not expand their existing campus on a block of single family homes acquired for that purpose. Holy Cross Hospital recently completed the planned expansion without removing the homes.
>
> Staff Report Attachment 7 at 2 and 3.

Community-Based Planning concluded that the proposed special exception would provide enhanced services for the local community, but would also serve the region as a trauma center, and that the removal of 23 homes for this expansion is not consistent with the Master Plan's recommendations concerning special exceptions. *See id.* at 3. Community-Based Planning expressed a willingness to reconsider its conclusions if changes were made to better address issues raised by MNCPPC's Urban Design Division.

The Urban Design Division recommended three changes to the expansion plan that it reviewed:

- Retain at least three of the existing houses located along Grant Street and Southwick Street
- Reduce the height and increase the setback of the proposed garage from Old Georgetown Road to enhance the "green corridor" along Old Georgetown Road as recommended in the Bethesda-Chevy Chase Master Plan.
- Locate any future temporary parking spaces and driveways outside the proposed green space

Staff Report Attachment 13 at 1.

Urban Design argued that preserving at least three of the existing houses along Grant and Southwick Streets instead of tearing down 23 houses helps "in preserving the character of the adjacent residential neighborhood" and "provides the stability of the neighborhood that is recommended in the Master Plan for special exceptions." *Id.* Suburban has not offered to preserve any of the 23 houses slated for demolition.

[11] Approval has since been granted. *See* BOA Opinion in Case No. S-2721.

Urban Design called for the garage to be two to three levels lower in height. *See id.* at 2-3. Suburban has since proposed the alternate garage, with seven stories above ground instead of ten. The Urban Design memo also recommended the alternative construction plan that Suburban ultimately adopted: removing the existing garage and building temporary parking spaces during construction of a new garage that meets the setback requirements. *See id.* at 2. Urban Design further recommended "a substantial amount of landscaping along Old Georgetown Road (e.g. closely spaced street trees and a continuous hedge) to screen the proposed surface parking lot" and enhance the green corridor effect described in the Master Plan. Suburban responded by adding more landscaping along Old Georgetown Road. *See* Staff Report at 5, 6.

3. Petitioner's Land Planner

Petitioner's land planner, Douglas M. Wrenn, opined that the proposed development would be consistent with the Master Plan. He began his Master Plan testimony by reviewing its first major goal, "to perpetuate and enhance the high quality of life" in the BCC area. Tr. 12-15-08 at 254. Mr. Wrenn opined that the modernization and expansion of the Hospital to meet existing and projected healthcare needs will perpetuate and enhance the high quality of life in the area. *See id*. He described access to excellent healthcare as a fundamental requirement of quality of life in the community.

Mr. Wrenn identified the Master Plan's second overarching goal as protecting the high quality residential communities in the planning area as well as the services and environmental features that enhance the area. *See id.* at 254-55. In his opinion, the proposed development protects local residential communities because the buildings are concentrated away from residences, toward Old Georgetown Road. He suggested that closing Lincoln Street will "insulate" the neighborhood from hospital activities by concentrating activity on the hospital campus and buffering the surrounding neighborhood. *See id.* at 255-56. Mr. Wrenn argued that the campus setting Suburban proposes to create would improve compatibility with the neighborhood and "overall visual quality." *Id.* at 256.

In Mr. Wrenn's view, the most important part of the Master Plan is its anticipation that Suburban or other large land users might seek to expand. Section 3.31 of the plan (pp. 51 and 57) recommends

reviewing any expansion proposal in the context of impacts on adjacent communities. Mr. Wrenn noted the Staff Report's finding that the impacts of the proposed expansion have been minimized and will not have any unacceptable adverse impacts on the character of the neighborhood. *See* Tr. 12-15-08 at 257, citing Staff Report at 15.

Mr. Wrenn acknowledged that the Master Plan discourages the removal of homes for special exception uses and recommends protecting neighborhoods from further encroachment of special exceptions except for those that serve local community need. He interprets this to mean the Master Plan anticipated that in some circumstances there might be a need to remove homes, but it should be done only if supported by local community needs. *See id.* at 257-58. In his view, Suburban meets the definition of serving a local need, even though it serves a larger area as well as the local community. *See* Tr. 12-16-08 at 55-57. In Mr. Wrenn's view, the language discouraging the removal of homes related to *new* special exceptions, not the expansion of existing ones, even if the expansion converts residential property to special exception use. *See id.* at 260; Tr. 12-16-08 at 111-115.

On cross-examination, Mr. Wrenn argued that considering the entire proposal, with unification of the campus, the location of parking, circulation and buildings, and the landscape buffer, even with the removal of houses the proposed expansion meets the goals listed for the Old Georgetown Road corridor on page 58 of the plan, including maintaining residential character and preserving neighborhood stability. *See* Tr. 12-16-08 at 138-39. He explained that removing 23 houses would not destabilize or change the character of the broader community as he defined it on Exhibit 150, stretching from the Beltway to River Road. *See id.* at 139-41.

Mr. Wrenn noted that the proposed plan would implement the Master Plan's green corridors concept along Old Georgetown Road by adding street trees and landscaping along the street frontage. *See id.* at 261, Ex. 26 at 6.

4. HTCA Land Planner

Mr. Doggett opined that the proposed expansion would conflict with the goals and recommendations of the Master Plan. He described the Master Plan as having several main thrusts:

- To maintain a residential character along major highways by implementing a green corridors policy; in Mr. Doggett's view, this doesn't mean a row of trees in front of a parking garage or an office building. *See* Tr. 6-8-09 at 34.

- To promote the supply of housing at various prices; Mr. Doggett finds the demolition of 23 houses to be strikingly against this master plan objective. *See id.* at 35.

- To discourage the concentration of office-related special exceptions while supporting those that are modest in scale, and on a community scale. Mr. Doggett stressed that a county is not a community – a community is something you handle in a planning sense, something you can see the beginning and end of, like the eight communities the Master Plan identifies adjacent to Old Georgetown Road between the Beltway and the Bethesda CBD. *See id.*

Mr. Doggett emphasized as one of the Master Plan's main points that this is a housing sector. He sees the purpose of the green corridors policy as retention of residential uses, not their removal, and he does not consider a four or seven-story garage compatible with that aim. *See id.* at 36. He noted what he called a very definite statement on page 31 of the plan that any "modification or addition to an existing building to accommodate a special exception use should be compatible with the architecture of the adjoining neighborhood and should not be significantly larger than nearby structures." *Id.* at 39 quoting Master Plan at 31. In his view, the Master Plan's support for special exceptions such as child day care, group homes or elder care does not extend to a large hospital expansion, the closure of a main street, removing mature trees and "an incredible demolition of 23 houses." Tr. 6-8-09 at 39.

Mr. Doggett considers 38,000 square feet of physician office space to be, in effect, an office building. He offered anecdotal evidence from his surgeon, his cardiologist and another doctor, all of whom have offices near a hospital and said they see no reason to have an office in the hospital itself. *See id.* at 36-38.

Mr. Doggett drew attention to two paragraphs he considers key: page 60, bottom paragraph on the left and second paragraph from the bottom on the right. *See id.* at 44-45. The first of these follows the paragraph that discourages new special exceptions because of their cumulative effects, and recommends considering on a case-by-case basis special exceptions that serve local community needs and have "relatively minimal" impacts. The second paragraph that Mr. Doggett considers key discourages the assemblage of developed properties for special exception purposes, and specifically

discourages the demolition of residential structures "for the purpose of constructing a large building that is not in keeping with the residential character of the area." Master Plan at 60. Mr. Doggett concludes that the proposed expansion, with its proposal to remove 23 houses, is "strikingly inconsistent" with the Master Plan. He anticipates that tearing down 23 houses will have a powerful detrimental effect on the Huntington Terrace neighborhood by radically affecting the use and enjoyment of houses across the street from those being torn down, and by increasing the sense of uncertainty about whether Suburban will seek to expand further in the future, tearing down more houses. *See id.* at 76-79, 91-92, 101-105. In Mr. Doggett's experience, that kind of uncertainty leads people to sell their homes if they can, gives them less incentive to keep up their homes, and makes them unwilling to invest more by putting on additions. *See id.* at 80-82.

On cross-examination, Mr. Doggett acknowledged that the Master Plan includes promoting and enhancing healthcare as a goal. He argued that a smaller hospital could achieve that goal, and that the Hospital might be able to meet its goals with a different design. *See id.* at 164-65.

5. Hearing Examiner Analysis[12]

The Zoning Ordinance requires a finding of master plan consistency before a special exception petition can be granted. The relevant finding is quoted in full here (Code § 59-G-1.21(a) and (a)(3), emphasis added):

> **A special exception may be granted with the Board . . . finds** from a preponderance of the evidence of record **that the proposed use:**
>
> **(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 a 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 concluded 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.[13]

[12] Master Plan page references generally are not provided in this discussion. Please see quotes and page references in Part C.1.

[13] It is an open question whether the finding by Community-Based Planning that the proposed expansion would be inconsistent with the Master Plan requires "specific findings" under this section, but it is the Hearing Examiner's and the BOA's practice to make such findings in any case.

Each adopted master plan amends the County's general plan, so the analytical focus is on the applicable area master plan. The present petition seeks to modify an existing special exception, not to establish a new use. Thus, our task is to assess whether the proposed Hospital expansion would be in agreement or compatible with the Master Plan. This does not require consistency in every detail, particularly considering the age of the plan. It does require a substantial degree of consistency with the Master Plan's goals and objectives for this part of the planning area.

In considering the evidence concerning Master Plan interpretation, the Hearing Examiner has placed less weight on Mr. Wrenn's testimony than on the opinions of Technical Staff, Community-Based Planning Staff and Mr. Doggett. Mr. Wrenn's opinion was based in part on two premises that the Hearing Examiner considers faulty: (1) that the proposed development protects local residential communities because the buildings are concentrated away from residences, toward Old Georgetown Road, and (2) that closing Lincoln Street will "insulate" the neighborhood from hospital activities by concentrating activity on the hospital campus and buffering the surrounding neighborhood. *See* Tr. 12-15-08 at 254-56.

While it is true that the garage is proposed at a location close to Old Georgetown Road, by no stretch of the imagination can the garage or the proposed new hospital building be considered "concentrated away from residences." That is something that cannot be accomplished on this site with the footprints of the proposed buildings. The garage is proposed at a location 64 feet from the nearest residential property line to the west and directly across narrow Southwick Street from other residences. The addition is proposed to be 76 feet from the nearest residential property line in which Suburban does not have an ownership interest.[14] The addition and garage might be described as concentrated away from homes on the west side of Grant Street or on McKinley Street, but their setbacks from Southwick Street residential lots are only slightly greater than the bare minimum of 50 feet required by the specific conditions for the use. The proposed addition would extend some 500 feet back from Old

[14] The addition would be 55 feet from the nearest residential property line shown on the site plan, but when the hearing closed Suburban had acquired a purchase option on that property, so it may already be or soon become Hospital property, justifying a different compatibility analysis.

Georgetown Road; in the Hearing Examiner's view, calling that "concentrated toward Old Georgetown Road" is so unreasonable that it undercuts the credibility of the resulting expert opinion.

In the Hearing Examiner's view, the suggestion that closing Lincoln Street would insulate the neighborhood from hospital activities is an unpersuasive attempt to put a positive spin on an adverse impact. The main effects of closing Lincoln Street are to allow Suburban to build an addition in a location that is optimal for Hospital operations and avoids costly alternatives like building underground, and to change local transportation patterns. The only way in which closing Lincoln Street could be said to "insulate" the neighborhood from Hospital activities is by forcing residents to drive/walk/bicycle around the Suburban campus rather than traveling through the middle of it, a choice that residents can make right now if they wish. Perhaps Mr. Wrenn was thinking of the possibility that if Lincoln Street were not closed, the Hospital would propose an expansion that puts a new building in the southwest corner of the current Hospital site, between the existing Hospital building and Grant Street. A building at that location would, at a minimum, increase the adverse impact on Grant Street residents. However, given that witnesses for Suburban testified multiple times that it would not be feasible to fit the desired expansion footprint on that part of the site, it seems inaccurate to say that the closing of Lincoln Street protects the neighborhood from that eventuality.

Based on a thorough review of the text of the Master Plan and all of the evidence presented about it, the Hearing Examiner concludes that the proposed expansion plan would require some significant changes to be considered consistent with the Master Plan. The most significant such change is reducing the number of houses to be demolished. Some changes will also be necessary to the size and/or location of the new structures, as discussed in more detail under "Compatibility" in Part III.K below.

The Master Plan's overarching goal for this area is, as Mr. Doggett testified, protecting the area's residential character and high quality of life. The plan's recommendations to reach this goal include a number of elements related to special exception applications, some of which apply more readily to the present application than others. The most fundamental of these recommendations is to

discourage the assemblage of properties and the demolition of houses to accommodate a special exception use. This recommendation goes to the very heart of the Master Plan's goals for the area, because removing houses quite literally makes the character of the area less residential. Removing houses also has a significant negative impact on quality of life in the neighborhood, both by changing the nature of the neighborhood and by creating uncertainty about the future. Testimony from Mr. Doggett and several lay witnesses indicates strongly that when a large institution buys up residential properties with an eye to expansion, many – although not all – local homeowners become reluctant to invest in their homes and/or sell outright. This, the evidence suggests, has an adverse effect on property values and people's enjoyment of their homes.

Tearing down 23 homes within and on three sides of the Hospital's proposed "super-block" would so dramatically reduce the residential character of that part of Huntington Terrace that it cannot reasonably be considered consistent with the Master Plan. To be consistent with the Master Plan, enough houses must be retained to preserve the residential character of each street that will remain residential, and to preserve the existing, effective buffer for homes that confront Hospital property.

Community-Based Planning Staff highlighted Master Plan language that discourages the removal of homes to construct a large building that is not in keeping with the residential character of the area. It cannot be denied that Suburban proposes to remove homes to construct a large building that is not residential in character. This must be viewed, however, through the prism of a special exception modification, which assesses the impact of the proposed changes compared to existing conditions, not as though it were a new use. The proposed expansion would replace some houses with a large building, but in a location where the immediate area already has a significant institutional presence. This would not introduce a new element to the neighborhood. Moreover, a well-buffered and landscaped expansion could be an opportunity to balance the intrusion of new structures with improvements to the edges of the site.

In the Hearing Examiner's view, homes can be removed for the proposed expansion, consistent with the Master Plan and compatibility requirements, only if the removal is limited to the eight homes

that abut only Lincoln Street. Those eight homes face only each other, so their removal would not affect the character of any remaining residential street or the effectiveness of their buffering role. They would facilitate a hospital expansion that would have a series of impacts on the neighborhood, but in the Hearing Examiner's view, with the changes discussed in Part III.K, those impacts can be kept to a level that is acceptable under the County's special exception standards.

Removing 23 houses would also be inconsistent with the Master Plan's goal to provide for a balanced housing supply accommodating people of varying income levels. Having a number of rental units in an established single-family neighborhood provides an unusual opportunity for people who might be able to afford the rent, but are not a financial position to buy a home in that neighborhood. Testimony indicated that Suburban charges very reasonable rents for the houses it owns in Huntington Terrace, so their loss would reduce the availability of relatively affordable housing in this area. Keeping that loss to eight houses would be significantly more consistent with the Master Plan's housing goals than removing 23 houses.

The Master Plan discourages special exceptions except those related to community-serving uses. There was a great deal of testimony about whether that recommendation applies only to new uses or also covers the expansion of an existing special exception, and about what "community-serving" means. In the Hearing Examiner's view, the recommendation was not specifically intended to address an expansion like the one proposed here, given that the same plan identifies several large land users in the mid-Bethesda area, including Suburban, and states that any expansion proposals "should be reviewed in the context of their impact on adjacent communities." Moreover, the term "community-serving" is ambiguous in this context, given that (i) Suburban clearly provides vital services both to residents of the general neighborhood and to a much larger pool of patients from around the County and the region; and (ii) the Master Plan specifically supports special exceptions that contribute to its health objectives, which include hospital services "appropriately sized to be compatible with neighborhoods." Master Plan at 33.

The Master Plan discourages concentrations of office-related special exceptions in residential communities, including medical offices. The Hearing Examiner does not consider this recommendation sufficient grounds to prohibit physicians' offices at Suburban. Physicians' offices within the proposed hospital building would not have the kind of impact this recommendation likely was designed to prevent – a concentration of office buildings and accompanying parking that could materially change the character of an otherwise residential neighborhood. In the context of a large hospital addition, the presence of physician's offices within the new building does not add materially to the facility's impact on the residential character of the neighborhood, particularly with all of the resulting patient traffic using Old Georgetown Road for access.

The Master Plan considers it critical that further special exception activity be discouraged in the area around Suburban and NIH so the residential character of the road, which is already heavily institutional, will not be more adversely affected. The expansion proposed here would not significantly change Suburban's impact on the character of Old Georgetown Road itself, because the Hospital's Old Georgetown Road frontage is already occupied entirely by non-residential buildings and parking lots, as it would be with the expansion. Moreover, much of the two-block area in which Suburban proposes its expansion is already non-residential in character due to existing Hospital facilities. Thus, in the Hearing Examiner's view, the proposed expansion would not violate this particular master plan recommendation.

Most of the Master Plan's design and landscape guidelines for special exceptions were intended to apply to uses in single-family structures, but their goal of a quality appearance is entirely satisfied by the plan proposed here, with its high quality architecture and landscaping. The proposed expansion would also be consistent with the Master Plan's green corridors policy, as it calls for landscaping along the Old Georgetown Road frontage. The proposed Hospital addition would technically satisfy the recommendation that building additions add no more than 50 percent of the square footage of the existing building, although that recommendation was undoubtedly intended to apply to additions to

residential structures, or at least smaller non-residential structures. Still, the proposed addition's low profile compared to the existing Hospital building is a plus in terms of compatibility.

To protect major highway corridors and residential communities from incompatible special exception design, the Master Plan states that any special exception building addition should be compatible with neighborhood architecture and not significantly larger than nearby structures. The same paragraph recommends avoiding front yard parking because of its commercial appearance – a clear indicator that this recommendation was targeted at special exceptions in residential structures. A strict application of this language to a hospital would prevent any new construction at Suburban, given that hospital buildings are necessarily larger than single-family residences (although it should be noted that neither the addition nor the proposed alternate garage would be significantly larger than the existing Hospital building). None of the parties to this case has espoused such an extreme position, and neither does the Hearing Examiner.

Any consideration of relevant Master Plan language should take into account its areawide objective to support large land users, and its health objective to encourage hospital services at a compatible size. Supporting large land users includes giving individualized review to expansion plans, and seeking to sustain their missions without undue imposition on the surrounding neighborhood. Part III.K of this report outlines parameters that the Hearing Examiner would consider appropriate for an expansion at Suburban that is compatible with the neighborhood.

D. Traffic

1. Hospital Evidence: Traffic Generation and Roadway Capacity

The Hospital's traffic expert, Martin J. Wells, testified extensively over the course of several days. His firm prepared a traffic impact study following the Planning Board's Local Area Transportation Review ("LATR") guidelines. This entailed examining existing and future traffic conditions with and without the proposed Hospital expansion and street closure, taking into account existing traffic, traffic diversion due to the proposed road closure, and background traffic from projects that have been approved but not yet built. *See* Tr. 12-18-08 at 158. At Technical Staff's request, they studied the

intersections of five local east-west roads, Greentree Road, Southwick Street, Lincoln Street, McKinley Street, and Roosevelt Street, with Grant Street, which runs along the Hospital's western boundary; the intersections of the same five roads with Garfield Street, which is the next north-south street west of Grant Street; the intersections of the same five roads plus Battery Lane, Huntington Parkway, Center Drive and West Cedar lane with Old Georgetown Road, which runs along the Hospital's eastern boundary; and the intersection of Huntington Parkway with Bradley Boulevard, a major road west of the subject site. *See* Tr. 12-18-08 at 103; Ex. 25 at 11. Mr. Wells noted that Old Georgetown Road is classified as a major highway, Bradley Boulevard as an arterial road, Huntington Parkway and Greentree Road as primary streets, and the remainder as residential streets. *See* tr. 12-18-08 at 103, Ex. 25 at 9-10. The following intersections within the study area are signalized: Old Georgetown Road at West Cedar Lane, Center Drive, Greentree Road (called South Drive on the east side of Old Georgetown Road, within the NIH campus), Lincoln Street and McKinley Street. Southwick Street terminates at Old Georgetown Road and there is no median break, so traffic heading east on Southwick must turn right on Old Georgetown. The road network, traffic lights and stop signs are shown on the drawing on the next page, which also identifies which way vehicles can turn at each intersection. The road network may be seen on a more conventional street map on page 14.

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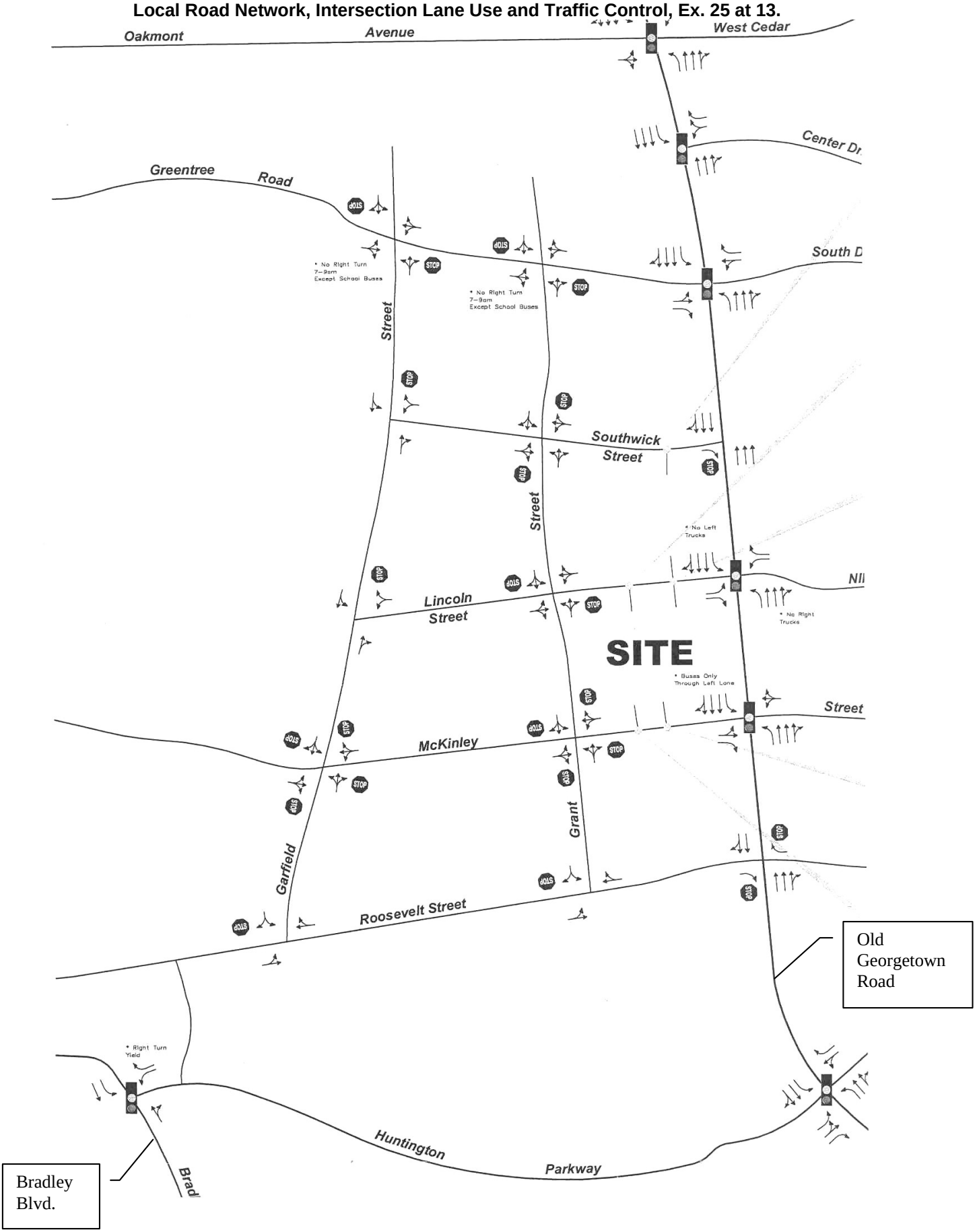
Local Road Network, Intersection Lane Use and Traffic Control, Ex. 25 at 13.



Mr. Wells and his staff calculated Suburban's current traffic generation based on these figures:

Existing Hospital Building	323,100 square feet
Lambert Building	+ 17,000
Useable Cellar[15]	+ 95,787
Total	435,887 square feet

Mr. Wells calculated the square footage with the proposed expansion as follows:

Existing Hospital Including Useable Cellar[16]	418,887 square feet
Hospital Expansion Space Beyond Standard of Care	+76,996
Physician Office Space Proposed in Hospital Addition	+38,000
Total for traffic generation purposes	533,883 square feet
Standard of Care Expansion	+134,996 square feet
Total Hospital Area after Expansion	668,879 square feet

As noted earlier, the Hospital attributes approximately 135,000 square feet of the proposed expansion to "right-sizing" the physical facility to better accommodate the level of service Suburban currently provides, e.g. providing for single patient rooms instead of double rooms, and increasing the size of the operating rooms. This "standard of care" space is not treated as generating new trips. New trips are calculated based on the 77,000 square feet intended to provide for an expansion in services, as well as the proposed physician office space. *See* Tr. 12-18-08 at 114-115; 25 at 2, 7, 27. Mr. Wells used the Hospital's current trip generation rate per 1,000 square feet of space, including trips generated at off-site parking locations, as the trip generation rate for the Hospital expansion space. *See* Tr. 1-16-09 at 139-40. For the physician office space, he used a trip generation rate from the Institute of Transportation Engineers, a nationally known organization whose trip generation rates are widely used. *See* Ex. 25 at 27, n. 2.

Mr. Wells' firm provided the following estimates for trip generation during the peak hours of weekday street traffic, 8:00 am to 9:00 a.m. and 5:00 to 6:00 p.m:[17]

[15] Traffic generation took into account space that is occupied by employees and therefore generates traffic and parking needs, but is not included in the gross square floor area of the building for other purposes because it is classified as a cellar rather than a basement. *See* Tr. 12-18-08 at 105.
[16] The Lambert Building is excluded because the Hospital intends to tear it down. Its activities would be moved to the Hospital addition, so its traffic generation would be accounted for in the 77,000 square feet of new space.
[17] These figures are presented graphically in a bar chart in Appendix A at 6.

Suburban Hospital Trip Generation Analysis, Ex. 25 at 27

	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
Existing						
Hospital Building Including Usable Cellar	167	86	253	91	172	263
Off-site Parking	43	0	43	1	40	41
Total	210	86	296	92	212	304
Future						
Existing Hospital Building Including Usable Cellar	210	86	296	92	212	304
Hospital Expansion, 77,000 sq. ft.	37	15	52	16	37	54
Physician Office Space, 38,000 sq. ft.	74	20	94	35	93	128
Total	321	121	442	143	342	486

The Hospital provided more detailed trip data for trucks, as shown in the table below.

Suburban Hospital Truck Trips, Ex. 236(c)

Vehicle Type	**Lincoln In/Out**	**Existing McKinley In/Out**	**Total In/Out**	**Lincoln In/Out**	**Future McKinley In/Out**	**Total In/Out**
Trucks						
Service/Delivery	17/17	4/4	21/21	0/0	21/21	21/21
Tractor Trailer	1/2	0/0	1/2	0/0	1/2	1/2
Subtotal	**18/19**	**4/4**	**22/23**	**0/0**	**22/23**	**22/23**
Ambulances						
Emergency	13/0	0/0	13/0	0/0	13/0	13/0
Pat. Transfer	25/45	0/0	25/45	25/45	0/0	25/45
Subtotal	**38/45**	**0/0**	**38/45**	**25/45**	**13/0**	**38/45**
Shuttle buses	27/19	85/86	112/105	32/32	1/1	33/33
Trash	1/1	0/0	1/1	0/0	1/1	1/1
TOTAL	84/84 168	89/90 179	173/174 347	57/77 134	37/25 62	94/102 196

The truck trip estimates are based on counts taken over a 13-hour period, from 6:00 a.m. to 7:00 p.m. During that period, Mr. Wells' firm counted eight service delivery truck trips and 171 shuttle buses entering or exiting the McKinley Street driveways. *See* Tr. 12-18-08 at 140-141; Ex. 236(b). At the Lincoln Street driveways, they counted 37 delivery trucks and two trash trucks. *See* Ex. 236(b). Mr. Wells forecasts a 60 percent decrease in large-vehicle use of McKinley Street to reach the Hospital, because shuttle buses will pick up and drop off passengers at the main entrance, off Old Georgetown Road, so their only trips on McKinley will be to and from the shuttle-bus parking area. *See* Tr. 12-18-08 at 141-142. In addition, shuttle bus trips will be dramatically reduced if all the parking is consolidated on-site, as proposed. *See id.*

The LATR standards direct applicants to measure roadway capacity based on critical lane volume ("CLV"), a figure that represents the number of vehicles that can get through an intersection in the space of an hour. The County Council has established a maximum acceptable CLV for the Bethesda/Chevy Chase area of 1,600. Mr. Wells' firm found that all of the study intersections currently operate at a CLV below 1,600. With background traffic, all intersections would operate below the CLV standard except for Old Georgetown Road and West Cedar Lane/Oakmont Avenue, which would exceed the standard in the evening peak hour. With projected Hospital trips, the results would be the same: Old Georgetown Road and West Cedar Lane would operate at a CLV above the standard, and all other study intersections would continue to satisfy the standard. A roadway improvement has been identified to bring that intersection into compliance with the standard. More detail is provided in the paragraphs that follow.

At Old Georgetown Road and West Cedar Lane, the CLV currently is at 86% of the standard at its highest point, in the evening peak hour (1,205 am/1378 pm). At Old Georgetown Road and Battery Lane, the CLV is at 90% of the standard at its highest point, in the morning peak hour (1,448 am/1,143 pm). The Bradley Boulevard/Huntington Parkway intersection is at 89% of the standard at its highest point, in the evening peak hour (900 am/1,419 pm). All of the other study intersections along Old Georgetown Road currently operate at 76 percent or less of the CLV standard. The study intersections

along Grant Street and Garfield Street and the current Hospital driveways currently operate at 39% or less of the CLV standard during both the morning and evening peak hours. *See* Ex. 25 at 16. The eight intersections of local streets within Huntington Terrace operate at 10% or less of the standard, so in Mr. Wells' view, capacity is not an issue there. *See* Tr. 12-18-08 at 161.

The LATR study included three pipeline projects in the vicinity of the site:

1. NIH Main Campus Master Plan
2. National Naval Medical Center expansion under the federal Base Realignment and Closure ("BRAC") process
3. American College of Cardiology project

With background traffic anticipated from these three projects, the LATR study found that the intersection of West Cedar Lane/Oakmont Avenue with Old Georgetown Road will operate at a CLV of 1,719 at its highest point, in the evening peak hour (1,298 am/1,719 pm). This exceeds the congestion standard for the area. The intersection of Battery Lane with Old Georgetown Road would operate with a CLV at 92% of the standard at its highest point, in the morning peak hour (1,472 am/1,180 pm). The intersection of Bradley Boulevard and Huntington Parkway would be at 89% of the standard at its highest point, in the evening peak hour (917 am/1,433 pm). All of the other Old Georgetown Road study intersections would operate at 80% or less of the standard in both morning and evening peak hours. The Grant Street and Garfield Street intersections and the Hospital driveways would operate at 34% or less of the standard. *See* Ex. 25 at 17-18.

The traffic anticipated from the Hospital expansion added an estimated 442 morning peak hour trips and 486 evening peak hour trips. The distribution of those trips on the road network was based on existing travel patterns and parameters set in the LATR Guidelines published by the Planning Board. Existing Hospital trips and existing Lincoln Street trips were redistributed to reflect anticipated changes in circulation patterns. *See* Ex. 25 at 18, 28, 29. The study concluded that with the increased Hospital traffic, the intersection of West Cedar Lane/Oakmont Avenue with Old Georgetown Road would operate at a CLV of 1,340 during the morning peak hour and 1,744 during the evening peak hour, exceeding the maximum during the evening by about nine percent. *See id.* at 19; Tr. 12-18-08 at 162-63. All other

off-site intersections in the study area would operate within the congestion standard, with the Grant and Garfield Street intersections at about a third of the congestion standard and the local streets at less than ten percent. *See* Ex. 25 at 18-19; Tr. 12-18-08 at 163. The Bradley Boulevard/Huntington Parkway intersection would operate at about 90% of the standard at its highest point, during the evening peak hour (922 am/1,439 pm).

The LATR study noted that a third westbound lane on West Cedar Lane at that location, plus split phasing for the east/west approaches, would allow the intersection to operate at a CLV of 1,219 during the morning peak hour and 1,525 during the evening peak hour, bringing the CLV back down below the congestion standard. *See* Ex. 25 at 18-19. Mr. Wells testified that another alternative was recommended in the BRAC study, to construct dual southbound left turn lanes on Old Georgetown Road. *See* Tr. 12-18-08 at 163. Mr. Wells considers the option proposed in his LATR study to be the best one for the Hospital. He considers it workable, and it would provide left turns that serve Suburban. If the BRAC development is built first and they construct the two turn lanes on Old Georgetown Road, that will also accommodate the anticipated traffic from Suburban's expansion. *See id.* at 165.

The County's current Growth Policy also requires analysis of a proposed development under Policy Area Mobility Review ("PAMR"). PAMR requires that all development in the Bethesda/Chevy Chase area mitigate 30 percent of its trips. For Suburban, that means 57 trips in the morning and 67 trips in the evening. *See* Tr. 12-18-08 at 169. The prescribed mitigation methods are steps that are designed to increase non-automobile travel, such as creating a pedestrian refuge in a busy street, or installing a handicap ramp, bicycle racks, or a bus information kiosk. *See id.* at 171-74. Suburban proposes to satisfy this requirement with a series of such measures, including a pedestrian refuge on Old Georgetown Road, handicap ramps, pedestrian crossing signals, bicycle lockers, a real time transit information sign, bicycle lock information kiosks and static transit information signs. *See id.* at 173-74. Technical Staff finds these measures acceptable at this early stage, but will also require the Hospital to submit a detailed Transportation Management Plan. *See* Tr. 12-18-08 at 174, 176.

Mr. Wells opined that the proposed expansion would be in harmony with the general character of the surrounding neighborhood and would not be detrimental from a transportation perspective because the plan directs traffic away from local streets to Old Georgetown Road; provides ample parking, eliminating the possibility of spillover parking;[18] would generate traffic within the capacity of the local road system; enhances vehicular/pedestrian and bicycle convenience and safety by improving Old Georgetown Road and on-site connections; and eliminates cut-through traffic on Lincoln Street. *See* Tr. 12-18-08 at 208-210. Mr. Wells further opined that the proposed expansion would not have any detrimental impact on vehicular traffic, pedestrian traffic or safety, and would be served by adequate public transportation facilities.

2. Opposition Evidence: Traffic Generation and Roadway Capacity

On cross-examination, Mr. Wells agreed that the proposed plan would lead to additional traffic on some neighborhood streets, such as the short stretch of Southwick Street between Old Georgetown Road and the proposed employees entrance to the garage, and the portion of McKinley Street between Old Georgetown Road and the new McKinley driveways. In Mr. Wells' view, the proposed expansion plan would discourage if not eliminate traffic going through the neighborhood to the west. Mr. Wells was reluctant to admit the obvious point that local traffic that might have used Lincoln Street will have to use other neighborhood streets to access Old Georgetown Road. *See* Tr. 12-18-08 at 228-29. He repeatedly referred to traffic taking Greentree Road and Huntington Parkway, larger roads than the local residential streets, without distinguishing between commuters coming from areas farther west than Huntington Terrace, who might logically take Greentree or Huntington Parkway, and local residents, whom common sense would suggest would take the closest alternatives to Lincoln Street – Southwick and McKinley. Mr. Wells' traffic projections in fact reflect increases in traffic on some of the local streets, but some of his testimony was less clear cut.

HTCA's land planner, Mr. Doggett, opined that increasing traffic on narrow, quiet residential streets would adversely affect residents by changing the character of the street, even though the CLV

[18] Mr. Wells acknowledged on cross-examination that street parking restrictions in Huntington Terrace effectively prevent overflow parking on almost all streets. *See* Tr. 12-18-08 at 220.

stays within the established congestion limit. *See* Tr. 6-8-09 at 106-108. He provided anecdotal evidence about his residential street in northwest Washington, DC, which changed in character when commuter cut-through traffic discovered it. Now, it has less pedestrian activity and fewer children playing. Mr. Wells agreed on cross-examination that increased traffic on a residential street may affect the livability or character of that street above a certain threshold. *See* Tr. 12-18-08 at 240. In his view, that threshold is not reached in this case. *See id.* He noted that some literature suggests that traffic at a level of about 200 trips per hour will affect the character of a residential street. The Hearing Examiner notes that the Hospital's projections suggest traffic will stay far below 200 trips per hour on the street most heavily affected by the proposed expansion. See discussion p. 82-83 infra. Mr. Wells does not consider the relatively narrow width of some Huntington Terrace streets a problem. He described them as "yield streets," and stated that if the volumes are modest enough, they work quite well. *See id.* at 230-31.

HTCA was not persuaded by Mr. Wells' testimony that additional traffic coming to the Hospital should not concern Huntington Terrace residents because drivers will use Huntington Parkway, which skirts the edges of Huntington Terrace. HTCA representative Howard Sokolove argued that Mr. Wells is wrong, because commuters and others are interested in avoiding traffic and getting to their destinations quickly, so finding shortcuts is routine. *See* Tr. 5-5-09 at 16. Mr. Sokolove traveled and timed the Huntington Parkway route from Bradley Boulevard and Rayburn Road (a point west of the Huntington Terrace neighborhood) to the Hospital, as well as three shortcut routes using local Huntington Terrace streets. He found that one of the shortcut routes was slightly quicker, another took about the same amount of time, and the third took less than half a minute longer. *See id.* at 16-17; Exs. 339 and 340(a). Mr. Sokolove conducted his drive tests from 6:30 a.m. to 8:30 a.m. over the course of several days: a Tuesday and Thursday in February and a Friday and Wednesday in March. *See* Ex. 339. The times for the various routes ranged from 3 minutes 22 seconds, taking Rayburn Road to McKinley Street to Garfield Street to Southwick Street to Old Georgetown Road to Lincoln Street, to 4 minutes 24 seconds taking Rayburn to McKinley Street to Old Georgetown Road to Lincoln. *See* Ex.

339. Mr. Sokolove timed the Huntington Parkway route (Bradley Boulevard to Huntington Parkway to Old Georgetown Road to Lincoln Street) at four minutes one second. *See id.*

Mr. Sokolove noted that taking McKinley Street to Old Georgetown Road was slower than Huntington Parkway because McKinley is so narrow that with cars parked on one side (some of the homes do not have driveways), it is really a one-lane road. *See* Tr. 5-5-09 at 24. As a result, drivers have to deal with opposing traffic creating bottlenecks. Mr. Sokolove tried several routes, ultimately finding one that got him to the Hospital about 30 seconds faster than Huntington Parkway and gave him a sense of movement, rather than being bogged down in traffic or the multiple traffic slowing mechanisms on Huntington Parkway. *See id.* at 24-25. His fastest route was to take McKinley to Garfield to Southwick to Old Georgetown to Lincoln Street. That route avoided any traffic lights on Old Georgetown Road, as well as the bottleneck at McKinley and Grant. *See id.* at 25, 30-31. Mr. Sokolove noted that the Huntington Parkway route involved four traffic lights: one at Bradley and Huntington Parkway and three on Old Georgetown Road, at Huntington Parkway, McKinley and Lincoln Street. *See id.* at 26-27; Ex. 340(a). Mr. Sokolove maintained that cut-through traffic is the norm and will continue to be with the proposed expansion, except in greater numbers due to more employees, more parking and physician's offices.

On cross-examination, Mr. Sokolove agreed that it's possible someone traveling to NIH from Bradley Boulevard would prefer to take Huntington Parkway to Old Georgetown Road, where it is possible to turn left and be on the same side of the street as NIH. *See* Tr. 5-5-09 at 209.

Huntington Terrace resident Frances Ulmer submitted a written analysis of the Abandonment Study[19] prepared by Mr. Wells' firm, and supported her analysis with testimony. *See* Exs. 337(a) and (b); Tr. 5-4-09; 6-1-09. Ms. Ulmer resides one block from the Hospital, on McKinley Street between Grant and Jefferson Streets. She has 26 years of job experience in the information technology sector, with responsibility for reviewing detailed technical data and working with spreadsheets on a regular

[19] Ms. Ulmer did not review the LATR Study. There was some confusion the first time she testified as to whether she had the most current version of the Abandonment Study. At the second hearing she stated that she had worked from the most current version, Exhibit 173. In any event, her analysis was based on the traffic counts, which were the same in both versions of the study. *See* Tr. 5-4-09 at 62; 6-1-09 at 5-6.

basis. *See* Tr. 5-4-09 at 88-89. Based on the detailed analysis presented in her written submissions, Ms. Ulmer was asked to return on a second day for cross-examination, to give counsel a chance to review her work.

Ms. Ulmer reviewed the LATR Guidelines as well as the Abandonment Study, and observed that the guidelines are not able to account for all scenarios, so the study results must be considered with other evidence. She found the Abandonment Study limited because it focused on CLV and congestion standards, as called for in the LATR Guidelines. *See* Tr. 5-4-09 at 66-67. Ms. Ulmer observed that the LATR Guidelines apply the same congestion standard of 1,600 CLV to all streets in the Bethesda/Chevy Chase policy area, whether residential streets like McKinley Street or a main thoroughfare like Old Georgetown Road. In her view, the same congestion standard should not be applied to different types of streets. The Hearing Examiner finds that Ms. Ulmer makes an interesting point. Without persuasive evidence that this practice results in a misleading LATR result, however, the observation alone is not sufficient reason to depart from the LATR standards.

Ms. Ulmer noted that the Abandonment Study shows significant traffic volume increases on Old Georgetown Road. She observed that there are already bottlenecks at Old Georgetown Road and McKinley Street on a regular basis during rush hour. This observation was supported by a series of five photographs, all taken at 9:04 a.m. on a weekday, showing gridlock at the intersection of Old Georgetown Road and McKinley Street. *See* Ex. 337(b); Tr. 5-4-09 at 68-70. The photographs demonstrate that three vehicles waiting to turn left (north) on Old Georgetown Road from McKinley Street, as well as an armored truck waiting to turn right (south), were unable to move forward on their green light because of vehicles stopped on Old Georgetown Road in the middle of the intersection. The photographs show that the situation was resolved for the vehicles turning left when the southernmost car standing in the intersection backed up out of the intersection, creating enough passageway for the three waiting vehicles to turn onto northbound Old Georgetown Road. The last of the five photos (all of which were taken in the space of about a minute) shows the armored truck about to turn right as the light turns yellow. *See* Ex. 337(b); Tr. 5-4-09 at 69-70. In the Hearing Examiner's view, the minor

delays evidenced by these photographs do not outweigh the substantial, probative evidence provided by the Hospital in the form of Mr. Wells' testimony and written reports, which indicate that the proposed Hospital expansion would not increase local traffic beyond the congestion level the County Council has established as acceptable.

Ms. Ulmer faulted the Abandonment Study for focusing on Lincoln Street at the expense of McKinley Street. *See* Tr. 5-4-09 at 70. (The Hearing Examiner notes that Ms. Ulmer may not have been aware that the Wells firm also prepared a complete LATR Study, with a much broader focus that included McKinley Street. The Abandonment Study focused on Lincoln Street because its purpose was to support the Hospital's abandonment request.) Ms. Ulmer considers McKinley Street important to address because it is a major artery into and out of Huntington Terrace and all the adjacent neighborhoods, and it extends almost to Bradley Boulevard. As a result, it already gets significant residential and cut-through traffic. Ms. Ulmer described McKinley Street as an old road, never intended for heavy traffic use. She characterized it as narrow and hilly, with a major blind spot close to the Hospital, between Grant and Jefferson Streets. Ms. Ulmer submitted two photographs of this part of McKinley Street, which show that if there is a parked vehicle or a vehicle larger than a car, the road is too narrow for two-way traffic. *See* Ex. 337(b). She also noted that based on the traffic counts in the Abandonment Study, traffic gets heavier on McKinley Street after the morning peak hour and stays steady all day. *See* Tr. 5-4-09 at 73-74.

Ms. Ulmer compared the existing traffic counts for the six intersections immediately surrounding the Hospital (Old Georgetown Road and Grant Street at Southwick, Lincoln and McKinley) with the turning movements projected in the Abandonment Study. She found a total increase in traffic entering all of those intersections of 93 vehicles during the morning peak hour, and 12 leaving those intersections during the same period. *See* Tr. 5-4-09 at 75-77. She found this small number of additional turning movements not to be credible in light of the proposed Hospital expansion, which includes 66 additional patient beds, 260 additional employees, an increase in onsite parking and 38,000 square feet of physician office space. *See id.* at 77. Ms. Ulmer explained that in her analysis,

"entering" these intersections means turning towards the Hospital or the Huntington Terrace neighborhood, and "leaving" means driving away from the Hospital or the neighborhood. *See id.* at 78-79. Ms. Ulmer stated that she was aware that McKinley Street is currently a major entry point for Hospital visitors and would be only a minor entry point with the proposed reconfiguration. She maintained, nonetheless, that the small projected increases in turning movements are not credible. *See* Tr. 6-1-09 at 15-16.

The Hearing Examiner raised the question whether the proposed Southwick Street employee entrance is necessary. Technical Staff opined that the loop roads at the proposed main entrance would have sufficient roadway capacity to accommodate the additional traffic that would result from not building the Southwick Street driveway, but that by separating employee traffic from the patient/visitor/emergency vehicles at the main entrance, the Southwick Street driveway "would enhance the flow of traffic in and around the new main entrance and parking garage." Ex. 223. Mr. Wells opined that the Southwick Street entrance is necessary to provide sufficient garage access and egress capacity, to avoid overloading garage drive aisles and creating delays that could cause queues inside and outside the garage, potentially causing traffic backup onto Old Georgetown Road. *See* Ex. 263(f)(1). Mr. Wells noted that the two entrances would distribute traffic across two levels of the garage, due to the sloping site grade. This, in his view, would enhance the efficiency of the garage. *See id.* He also observed that if the Southwick Street driveway were eliminated, almost all of Suburban's vehicle trips would use Old Georgetown Road, which has sufficient capacity to accommodate the additional trips. *See id.* In response to the Hearing Examiner's concern about this issue the Hospital offered to limit use of the Southwick Street driveway to the hours of 6:00 a.m. to 8:00 p.m. except for emergencies. *See* Ex. 443(a) at 114.

3. Hospital Response: Traffic Generation and Roadway Capacity

The Hospital submitted additional, more detailed traffic projections in response to opposition contentions. *See* Exs. 185, 186, 263(f)(2) through (7), 406 and 410. The Hospital provided projections for various road segments within Huntington Terrace and Old Georgetown Road on a 24-hour basis

with and without the Southwick Street employee entrance; during the street peak hours of 8:00-9:00 a.m. and 5:00-6:00 p.m., with and without the Southwick Street entrance and with and without the driveway reconfiguration proposed in NIH's current master plan; and during the Hospital's peak traffic hours, 6:30 -7:30 a.m. and 3:15 to 4:15 p.m, with and without the Southwick Street entrance. These projections took into account existing trips on each roadway, changes in NIH trips due to entrance changes that took place during the hearing (some projections also relied on entrance changes proposed in NIH's master plan), trips redistributed due to the Lincoln Street closure, and increased Hospital trips. *See, e.g.,* Ex. 263(f) (6). Some of these elements resulted in traffic decreases and some in increases. For example, redistributing Lincoln Street trips is projected to decrease traffic on Lincoln Street west of Grant and on Grant Street between Lincoln and Madison, but to increase traffic on Southwick Street and part of Greentree Road. The new Hospital access configuration is expected to increase trips on McKinley Street and on Southwick Street east of Grant Street, but to decrease traffic on parts of Grant and on Southwick Street west of Grant.

The results of the 24-hour counts indicate that some local streets would experience small increases in traffic as a result of the proposed Hospital expansion, and some would experience small decreases. The most dramatic increases are projected on Southwick Street, which is expected to experience a 50% to 60% increase in traffic between Grant Street and the garage entrance, and almost double the traffic between the garage and Old Georgetown Road. *See* Ex. 263(f)(6). These are very significant increases, but they still leave Southwick with only 390 trips between Grant and the garage entrance in a 24-hour period, significantly lower than current traffic levels on the first block of McKinley (ranging from 1,000 trips west of the Hospital entrance to 4,000 closer to Old Georgetown Road) or on Grant near Lincoln (ranging from 500 to 650 during the week). The small portion of Southwick between the garage and Old Georgetown would have 24-hour traffic levels at the low end of what the first block of McKinley currently experiences, with over 1,000 trips in 24 hours. The other significant change projected is a 60% to 70% decrease in traffic on Lincoln Street west of Grant, leaving that stretch of Lincoln with lower traffic volumes than Southwick experiences now.

The Hospital also submitted evidence in response to Mr. Sokolove's testimony and exhibits about trip lengths and whether commuters coming from the west would take Huntington Parkway or local streets. Mr. Wells agreed that some drivers would take local residential streets, although he continued to project that a large majority of drivers coming from the west would take Huntington Parkway or Greentree Road. *See* Tr. 6-9-09 at 29. He added that his findings are consistent with map directions provided by three internet sites, Mapquest, Google Maps and Maps Alive, all of which direct a driver going from River Road near Wilson Lane to the Hospital's street address to take Huntington Parkway to Old Georgetown Road. *See id.* at 29-30.

Mr. Wells analyzed Mr. Sokolove's drive time test results and concluded that some Hospital employees will take Huntington Parkway and some will cut through the neighborhood, consistent with his forecasts. He further found that the minimum and maximum drive times for the Huntington route and the alternatives overlap – sometimes one route is faster and sometimes it is slower, depending on the run. *See id.* at 34. Moreover, he found that Mr. Sokolove's average travel times are lower on Huntington Parkway compared with the alternatives on all four days during the Hospital's peak commuting time. That is not the case for the street peak hour, but when the bulk of Hospital employees are coming to work, Mr. Wells found Mr. Sokolove's times suggest that Huntington Parkway will be quicker. *See id.*

4. Hospital Evidence: Access and Circulation

The Hospital currently has six driveways: two on McKinley Street (one inbound and one outbound); one on Southwick Street leading to the parking garage and a small surface parking lot just west of it; two driveways on the south side of Lincoln Street leading to parking lots and the loading area; and one on the north side of Lincoln Street leading to the parking garage. *See* Tr. 12-18-08 at 106-107. Mr. Wells noted that the Hospital has installed signage to limit the Southwick Street entrance to inbound traffic only, to limit cars using the McKinley Street exit to left turns only, towards Old Georgetown Road, and to allow only left turns out of the Lincoln Street driveways, towards Old Georgetown Road. *See id.* at 107-109. All of these restrictions are intended to keep Hospital traffic out of the Huntington Terrace

residential area to the west. *See id.* at 109-110. Mr. Wells stated that based on his firm's traffic counts, 7 to 13 percent of cars using those driveways violate the turn restrictions. *See id.* at 108-109. He observed that one of the advantages of abandoning Lincoln Street is to physically prevent that kind of illegal movement (*see id* at 110); the Hearing Examiner notes that the proposed plan would not prevent all illegal turns out of Suburban into the neighborhood, but would greatly reduce the opportunity to make them by shifting the vast majority of the traffic to a new Old Georgetown Road entrance/exit, and by creating side street access points whose geometry makes it much more difficult to turn towards the neighborhood than it is from the existing driveways. Mr. Wells noted that the current parking shortage increases the number of Hospital-bound visitors and patients who drive on neighborhood streets, because many people have to make a second or third pass looking for parking.

Mr. Wells opined that there simply are too many functions that converge in too little space at the current main driveway: cars driven by Hospital physicians, staff and visitors; emergency and non-emergency ambulances[20]; service and delivery vehicles and trash trucks using the same short section of Lincoln Street to reach the western Lincoln Street entrance; and pedestrians arriving from the parking garage. *See* Tr. 12-18-08 at 111. He noted that with the proposed expansion, the Hospital would be served by four driveways, two fewer than under existing conditions. The main driveway would be on Old Georgetown Road at the former intersection with Lincoln Street, with one driveway on Southwick Street and two on McKinley Street. Drivers entering via the main driveway would turn right to enter the new parking garage, go straight to drop off a patient at the main entrance, or turn left to drop off a patient at the emergency entrance or to access the physician parking lot just south of the main driveway. *See id.* at 129. 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

[20] Hospital witnesses explained that some ambulances arrive under emergency conditions while others are used for non-emergency patient transport, such as a nursing home resident being brought to the Hospital for regular treatment.

that the curb radii would make it very difficult if not impossible to turn left on exiting or to turn right to enter. *See* Tr. 12-18-08 at 128.

The eastern McKinley Street driveway (the one close to Old Georgetown Road) would be designated for use by inbound emergency ambulances only. Ambulances would be directed to exit using the main driveway. Mr. Wells noted that this would provide ambulances with an unencumbered route to the emergency entrance, in contrast with today's somewhat confusing situation. *See id.* Emergency ambulances would also be directed to shut off their sirens when they turn from Old Georgetown Road onto McKinley Street, to spare the neighbors the noise. The western McKinley Street driveway (the one farther from Old Georgetown Road) would provide access to two card-operated parking lots used by physicians and by patients at the cardio rehabilitation center. It would also serve traffic heading for the loading dock or the large-vehicle parking area. Signage and a raised median would restrict drivers to right turns in and left turns out at this driveway, to discourage the use of neighborhood streets. *See* Tr. 12-18-08 at 122-23 and 148-49; Ex. 260(c). Trucks headed for the loading dock would enter via the western McKinley Street driveway, turn left, follow a clockwise path around the existing Hospital building, pull forward just past the dock and back into the dock. *See* Tr. 12-18-08 at 134. To exit, they would retrace their path to McKinley Street. Shuttle buses would make only one trip in and out of the parking area per day; during the day they would be in use, stopping at a shuttle bus stop near the main entrance and various off-site locations.

The vehicular circulation and parking plan may be seen in Appendix A, pp. 4-5.

Mr. Wells described the existing pedestrian travel network, which includes sidewalks on both sides of Old Georgetown Road, the south side of McKinley Street, the north side of Lincoln Street and the north side of Southwick Street. He identified a lack of sidewalks on the north side of McKinley west of the Hospital driveway, the south side of Lincoln Street west of the Hospital driveway; the south side of Southwick along the Hospital frontage; and both sides of Grant Street between McKinley and Southwick. *See id.* at 112. The proposed modification would fill in these gaps in the sidewalk network.[21]

[21] Lincoln Street would be closed, but a pedestrian path, albeit on a more circuitous route, would be created through Hospital grounds.

Mr. Wells pointed out the closest bus stops, located on both sides of Old Georgetown Road in front of the Hospital.

5. Opposition Evidence: Access and Circulation

On cross-examination, Mr. Wells testified that he has been the traffic planner for numerous hospitals including Shady Grove Adventist, Washington Adventist, INOVA Fairfax, Washington Hospital Center and Georgetown University Medical Center. *See* Tr. 12-18-08 at 212. He testified that one of his past projects may have involved closing a public street, but he was not sure. He stated that one and possibly two of the hospital plans he worked on involved removing homes.

The HTCA argued that the access and circulation proposed in connection with this modification would be inadequate and unsafe. They contended that the main driveway would present unacceptable access conflicts, with too many streams of traffic crossing in too many directions: some cars turning right to get into the garage, putting them in potential conflict with pedestrians crossing from the garage to the main Hospital entrance; not enough space for cars to pull over in front of the entrances without blocking travel lanes; potential conflicts between cars and ambulances exiting the main driveway and entering cars needing to turn left to reach the emergency entrance or the physician parking lot; and not enough space for cars to pull over in front of the entrances without blocking travel lanes. *See* Sokolove testimony, Tr. 5-5-09 at 185-189; 197-98. Howard Sokolove, who testified on this issue for the HTCA, suggested the potential access problems would be exacerbated by private cars bringing patients to the emergency room, whose drivers might be panicked or stressed about an injured loved one and have trouble following signs. *See id.* at 189-90; 237. (As Mr. Corapi testified later, someone who is able to drive to the Hospital should be able to follow directional signs.) He described the southwest corner of the parking garage as creating a blind corner for drivers moving in either direction. All of these problems, he argued, would be compounded by the size of the garage, which would bring in virtually double the amount of parking capacity, and the physician's offices, which would greatly increase the number of trips to the site. *See id.* at 191-92. The physicians offices, Mr. Sokolove observed, would

bring to the site many cars with patients who need help getting out of the car and perhaps into a wheelchair, taking extra time in front of the main entrance.

Mr. Sokolove contended that it is unacceptable to expect a driver dropping off an emergency room patient to go park in the garage and walk back to the emergency entrance. He expects that people will resist the requirement to move their cars to the garage, and will instead block the emergency entrance area with their vehicles while waiting for a loved one to be tended to. *See* Tr. 5-5-09 at 199. Mr. Sokolove noted that the Hospital's rate of more than 40,000 Emergency Department trips each year translates into an average of about 115 per day, 82 of them by private vehicle.[22] *See id.* at 203-204. He also considers it unsafe for bicyclists and pedestrians who might want to use the path through the Hospital grounds from Grant Street to Old Georgetown Road to have to ride/walk through the mayhem of the proposed front driveway. *See id.* at 200.

6. Hospital Response: Access and Circulation

In the Hearing Examiner's view, the Hospital persuasively refuted each of the opposition contentions. 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 at 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. He noted that the geometry of each of the driveways and on-site roadways would be designed to adequately accommodate the vehicles intended to use them, including tractor trailer trucks, fire trucks, cars and other vehicles. *See* Tr. 12-18-08 at 137. He specifically opined that there would be adequate space for patient drop-offs at both the main entrance and the emergency entrance, considering the number of patients that can reasonably be expected to arrive within a short space of time and how long each vehicle can reasonably be expected to stay in the drop-off area. This testimony was supported by a drawing showing that the main entrance configuration as shown on the

[22] Mr. Sokolove calculated the percentage of emergency patients arriving by private vehicle based on estimates given to him unofficially by Emergency Department staff.

site plan has room for four vehicles without blocking the travel way, and that it could be reconfigured to make room for six. *See* Ex. 408. Mr. Wells stated that the proposed plan would separate and distribute traffic and reduce, if not eliminate, conflicts at the main driveway. In his view, it is desirable to distribute Hospital traffic among the three streets that serve the Hospital – Old Georgetown, McKinley and Southwick – rather than concentrating all Hospital traffic at the main entrance, which would replicate the problem that the Hospital has today on Lincoln Street. *See id.* at 137-38.

7. Hospital Evidence: Roadway Improvements

The Hospital proposes to make several improvements to Old Georgetown Road, consistent with the Master Plan: providing a ten-foot public improvement easement for a total of 60 feet of right-of-way; widening the median in the mid-block crosswalk to six feet across to serve as a pedestrian refuge; widening the median from the existing Lincoln Street to McKinley Street; creating proper crosswalks and handicap ramps; reconstructing the sidewalk along the Hospital's Old Georgetown Road frontage and creating a landscape panel between curb and sidewalk; and widening the curb radius in the northwest quadrant of the intersection of Old Georgetown Road and McKinley Street to better accommodate tractor trailers. *See* Tr. 12-18-08 at 145-47; Exs. 73(ooo) and 431(i).

The Hospital has also agreed to make roadway improvements on McKinley Street: dedicating ten feet of land for right-of-way and constructing a second westbound travel lane, 16 feet wide, from Old Georgetown Road to the new Hospital driveway midway down the block. *See* Tr. 12-18-08. at 147; Ex. 225. This would widen McKinley Street to four lanes: an eastbound lane that flares to two lanes at the intersection with Old Georgetown Road; a westbound through lane; and a westbound turn lane from Old Georgetown Road to both of the new Hospital driveways, for traffic heading to the Hospital. The new westbound lane would be used by emergency ambulances heading to their dedicated driveway, and for physicians, cardio rehabilitation patients, delivery trucks and vendors heading to the western McKinley Street driveway. West of the western McKinley Street driveway, McKinley Street would have two 13-foot lanes, one heading in each direction.

8. Opposition Evidence and Hospital Response: Roadway Improvements

Huntington Terrace's land planner, Mr. Doggett did not view the proposal to widen McKinley Street as an improvement. In his view, widening it would reduce its residential character.

HTCA raised a concern about the fact that even with the widened curb radius, tractor trailers would not be able to make the right turn from southbound Old Georgetown Road to McKinley Street while staying in the right-most lane of Old Georgetown Road; they would need to swing out into the next lane to the left to make the turn. *See* Tr. 12-18-08 at 152. Mr. Wells explained that this is typical of how tractor trailers handle urban intersections, and how they handle turning from Old Georgetown Road to Lincoln Street currently. *See id.* at 153-54. He added that if the curbs were wide enough to allow tractor trailers to stay in one lane, the intersection would be inconveniently wide for pedestrians. *See id.* at 154. He considers this a safe condition because smaller vehicles can be expected to get out of the way when a tractor-trailer is making a turn. *See id.* at 154. Moreover, the existing traffic counts indicate that the Hospital currently receives tractor-trailer deliveries only one or two times a day, and that number is not expected to increase. *See* Ex. 236(c).

9. Hospital Evidence: Abandonment

Mr. Wells' firm prepared a study of the impacts of the proposed Lincoln Street abandonment to support the Hospital's case during the abandonment hearing that took place in the fall of 2008.[23] *See* Ex. 173. To abandon a road right-of-way, the County Council must find that (1) the right-of-way is "no longer necessary for present public use or anticipated public use," or (2) "the abandonment . . . is necessary to protect the health, safety and welfare of the residents near the right-of-way." *See* Ex. 173 at 2, quoting the Montgomery County Code. Thus, the abandonment study focused on supporting those findings. Nonetheless, its conclusions are relevant to the BOA's task of determining whether the proposed abandonment of Lincoln Street – which is integral to the proposed expansion – would have adverse impacts on the neighborhood that are unacceptable under the County's standard of evaluation for special exceptions.

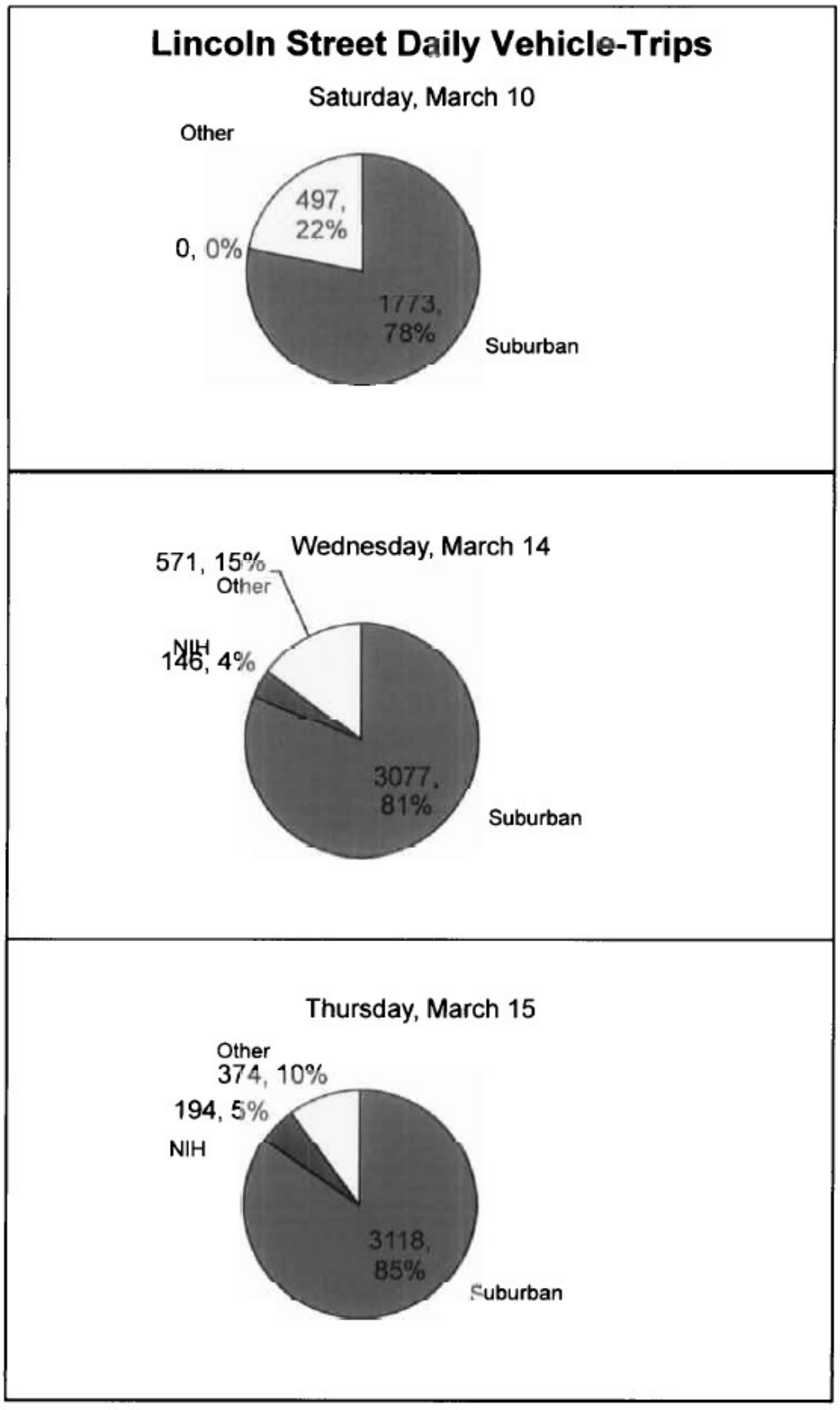
[23] The Office of the County Executive conducts road abandonment hearings. The hearing officer who conducted the hearing on this proposed abandonment has not yet produced a report and recommendation. The parties to this case report that the hearing officer is waiting to release her recommendation until the Board of Appeals has made a decision on the special exception modification.

Mr. Wells observed that Lincoln Street is only three blocks long. It extends from Old Georgetown Road to Garfield Street. There are 12 driveways on the block of Lincoln Street proposed for abandonment (hereinafter, the first block of Lincoln Street, all of which are controlled by the Hospital (one leads to the Hospital garage and two to surface parking for the Hospital; the rest lead to rental houses proposed for removal). *See* Tr. 12-18-08 at 179-80. The first block of Lincoln Street is 19 feet or two lanes wide at Grant Street, and 38 feet or three lanes wide at Old Georgetown Road. The right-of-way is 50 feet wide. The Old Georgetown Road intersection is controlled by a traffic signal. The three Hospital driveways are controlled by stop signs. There are pedestrian crosswalks just west of Old Georgetown Road and west of the Hospital's main driveway, and a sidewalk on the north side of the street. Street parking is prohibited on both sides of the street. *See id.* at 181.

Mr. Wells noted that Lincoln Street serves short trips, and that the block proposed for abandonment serves primarily Hospital trips. *See* Tr. 12-18-08 at 179, Ex. 167. Longer trips use other parallel streets, primarily Huntington Parkway and Greentree Road, which are classified as primary streets (a higher classification than Lincoln, which is a residential street). Mr. Wells' firm conducted counts of vehicles and pedestrians on Lincoln Street on a Saturday, a Wednesday and a Thursday in March, 2007. The counts identified how many vehicles went into Hospital entrances, how many went straight across Old Georgetown Road into NIH, and how many went elsewhere. The pie charts on the next page show graphically the results of those counts, which are also presented in the table below:

Date and Total Trips	Suburban Trips	NIH Trips	Other
March 10, 2007, 2,270 trips	1,773 or 78%	0	497 or 22%
March 14, 2007 3,794 trips	3,077 or 81%	146 or 4%	571 or 15%
March 15, 2007 3,686 trips	3,118 or 85%	194 or 5%	374 or 10%

Lincoln Street Daily Vehicle Trips, Ex. 167



Mr. Wells' firm also counted pedestrian trips, differentiating between pedestrians who crossed Lincoln at Old Georgetown Road and were not seen entering Hospital grounds, and those who crossed at the crosswalk leading from the garage to the Hospital. They found that on Saturday, March 10, 95% of the people crossing the road were in the garage crosswalk. On Wednesday, March 14 and Thursday, March 15 the raw numbers were much larger (more than 1,000 people crossing compared to a bit more than 400 on Saturday) but the percentages were similar: 96% in the garage crosswalk on Wednesday and 94% on Thursday. *See* Tr. 12-18-08 at 183-84, Ex. 168. Mr. Wells concluded that local neighborhood residents and commuters who use the first block of Lincoln Street have multiple route choices, and use Lincoln as a matter of convenience. They don't have to use the first block of Lincoln Street because Lincoln is not the sole means of access to any property not controlled by the Hospital. *See* Tr. 12-18-08 at 186.

In Mr. Wells' view, using the Lincoln Street road bed for the proposed Hospital expansion would be a superior public use compared to the modest, convenience use of the road by local residents. *See id.* He observed that closing the first block of Lincoln would eliminate cut-through trips on Lincoln, as well as eliminating conflicts among ambulances, cars, trucks and pedestrians at the main Hospital entrance. He opined that alternative vehicular routes have sufficient capacity to accommodate the traffic that would be displaced by the proposed abandonment, and that pedestrians would have an adequate alternative route through the unified Hospital campus. *See id.* at 186-87.

10. Community Evidence: Abandonment

Mr. Sokolove argued for the HTCA that the proposed abandonment of Lincoln Street would adversely affect their community in many ways. He referred to traffic data on pages 19-20 of the Abandonment Study, including a count of 571 vehicles using Lincoln Street on March 14, 2007 that were attributed to Huntington Terrace. *See* Tr. 5-5-09 at 49. In Mr. Sokolove's view, 500 cars a day from Huntington Terrace using the first block of Lincoln Street contradicts Mr. Wells' assertion that Lincoln Street is not necessary for present use or anticipated future use. *See id.* at 51. He argued that preventing residents from using the more direct and convenient route for ingress and egress to their

homes interferes with the use and enjoyment of their property, raises safety problems, and adversely affects the residential character of other streets. *See id.* The safety problem arises because Lincoln Street traffic would be diverted to other secondary streets that are substandard. Mr. Sokolove cited Chapter 49 of the Montgomery County Code, which states that a secondary street with curbs and one-side parking must be at least 20 feet wide. *See* Tr. 5-5-09 at 178. He also cited executive regulations governing road width, approved by the County Council in December 2008, that indicate a secondary street must be 29.5 feet wide, to accommodate an eight-foot parking lane, a ten-foot lane next to it, and 11.5 feet for the other lane. *See id.* Several roads in Huntington Terrace are less than 29.5 feet wide.

Local residents testified that the pedestrian path proposed through the hospital grounds would not be an adequate substitute for the straight route they now have on Lincoln Street. Some residents complained about the additional distance pedestrians would have to walk on a path that winds through gardens and around the hospital addition. Some residents were concerned about the safety of walking through a park-like setting after dark, despite the Hospital's plan for lighting, security cameras, security guard patrols, and panic boxes to allow someone in distress or danger to quickly call for help.

One Huntington Terrace resident who testified in support of the modification reported that he travels the first block of Lincoln Street every day, often on bicycle, but he would consider it a trivial inconvenience to go one block to McKinley or Southwick instead. *See* Tr. 12-12-09 at 61.

E. Parking

The Hospital commissioned a parking study to determine how much parking is needed in connection with the proposed expansion. *See* Ex. 11(i). There are currently 730 parking spaces on the Hospital site: 268 in the existing garage and 462 in a series of surface parking lots. In addition, the Hospital has contractual agreements that make 351 off-site spaces available to its employees. *See* Tr. 12-18-08 at 105. Employees who park in the off-site satellite lots ride a Hospital-provided shuttle bus from the lots to work and back again. Thus, the total currently parking supply is 1,081 spaces. The on-site surface parking is distributed among a number of locations: upwards of 200 spaces in a lot north of Lincoln Street; about 90 spaces along Old Georgetown Road between the main entrance and McKinley

Street, reserved for physicians; about 60 spaces in two lots along McKinley Street; about 35 spaces in a small lot located between two houses on Grant Street, screened by fences on three sides; 14 spaces for vendors along the interior road from McKinley Street that runs behind the Hospital to the loading dock; six spaces just outside the emergency room for police cars; and five large-vehicle spaces, mostly used by shuttle buses and as a turnaround area for large trucks, located just northwest of the loading dock.

Mr. Wells contended that while the actual number of on-site parking spaces is 730, as a practical matter the actual capacity is about ten percent lower, or 657 spaces. The parking study describes as an accepted industry standard a "practical capacity factor" of 90 percent occupancy to account for normal parking turnover and to avoid long searches for an empty space. *See* Ex. 11(i) at 5. Based on his firm's counts, the peak occupancy of the on-site parking is 720 spaces, and the occupancy exceeds the practical capacity from mid-morning to mid- to late-afternoon. *See id.* at 190; Ex. 169.

The largest number of off-site spaces is at the Suburban Outpatient Medical Center on Rock Spring Drive in Bethesda, where the Hospital leases 234 spaces. *See* Tr. 12-18-08. at 191-92. Mr. Corapi and Mr. Wells testified that Suburban does not own the building, despite the fact that it bears the Hospital's name. Suburban leases the building under a master lease, and sub-lets parts of it to various tenants. Currently, some of the tenants have relatively low parking needs, so there are excess spaces available for Hospital satellite parking. Neither Mr. Corapi nor Mr. Wells considers this something the Hospital can rely on long-term, because the tenant mix may change and excess parking be absorbed. *See* Tr. 12-18-08 at 206-207; Tr. 2-20-09 at 44-46. The other off-site spaces are leased from the Bradley Hills Presbyterian Church, the Rockspring KC Club, the Women's Club of Bethesda, and the Bethesda United Methodist Church. Mr. Wells does not consider any of these to be reliable, long-term solutions for Suburban's parking needs.

Mr. Corapi and Mr. Wells both described satellite parking as a hassle for employees, adding significantly to the length of their commute. They testified that it is difficult to recruit and retain

healthcare workers, and obligating some of them to use off-site parking is an impediment to Suburban's recruiting and retention. *See* Tr. 12-18-08 at 204; Tr. 2-20-09 at 41-42. Mr. Wells opined that it makes sense for Suburban to consolidate all of its parking on campus both to ensure the availability of that parking long-term and to assist in Suburban's employee recruiting and retention efforts. He added that satellite parking results in more vehicles trips on the roads – not just the employees driving to the satellite lots, but also shuttle bus trips.

Based on counts conducted on-site and the number of employees riding the Hospital shuttle buses from off-site parking location, Mr. Wells' firm found that currently, the total peak parking occupancy on-site and off-site is 912 spaces.[24] Adding a 10 percent allowance for vacant spaces to make it workable, plus 10 percent for suppressed demand, Mr. Wells estimates the total parking demand currently at 1,116 spaces. *See* Tr. 12-18-08 at 194; Ex. 170(a). Mr. Wells contended that it is clear there is suppressed parking demand because some patients miss appointments when they are unable to find a parking space. Mr. Wells made the following calculation to estimate the number of parking spaces needed with the proposed expansion:

Future Parking Demand at Suburban with Expansion
Extrapolated from Ex. 170(a) and M. Wells Testimony

Existing Peak Parking Occupancy	912
Plus 10 Percent to Reach Practical Capacity of 912	102
Plus 10 Percent for Suppressed Demand	102
Plus Additional Spaces based on Hospital Expansion[25]	153
Plus Spaces Needed for Physician Office Space	190
Total Future Parking Demand	1,459

[24] The parking study found only 192 of the 351 satellite spaces in use, based on shuttle bus ridership. Mr. Coropi explained that some employees work longer, fewer days, so they don't use the shuttle buses, every day. See Tr. 2-20-09 at 42.

[25] This figure was calculated by applying the current parking ratio of 2.44 spaces per 1,000 square feet of Hospital space to the total square footage proposed with the expansion. The parking to Hospital square footage ratio was based on the ratio of the estimated current parking demand (1,116 spaces) to the existing Hospital square footage, minus the Lambert Building, plus the "standard of care" expansion (340,000 sq. ft. minus 17,000 sq. ft. plus 135,000 sq. ft.). The Hearing Examiner noticed after the hearing that the 2.44 was applied to 62,600 sq. ft. of Hospital expansion that is expected to generate parking, which is smaller than the figure of approximately 76,000 sq. ft. of expansion space that Mr. Wells used to estimate traffic generation. Compare Exhibit 11(i) at 6 with Exhibit 25 at 27. This discrepancy is not of great concern because it results in underestimating parking demand only slightly, by about 32 spaces. Moreover, if the application is remanded, the Hospital will have the opportunity to rectify this discrepancy or explain its purpose.

Mr. Wells acknowledged that his parking demand estimates exceed the number of parking spaces that the Zoning Ordinance requires for a Hospital with the same square footage. *See* Tr. 12-18-08 at 196. His estimates, he emphasized, are based on actual observations at this individual hospital.

Mr. Wells testified that the proposed alternate garage would provide a total of 1,244 spaces. Adding 173 surface spaces, the total parking available would be 1,417 spaces.[26] *See* Tr. 12-18-08 at 143. With the shorter alternate garage that the Hospital discussed on the very last day of the hearing, the on-site parking would consist of 1,176 garage spaces and 173 surface spaces, for a total of 1,349.

The proposed expansion includes surface parking along Old Georgetown Road, restricted by card access to physicians only; along McKinley Street, restricted by card access to staff and cardiac rehabilitation center patients; a small number of spaces for shuttle buses and other large vehicles (such as the Hospital's Mobile Med truck) just northwest of the loading dock; and vendor spaces along the drive leading from McKinley Street to the loading dock. These are intended for vendors who drive cars or other smaller vehicles that do not pull up to a loading dock.

On cross-examination, Mr. Wells stated that he did not know how many of the Hospital's employees are not "healthcare workers" per se, but rather are general workers such as grounds keepers, cafeteria workers and maintenance people. *See* Tr. 12-18-08 at 214. He did not know whether those types of workers are difficult to recruit and retain.

Mr. Sokolove testified for the HTCA that the proposed plan would nearly double on-site parking and eliminate satellite parking. *See* Tr. 5-5-09 at 32. In his view, this would impose unacceptable adverse impacts on the neighborhood in the form of additional vehicular traffic on local roads.

[26] The site plan that the Hospital first proposed for this modification included the original, larger garage, plus more surface parking than is currently shown. It had a total of 1,465 parking spaces. *See* Tr. 12-18-08 at 197. The Planning Board directed the Hospital to eliminate parking it had proposed along Grant Street in favor of a landscape buffer, and the Technical Staff requested the Hospital to produce an alternative garage design that would not need a variance. These changes resulted in the parking proposed at the hearing, as testified to by Mr. Wells. He observed that all of these variations would produce enough parking to park everyone who wants to park, but fewer spaces would mean fewer empty spaces available during peak times, and more time driving around looking for a space. *See* Tr. 12-18-08 at 198,

F. Transportation Management

The Hospital has a substantial transportation management plan, which includes free shuttle buses between Suburban and the Bethesda Metro Station, subsidized Metro checks, bike racks and showers, a work from home program, information on transportation alternatives and guaranteed rides home for employees participating in ride-sharing programs. *See* Tr. 12-18-08 at 199; Ex. 144(b). Currently 11 percent of the Hospital's main shift employees (those arriving between 6:30 and 9:30 a.m.) do not drive a car to work. They are auto passengers, rail passengers or bus passengers. The Hospital expects to be able to maintain this non-auto driver mode split with the proposed expansion, with the possibility of increasing the mode split to 14 percent over time with the following additional measures: information kiosks, real time and static transportation information signs, additional bike lockers, yearly transportation fairs to promote ride sharing and transit use, participation in regional programs addressing traffic mitigation, employee car pool spaces in highly visible and desirable locations, and a car sharing space. *See T*r. 12-18-08 at 200; Ex. 144(b).

The HTCA and the People's Counsel noted that in a recent special exception approval for a new location for the Washington Adventist Hospital, the BOA approved a non-auto-driver modal split goal starting at 11 percent and potentially increasing to 14 percent. Mr. Wells acknowledged that there is no metro station near the proposed new location for Washington Adventist, while Suburban is a little over a mile from the Bethesda Metro Station. He stated that a hospital close to a Metro station might have the same non-auto-driver modal goal as one far from Metro if, for instance, the one far from Metro is in a location where high local traffic congestion argues for a higher level of mitigation to reduce local traffic impacts. *See* Tr. 12-18-08 at 218-19. Mr. Wells did not work on the recent Washington Adventist case, but noted that it is located on the Route 29 corridor, which he is familiar with as a congested corridor.

Mr. Sokolove argued for the HTCA and Wayne Goldstein argued for the Montgomery County Civic Federation that Suburban has not explored several mitigation measures that have proven effective in other jurisdictions. These include "cashing out" – offering employees cash for their parking spaces – as well as providing a more generous transit subsidy (Mr. Sokolove testified that Suburban

offers employees about $65 per month, while NIH offers $110 per month). *See* Tr. 5-5-09 at 42-45. In the HTCA's view, a more vigorous traffic management program would require fewer parking spaces, resulting in a smaller garage and less traffic. While this may be true, the Hearing Examiner considers it unjustified for the BOA to impose such requirements without probative evidence that it is necessary to avoid unacceptable adverse impacts.

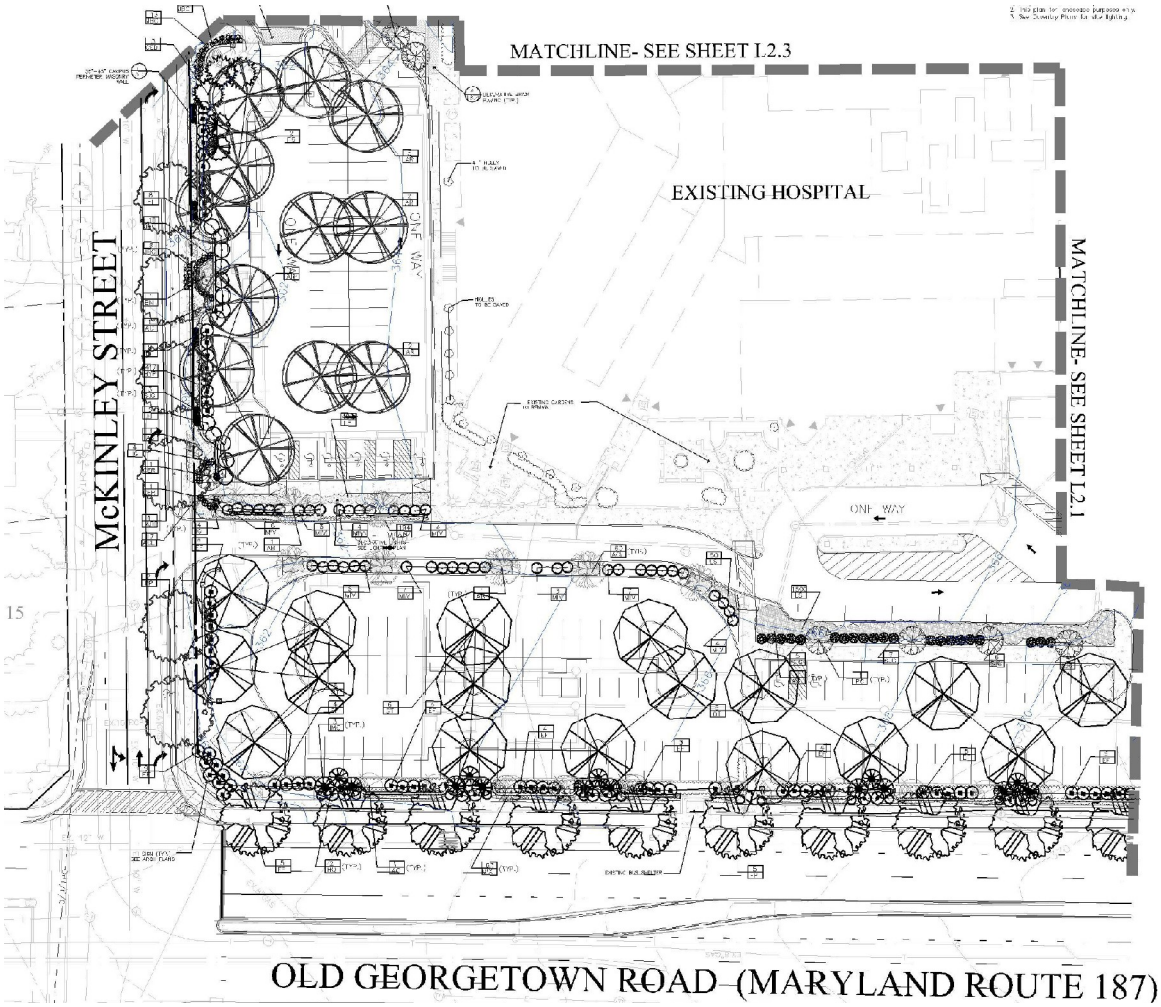
G. Landscaping

In addition to the gardens described in Part III.B.2, the Hospital proposes significant landscaping along its Old Georgetown Road frontage, in surface parking areas, around the perimeter of the parking garage and around the property lines it shares was residences it does not own on Southwick Street and Grant Street. *See* Composite Landscape Plan, Ex. 191(a); landscape plans by quadrant, Exs. 191(b) through (e); Planting Notes and Details, Ex. 191(f); Illustrative Campus Plan in Appendix A at 3.

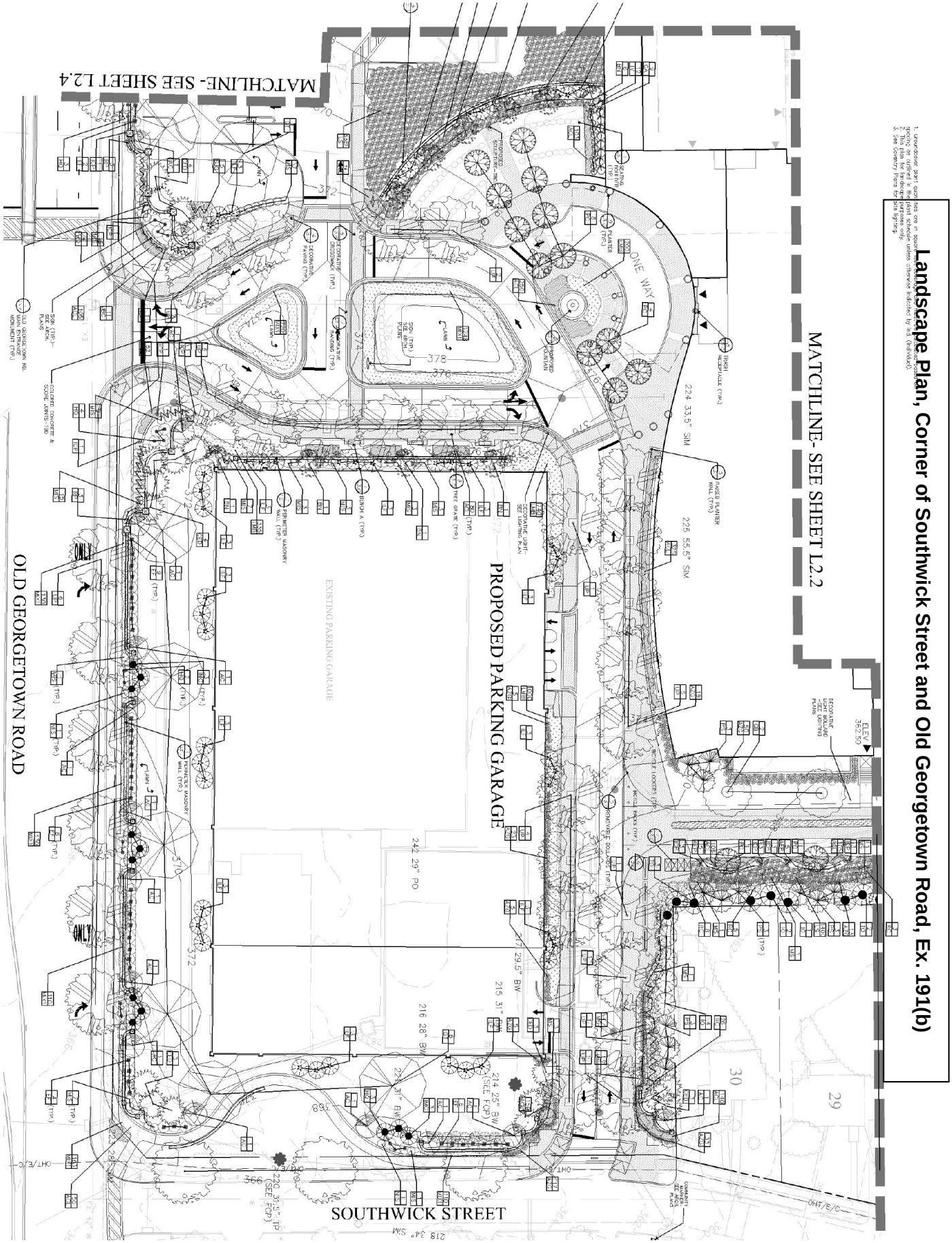
A series of landscape cross-section plans reproduced in Appendix A, pages 15 through 29, provide an artist's view of what the proposed landscaping will look like as a buffer at various locations around the site at planting, at ten years and at 20 years. The HTCA's land planner considered these idealized views of the landscaping, while the Hospital's landscape architect considered them good representations.

Along Old Georgetown Road and along the east side of the parking garage, proposed landscaping consists of street trees and rows of bushes, with more extensive gardens on either side of the main driveway. *See* Landscape Plan page L.2.4, Ex. 191(e), reproduced below. An additional row of deciduous trees is shown along the east side of the parking garage, between the street frontage and the garage, as well as intermittent groups of bushes along the garage façade. The south face of the garage is shown with extensive plantings as part of the main driveway landscaping. Along the west and north sides of the garage the Hospital proposes groups of deciduous trees, a sidewalk, and clusters of bushes and smaller plantings. *See* landscape plan for corner of Southwick and Old Georgetown below.

Landscape Plan, Corner of McKinley Street and Old Georgetown Road, Ex. 191(e)

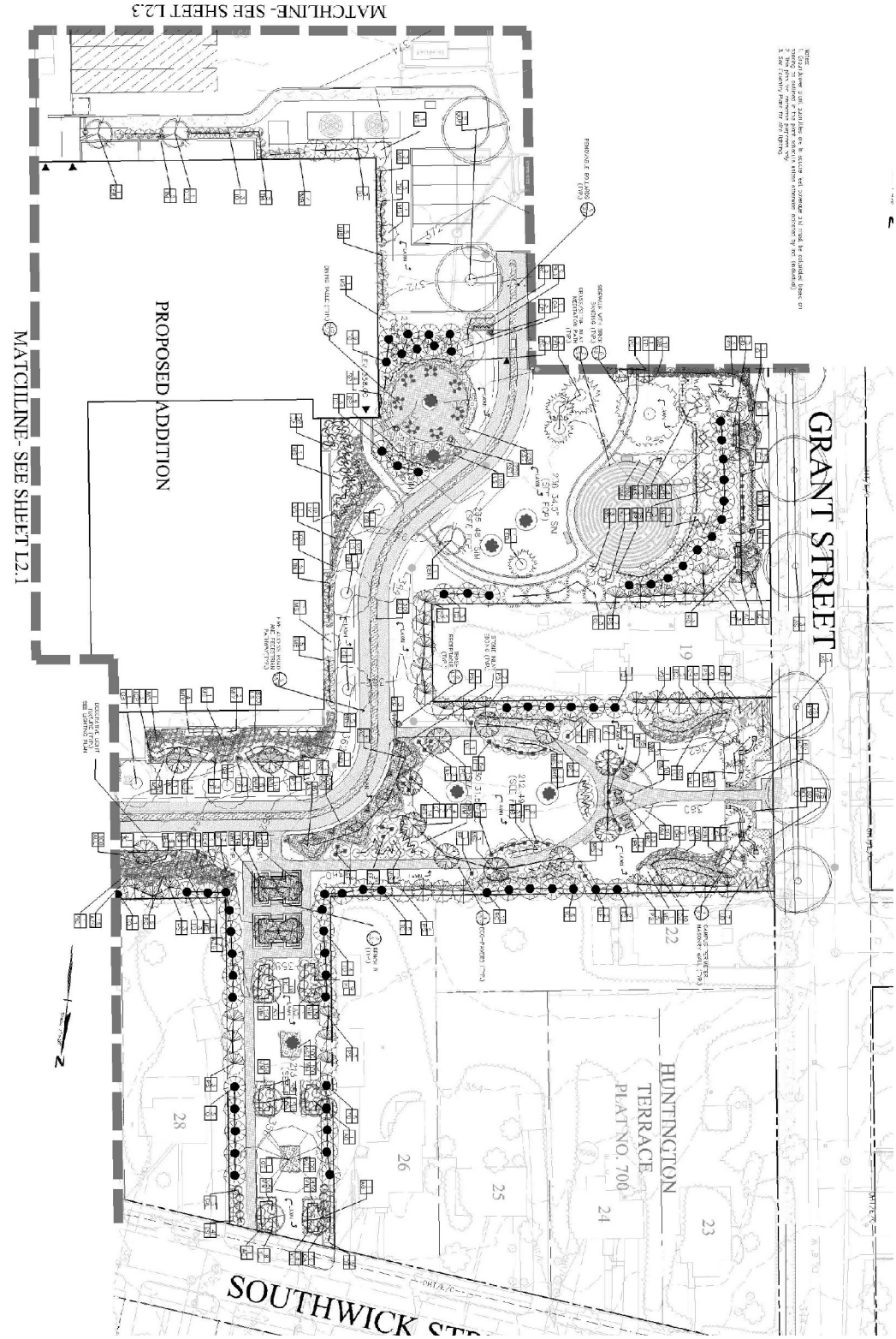


Around the property lines of residences that abut hospital property, the landscape plans propose a row of evergreens to buffer the residences, alternating American Holly, White Pines and Arborvitae in a tightly spaced, staggered row. *See* Ex. 191(b) below. On the Hospital side of the evergreens, the Hospital proposes additional layers of smaller plantings, in keeping with the general multi-layered approach.



Landscape Plan, Corner of Southwick Street and Old Georgetown Road, Ex. 191(b)

The Hospital proposes the same row of tightly spaced, mixed evergreens along the property lines around each of the gardens near the corner of Southwick and Grant. *See* Landscape Plan, corner of Southwick Street and Grant Street, Ex. 191(c), next page.



Landscape Plan, corner of Southwick Street and Grant Street, Ex. 191(c)

The Hearing Examiner asked the HTCA to inquire of the property owners adjacent to these gardens whether they would prefer to have the heavy evergreen buffer the Hospital proposes, if the modification is approved, or would like to be able to see into the gardens rather than seeing only a row of evergreens. Owners of three of the four homes abutting proposed gardens submitted letters. Some homeowners had some difficulty picturing what was being proposed, lacking familiarity with some of the plant names and not knowing how big the trees would be at planting. The owner of 5518 Southwick Street (Lot 26, directly north of the Healing Garden that extends out to Southwick Street), Stuart Borman, would like as much of a buffer as possible, such as tall trees between his property and the Hospital. *See* Ex. 379. Mr. Borman considers the "invasive finger of development" represented by the Healing Garden very worrisome. He fears that at a later point the Hospital will convert this finger of land into a driveway. Mr. Borman believes that the proposed addition is much too close to Southwick Street, and that the proposed garage will dominate that part of the street. He does not believe that landscaping will be able to buffer nearby residences from the noise, traffic and visual impairment. In his view, the Hospital's plan will make his block so unpleasant that no one will want to live there.

The owners of 5514 Southwick Street, on the south side of the Healing Garden, also want as much buffering as possible. *See* Ex. 378. Amy Royden-Bloom and Evan Bloom worry that the trees proposed along their property line will not be tall enough or thick enough to adequately block their view of a 50-foot/20-foot building located 70 feet from their property line. They are also concerned about HVAC and other noise from the proposed addition, since they can already hear hospital air conditioning nearly two blocks away ("As the hospital has ignored noise regulations in the past, we have little confidence that a new building just feet from our back yard will be quiet or even to code." Ex. 378). Ms. Royden-Bloom and Mr. Bloom are concerned that with the garden path so close to their property, people walking by will peer into their cars, windows, deck and backyard. For privacy and safety reasons, they would like the Hospital to construct a high, opaque fence that makes it impossible for passersby to see into or enter their yard. More fundamentally, they would like to preserve the views

and peace and quiet that are part of living in a residential community, and to look at trees and bushes and sky, not a "massive institutional structure." Ex. 378.

The owners of 8711 Grant Street, along the north edge of the Wellness Garden (the garden abutting Grant Street closest to Southwick Street) are John Cooper and Margaret Dittemore. *See* Ex. 380. Mr. Cooper testified about the severe adverse impacts he expects if the proposed expansion is carried out, including the loss of neighbors and sense of community and losing the view from his backyard of open space and houses, to be replaced by a large institutional building. *See* Ex. 147; Tr. 12-12-09 at 256-80. In their letter, Mr. Cooper and Ms. Dittemore chose not comment on whether they prefer buffering or an open view into the garden proposed next door to their house. They rejected the proposed expansion plan and landscape plan in their entirety, fully supporting the position of the HTCA. *See* Ex. 380. In their view, the only positive aspect of the landscape plan is that it preserves some of the mature trees. They find that the plan "shows absolutely no organic connection to the local neighborhood" and would replace pleasant, modest homes with "an arboreal barrier against the remaining neighborhood." Ex. 380. Mr. Cooper and Ms. Dittemore object to the removal of homes that are their most effective shield against hospital noise, and the loss of badly needed affordable housing in the neighborhood. They would like to see the present plan revert to the plan that the neighborhood discussed intensively in 2001, which called for above-grade construction between Lincoln and McKinley Street and mostly below-grade construction north of Lincoln, with expanded parking facilities underground and green space at ground level, like the approach taken at the National Cathedral. They also argue that if all Suburban-owned houses cannot be saved, a large percentage of them should be. *See* Ex. 380.

H. Lighting, Signage and the Environment

The site lighting plan was designed with four goals:

- Provide adequate illumination for safety and security.
- Use attractive fixtures that are compatible with new and existing buildings.
- Create no light trespass and no off-site glare.

- Use the light fixtures to reinforce the site organization.

See Ex. 21.

With the exception of parking garage lighting and concern about car headlights, site lighting was one of the few areas of testimony that engendered little or no controversy during the hearing. The submitted photometrics show that levels of illumination along the side and rear lot lines comply with the 0.1-footcandle guidelines established in Code § 59-G-1.22(h). The only locations where illumination exceeds 0.1 footcandles at a property line are abutting public roads, where the 0.1-footcandle standard does not apply. *See* Exs. 73(jjj), 73(zz), 263(e). As discussed in Part III.B.2, Mr. Hagerty testified persuasively that due to the way the lighting and the louvers along the garage walls are designed, no lighting will be visible outside the garage except a glow along the louvers and lighting that will inevitably spill out from the vehicular entrances. The photometric plan shows illumination levels at the closest residential property line to a garage entrance (Lot 30 on Southwick Street) of zero footcandles – no light trespass. There will, moreover, be trees between Lot 30 and the garage to shield residents from viewing the lighting at the garage entrances. Mr. Doggett considers the glow from the louvers an unacceptable intrusion, but comparing it to the light trespass from the existing (albeit smaller) garage, the Hearing Examiner is persuaded that the proposed garage lighting would not create objectionable glare or light trespass.

The Hospital proposes three brick monument signs (two at the main entrance and one at the corner of Old Georgetown Road and McKinley), two stone signs identifying Huntington Terrace (one on Southwick Street and one on McKinley Street), and a series of directional and identification signs around the hospital campus, as shown on the Concept Signage Plan, Ex. 46(ww). Very few of the proposed signs would be visible from residential areas, and only one of those would be illuminated. The signage does not, in the Hearing Examiner's view, raise any compatibility issues.

Environmental Planning Staff at the MNCPPC recommends approval of the Hospital's preliminary forest conservation plan with tree save conditions. *See* Staff Report, Ex. 49, at 11. Staff also found that the proposed modification satisfies forest conservation requirements based on existing

trees to be saved and credit for on-site plantings (this finding was made after Technical Staff worked with the applicant improvements to the applicant's original tree save effort, which would have saved only two of 40 large and specimen trees).

If the modification is approved, Suburban's existing stormwater management system will be upgraded or replaced to meet current standards. The Hospital's engineer proposes underground systems for both stormwater treatment and quantity control. *See* Ex. 24 at 7. Porous pavement will be installed for quality control for most of the temporary interim surface parking, with a stone layer underneath for quantity control. Permanent pavement that is installed during the interim phase will have storm filters for quality control and additional stone storage under the porous paving for quantity control. *See* Ex. 102(b).

I. Noise

The Hospital commissioned a noise study to assess the noise impact of the proposed expansion on the surrounding residential neighborhood. The noise consultant, Scott Harvey, found that the noise of concern for testing purposes was that generated by building mechanical equipment. *See* Ex. 23 at 1. Mr. Harvey assessed the noise levels that the mechanical equipment would generate and recommended a series of noise mitigation measures to keep the noise below the level permitted under the Montgomery County Noise Control Ordinance. *See id.* Because the mechanical equipment operates 24 hours a day, Mr. Harvey applied the County's 55 dBa nighttime noise limit. The Hospital has agreed to implement all of the noise mitigation measures Mr. Harvey recommended, including mufflers in emergency generators, locating emergency generator exhaust 14 feet below the edge of the areaway, installing sound lining on certain ductwork and enclosing the new cooling tower with a barrier on three sides, extending 25 feet above final grade. *See* Ex. 216.

Mr. Harvey used a noise model that determines the noise impact at a chosen location by summing the noise levels from various noise sources. *See* Ex. 23 at 1. The model also considers noise screening by buildings and reflection of noise from buildings. *See id.* In this case, the noise sources that were studied are planned to be located outside, at ground level or roof level, and inside

basement mechanical rooms. Mr. Harvey's report explained that while interior equipment typically would not raise a noise concern, several items on this site are managed through a series of grilles and large areaways that provide noise conduits to the outside. Similarly, garage air supply and exhaust fans connect to shafts that lead to louvers on the face of the garage. *See id.* at 2. The model was arranged so that various noise sources could be turned on or off, to analyze their individual impacts as well as the cumulative impact with all sources operating.

The noise study concluded that with the proposed mitigation measures, the planned mechanical equipment would not result in any objectionable noise or vibrations because noise levels on all adjacent residential properties would be below 55 dBa. Noise measurements were taken at the property lines of the closest residences, all of which are owned by Suburban.[27] The first noise study considered the original garage, and the noise impact drawings show some noise impacts from mechanical equipment in the garage as well as from the hospital building. *See* Ex. 23, Appendix A. Mr. Harvey prepared an update to his noise study to consider the impact of the alternate garage. *See* Ex. 102(d). He noted that the alternate garage is 22 feet lower than the original garage, and incorporates a change in design that extends the exhaust and supply shafts up to the roof, instead of terminating them at the sides of the building. *See id.* These changes resulted in lower levels of noise from the alternate garage than from the original garage. *See id.*; Ex. 216.

Noise impact maps reproduced in Appendix A, pages 30-31, show that the proposed expansion would create noise impacts above 55 dBa in the area between the existing hospital and the addition. The area affected by noise above the 55 dBa level does not extend to any houses that are not owned by Suburban, and it appears that it would not even cross the lot lines of the residential lots Suburban owns and proposes to clear, although the lot lines are not shown on the noise map. *See* Exs. 216(a) and (b).

Mr. Harvey testified that he recommended the Hospital construct a six-foot masonry fence along the edge between the Grant Greenway (the garden at the corner of Grant and McKinley) and the

access road to the loading dock, to work with the trees and berm to muffle any noise the nearby homes might otherwise experience from truck traffic. *See* Tr. 2-2-09 at 138-40. In his opinion, these measures would bring the noise from truck back-up alarms down below the 50-dBa standard that applies to that type of sharp, pure-toned noise – a "prominent discrete tone". *See id.* at 139-40, 150. He also recommended that the Hospital install a six-foot wooden fence between the proposed interim parking lot and the remaining homes along Southwick and Grant, as a noise buffer. *See id.* at 141-42. Mr. Harvey noted that emergency vehicles such as ambulances are exempt from the County Noise Ordinance. On cross-examination, he acknowledged that residents of homes on the west side of Grant Street might still hear the back-up alarm on a truck backing into the loading dock, despite the six-foot masonry fence, berm and trees.

Mr. Harvey was asked on cross-examination for examples of various noise levels. He testified that normal conversation is about 65 dBa. *See id.* at 152. He described 50 dBa as a quiet noise level, like the background noise from air conditioning in an open office with cubicles. *See id.* Mr. Harvey further noted that a 10-dBa drop in noise sounds like cutting the noise level in half, that point source noise decreases by six decibels for every doubling of distance, and that the smallest change in noise that is audible to the human ear is a three-decibel change.

Mr. Harvey acknowledged that if 23 houses are torn down as proposed, the Hospital will have more flexibility about placing noise-producing equipment closer to Grant Street, because the noise will be measured from the closest residential property line – with the houses on the east side of the street gone, the closest residential property line is much farther away, on the west side. *See id.* at 157-58.

Mr. Harvey agreed that equipment that is not properly maintained could generate higher levels of noise over time. *See id.* at 161. He did not agree, however, that equipment will generate more noise over time as it ages, regardless of whether it is properly maintained. *See id.* Mr. Harvey acknowledged that in connection with earlier equipment installations (presumably 2001), Suburban made representations that the noise levels from the new equipment would satisfy the County Noise

[27] The HTCA argued that if the proposed modification is approved and all 23 houses are torn down, hospital noise should still be measured from the current rental house property lines, rather than from the houses across the

Ordinance, yet within a few years the noise was measured and found to be in violation. *See id.* at 165. He observed that after the Hospital's 2007 modification, which permitted the installation of a new HVAC system and noise muffling measures for existing equipment, he went back and measured the noise impacts after installation and was pleased to see that the actual results were pretty close to what his model had predicted. *See id.* at 168. On average, the actual noise was higher than the model's predictions by less than two decibels, and the greatest amount by which the actual exceeded the model was four. *See id.*

There was considerable discussion of measurements taken by the County at Suburban early in 2009, which measured noise levels just below 55, e.g., 54.7. He noted that he performed measurements at the same time as County employees, and his results were slightly lower. Moreover, he pointed out that the County measurements showed the noise levels to be in compliance. *See id.* at 171. In his opinion, there is ample margin between the extent of the noise-affected area he has predicted for the present modification and what the Noise Ordinance permits, so although there are additional mitigation measures that might reduce noise further, he considers them unnecessary. *See id.* at 173-74, 186.

Mr. Harvey has no concern about objectionable noise from cars in the proposed parking deck. He stated that normal passenger cars moving at slow speeds are quite quiet these days, and by the time you put them in a parking deck with other cars to block their noise, it's not an issue. *See id.* at 179.

J. Potential Impact on Property Values

Ryland L. Mitchell testified on behalf of the Hospital as an expert in real estate appraisal and valuation and submitted a written report intended to address "the effect on value of surrounding real estate resulting from the proposed expansion and renovation of Suburban Hospital". *See* Tr. 1-30-09 at 93; Ex. 28 cover letter. Mr. Mitchell's methodology was to compare appreciation rates in residential real estate in Huntington Terrace with those in the Sonoma neighborhood, the next neighborhood north

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street.

of Huntington Terrace on the same side of Old Georgetown Road. Sonoma was considered a "control" neighborhood because it is not in the immediate vicinity of Suburban. Mr. Mitchell also compared residential real estate appreciation rates for houses in close proximity to Holy Cross Hospital with those in an adjoining "control" neighborhood, comparing appreciation rates before and after the 2005-2007 expansion.

Mr. Mitchell identified 53 "paired sales" consisting of 106 arms-length real estate transactions within Huntington Terrace between 2000 and 2006, and 28 paired sales in Sonoma. A "paired sale" analysis compares the latest sale price for a house with its sale price the previous time it was sold. This comparison is intended to capture the rate of appreciation over time, e.g., if a house sold for $100,000 in 1970 and for $1,000,000 in 2005, it appreciated by $900,000 over that time. Mr. Mitchell found that homes in Huntington Terrace appreciated at a much high rate than homes in Sonoma from 2000 to 2002, and that homes in both neighborhoods appreciated at the same overall rate between 2003 and 2006. *See* Ex. 28 at 4. Mr. Mitchell concluded based on a visual inspection that there have been more renovations and tea-downs since 2000 in Huntington Terrace than in Sonoma. He found no evidence to conclude that any construction or other activity on the Hospital campus has resulted in lower resale values for homes in Huntington terrace.

In the Holy Cross Hospital area, Mr. Mitchell gathered data an arms-length home sales in the Holy Cross neighborhood and an adjoining neighborhood farther from the hospital, but with homes of similar ages, construction and lot sizes. *See* Ex. 28 at 7. He identified 13 "paired "sales" (26 real estate transaction) in the Holy Cross neighborhood and 16 in the control neighborhood between October 1, 2005 and March 31, 2007. *See id.* He also examined home sales data in these two neighborhoods in 2000 and 2001, before the most recent hospital expansion. Mr. Mitchell found that in the 2000 to 2001 period, homes in the Holy Cross neighborhood sold at lower average prices per square foot than homes in the control neighborhood. *See id.* at 8. During the period of the hospital expansion between 2002 and 2005, homes in the Holy Cross neighborhood appreciated at a faster rate than those in the control neighborhood. *See id.* Mr. Mitchell concluded that the expansion of Holy

Cross Hospital had no adverse impact on home values in the immediate neighborhood. On the basis of this conclusion he opined that the proposed expansion of Suburban is unlikely to have a negative impact on homes values in Huntington Terrace.

HTCA counsel Mollie Habermeier identified numerous flaws in Mr. Mitchell's methodology, which not surprising given that his expertise is in real estate valuation, and this was the first time he performed an analysis of this type. *See* Ex. 444, citing Tr. 1-30-09 at 89. The critical weakness in Mr. Mitchell's analysis is that he set out to address the question "whether the Hospital has exerted any atypical market influence on the Huntington Terrace neighborhood, in comparison with the control community." Ex. 28 at 2. Mr. Mitchell failed to differentiate between the effect of the Hospital's existence and the effect *of the proposed modification and expansion.* He came closer to doing this in his review of aggregate real estate data in the area of Holy Cross Hospital. Comparing aggregate appreciation rates before and after the hospital expansion is a useful start, but can be misleading – the period from 2002 to 2005 when Mr. Mitchell observed higher appreciation rates coincided with a time of great real estate price appreciation generally, so the higher appreciation rate may be attributable to general market forces. As HTCA points out, Mr. Mitchell did not compare the increase he found with average real estate price increases in the area at that time. Moreover, he did not compare the prices of individual houses near Holy Cross Hospital before and after the expansion, which would be much more informative than aggregate numbers.

Mr. Mitchell's work lacked sufficient rigor to be given significant weight. His initial study used small samples divided into arbitrary time periods, without concern for statistical significance. He made no effort to take into account differences between Huntington Terrace and Sonoma that might affect their relative appreciation rates, such as the fact that Huntington Terrace is located in a more desirable school district, which generally commands a real estate premium, or the fact that homes tend to be larger in Huntington Terrace. In his initial analysis Mr. Mitchell failed to account for unusual circumstances that could skew sales figures, such as houses that had been rebuilt or had a major addition, and were resold within a short period of time at a much higher price. He failed to take into

account the effects of inflation with regard to houses that sold after being in single ownership for 30 or 40 years; taking into account the effects of inflation would suggest lower price increases. The sales data he used for Huntington Terrace reflected more cases with older prior sales than the data from Sonoma. *See* Ex. 444 citing Tr. 1-30-09 at 162.

Mr. Mitchell responded to the HTCAs many valid criticisms of his work by re-doing it and presenting new result on rebuttal. These results showed no significant difference in appreciation rates between Huntington Terrace and Sonoma in the period studied. Mr. Mitchell concluded from this that proximity to Suburban does not affect home values in Huntington Terrace. In fact, he should have been asking why somewhat larger houses, closer to downtown Bethesda and in a more desirable school district, would have the same rate of appreciation as smaller houses in a less desirable area. In his rebuttal testimony Mr. Mitchell removed some, but not all of the houses that had been rebuilt or had a major addition, and he belatedly attempted to account for the effects of inflation. His efforts were not persuasive, given the lack of care and expertise he showed in his initial study and testimony.

HTCA also pointed out that Mr. Mitchell's initial analysis did not distinguish between impacts on sale prices of houses in Huntington Terrace generally from impacts on houses in close proximity to the Hospital. The general standards for special exceptions call for a finding that the proposed use will not be detrimental to the economic value "of surrounding properties or the general neighborhood." Code § 59-G-1.21(a)(5). Mr. Mitchell did not separately analyze impacts on "surrounding properties" until his remand testimony, at which point he compared five houses that he termed close to the Hospital with six that he termed "removed," calling this a "limited sampling." *See* Ex. 444 citing Tr. 6-30-09 at 28. He did not use any properties adjacent to the Hospital, probably because he excluded sales to Suburban (which pays a premium over market), and sales of adjacent properties have all been to Suburban in recent years. One of the houses in the "close" set had been bought and resold within less than a year, and he showed it with an annualized price increase of 69.8%, when the actual increase was only 17.5%. *See* Ex. 444 citing Exs. 426(a) and (b); Tr. 6-30-09 at 52.

If the petition is remanded, the Hearing Examiner recommends that the Board request a more rigorous analysis of impacts on economic value. If the Board votes to approve the modification, the Hearing Examiner recommends that it do so in reliance on a finding that the proposed expansion will be compatible, and a compatible use will not adversely affect housing prices, rather than relying on Mr. Mitchell's analysis.

K. Compatibility

1. Technical Staff and Planning Board

Technical Staff found that "the proposed expansion and modernization of the Hospital will be in harmony with the general character of the neighborhood given the adjustments to the initially submitted plans that, in staff's view, improve the project's design and neighborhood compatibility, while reducing environmental impacts." Staff Report at 1. Staff's opinion was influenced by "improved design elements" such as a low brick wall along the site perimeter, street trees and shrubs, multiple pathways and improved traffic flow. Staff noted that the scale of the proposed addition is designed so that the rear portion of the building is lower in height in areas closest to residences, and higher towards Old Georgetown Road. *See* Staff Report at 15. [The Hearing Examiner notes that this is only partially correct – two Southwick Street homes would be adjacent to a 50-foot section of the addition, not the 20-foot section.] Staff credited the step-down in height with breaking the building mass in two, and found that the proposed addition is well-related to the surrounding neighborhood in its siting, landscaping, scale, bulk, height, materials and texture. *See id.* at 20. Staff also observed that with the exception of the loading dock, which would remain unchanged, hospital activities would be oriented away from the residential areas, towards Old Georgetown Road and other health-related uses. *See id.* Staff found that the proposed design would enhance conditions on and around the site, including improvements to the Old Georgetown Road public right-of-way. *See id*. Staff concluded that "the proposed expansion will not have any unacceptable adverse impacts on the character of the neighborhood considering the design, scale and bulk of the proposed new structures" and "the hospital will be able to enhance the provision of important health services to the surrounding area and the County." *Id.* at 2.

Staff specifically addressed the adverse effects of removing 23 homes, beginning with the premise that leaving them in place "creates numerous setback and site coverage issues that would make expansion difficult, if not impossible." Staff Report at 14. In Staff's view, removing the houses "allows the hospital to better buffer the expanded special exception use from the rest of the residential neighborhood, thereby maintaining neighborhood compatibility." *Id.* at 14. Staff noted that hospital health services will be modernized and improved, and concluded that the new "campus" design would benefit both the hospital and the adjacent community. In sum, "Staff believes that the revised hospital expansion plan is a reasonable balance of the hospital's health service objectives and the impacts of an expanded hospital." *Id.*

Staff placed a limit on its support for removing houses, as noted in Part II above and repeated here due to its importance (Staff Report at 2):

> Staff would not support further assembly of parcels or the removal of houses beyond the two-block area within Grant Street, McKinley Street, Southwick Street and Old Georgetown Road that now comprises the hospital grounds. Staff believes this two-block area should be described and restricted under this modification as the Hospital's maximum expansion limits. Any further acquisition of homes beyond the maximum expansion limits for purposes of expanding or improving hospital health services would not be supported.

The three-member Planning Board majority that recommended approval of the application adopted the Staff Report, but loosened the restriction Staff suggested on additional assembly of homes in the neighborhood. The Planning Board recommended a condition limiting Suburban to the identified two-block area unless recommended otherwise in a new master plan. *See* Ex. 60. This condition would do little to resolve the uncertainty about future expansion at Suburban, particularly because the Master Plan is already 20 years old and past its intended lifespan.

2. Hospital Experts

The Hospital's expert witnesses opined, each as to his own specialty, that the proposed modification and expansion would be compatible with the neighborhood. The disciplines represented by these experts include land planning, campus planning, hospital architecture, landscape architecture,

traffic, lighting and civil engineering. Each expert's opinion was buttressed by detailed testimony concerning the basis for the opinion, and in most cases by a written report.

Suburban's campus planner, Matthew Bell, articulated seven "principles of a compatible campus" that were used to create the campus master plan proposed in this case (Ex. 46(r)):

1. The campus is enhanced by open spaces varying in size, use and character that provide places for gathering, meeting, solitude, and social interaction, that can be enjoyed by residents, workers, and visitors alike.

2. Landscape dominates the view, both interior and exterior to the campus.

3. Vehicular access and parking is designed to enhanced safety as well as provide accessible entry and circulation for all users – pedestrians, transit patrons, cyclists, and motorists.

4. Edges of the campus are well defined, with welcoming entries for the community.

5. Sustainability of community healthcare is enhanced th[r]ough long-range planning, environmentally sensitive design and interaction with the community.

6. Diverse spaces are unified by a common palette of materials and color.

7. Architectural elements respect the surrounding neighborhood in scale, material selection, and views.

Mr. Bell identified a number of architectural elements that he would argue promote a design that is "respectful of the surrounding residences": Buildings are concentrated away from the center of the site towards Old Georgetown Road, away from residential areas; building height is greatest along Old Georgetown Road and steps down closer to the residential edges; architectural materials "provide a scale and character sensitive to the neighborhood context"; landscape and building facades screen the visual impact of cars; generous setbacks allow for significant landscaping between campus facilities and nearby residences and roadways; primary mechanical equipment is housed within buildings to minimize visual impact and noise; and service areas and parking are screened from neighborhood view. *See* Ex. 73(qq); Tr. 12-12-08.

Mr. Bell also described unifying thematic elements in the Hospital's proposal, such as lighting chosen to reflect a pedestrian scale, special paving to denote entry areas and pedestrian walkways, pedestrian paths clearly separated from vehicular traffic, a common palette of plant materials carried

through the campus, and decorative brick walls surrounding the campus, creating identify and a sense of the edge of the campus and reflecting brick details in the existing hospital building, the addition and the garage. See Ex. 73(pp).

Mr. Hagerty, the Hospital's architect, opined that the plan submitted with this application is the best one, both for the Hospital and for the community. He testified with evident sincerity, noting that he lives only a short distance from Suburban and therefore is very familiar with the neighborhood, that if people could "get over the emotion of removing houses" they would see that the proposed plan represents a long-term improvement for the neighborhood, because it would create a green transition zone between the hospital campus and the neighborhood that would allow the two to co-exist nicely. *See* Tr. 11-18-08 at 92. Mr. Hagerty added that the proposed plan would foster the greater public interest in providing the best healthcare possible.

Mr. Hagerty testified that the design of the hospital addition is intended to be as compatible as possible with the existing hospital building. He described it as very subdued, in contrast to an all-glass building at NIH that is lit up at night like a beacon. The proposed addition would be predominantly glass only at the main entrance, to make the entrance easy to find. *See* Tr. 11-18-08 at 73.

Mr. Wrenn, Suburban's land planner, rested his compatibility opinion on several elements of the site organization, including concentrating arrival, parking and vehicular circulation as close to Old Georgetown Road as workable; concentrating buildings in the center of the campus to create a transition zone along the perimeter; providing generous setbacks and landscaping; proposing addition heights that are lower than the existing hospital building; saving a number of mature trees and supplementing them with a tremendous amount of new landscaping; improving access and circulation; and using a varied palette of materials that will be compatible with the surrounding residential community. *See* Tr. 12-16-08 at 18-19, 150-51. As noted in Part III.C above, the Hearing Examiner disagrees with the premise that the plan proposed here concentrates buildings in the center of the campus, away from residences – it does not do so for residences on the south side of Southwick Street

or the east side of Grant. This faulty premise undercuts the persuasive value of both Mr. Wrenn's and Mr. Bell's opinions.

Mr. Wrenn further opined that removing 23 homes would not have an adverse impact on the character of the surrounding neighborhood. *See* Tr. 12-16-08 at 51. He described the proposed plan as providing certainty, although that is difficult for the Hearing Examiner to accept, given that the Hospital has expressly declined to stop acquiring homes in the surrounding neighborhood, to sell homes that it now owns outside its proposed two-block campus, or to agree to the permanent limitation on expansion suggested by Technical Staff. Mr. Wrenn considers it better to define the campus and transition the use as proposed here, with shared amenity space, screened gardens and landscaping, and houses across the street, than to have hospital-owned houses on the campus, then the street, then houses again. He described the relationship proposed here as a "very comfortable one." *See id.* at 52-53.

Mr. Wrenn does not believe that removing 23 homes would destabilize the neighborhood. Rather, he thinks it would strengthen the community, which he defines more broadly than just Huntington Terrace. Mr. Wrenn argued that Huntington Terrace is not an island, it's part of a network of neighborhoods that share institutional uses, and removing 23 houses will not change the overall character of the neighborhood or the broader community. *See id.* at 53-54. He stated that what destabilizes a neighborhood is uncertainty, vacancy and lack of investment in properties, whereas this plan would address uncertainty with a long-term campus plan. *See id.* The Hearing Examiner notes that the focus of special exception analysis is the general neighborhood as defined, not a broader notion of "community".

3. HTCA and Other Witnesses

Mr. Doggett, HTCA's land planner, provided his expert opinion, supported by detailed testimony, that the proposed modification and expansion would not be compatible with the general neighborhood. He described the relationship between the existing institutional and residential buildings as resembling a jigsaw puzzle, where the residential penetrates into the institutional use, making things blend. *See* Tr.

6-8-09 at 52-54. The current screening along Grant, McKinley and Southwick Streets is on a residential scale, behind the houses, instead of building a screen wall along the edge of the hospital property. He considers this a more comfortable, natural flow. *See id.*

Mr. Doggett argued that an institution planning an expansion should consider what trees can be kept, what houses can be saved and what open space can be saved, and should try to fit in with the scale of nearby houses. It should also, in his view, consider local street patterns rather than proposing to close a road like the first block of Lincoln Street, which would cut the neighborhood off psychologically. *See id.* at 58-60. He stated that the proposed plan would have serious adverse effects on the surrounding neighborhood, entirely changing the character of the streets immediately around the Hospital by creating an institutional "super-block." Mr. Doggett reserved his strongest negatives for the proposal to tear down 23 homes, whose immediate effect would be to remove a barrier between homes across Grant Street and the Hospital, replacing it with landscaping. Mr. Doggett testified that while the landscape architect did a very competent job, the landscape plans are idealized, and there is no guarantee how a landscape plan will work out. Working for Fairfax County for over 20 years, Mr. Doggett had the opportunity to see how landscape plans at various sites developed over time. He learned that it is very difficult to forecast 30 years down the road. It takes a long time for trees of the diameter proposed here (3 inches) to grow. Trees die and are replaced. You may end up with a mix of trees that is discordant. Mr. Doggett opined that one cannot rely on landscaping to resolve issues with buildings. *See id.* at 55-56.

The longer-term effect of removing 23 houses, Mr. Doggett suggested, will be to continue the uncertainty that has plagued Huntington Terrace homeowners in recent years. For many people, their house is their biggest investment. Mr. Doggett argued that when you buy a house, you don't expect to have a totally different set of conditions across the street, with a hospital super-block instead of houses. No matter how many trees there are, he feels residents will still be looking at an institutional use. Mr. Doggett noted that Suburban has not made a long-term commitment not to expand further, and there is

no telling what the next master plan will say. In his experience, this kind of uncertainty makes homeowners reluctant to put additions on their homes, and often leads them to sell outright.

Mr. Doggett opined that the proposed plan would create adverse impacts on McKinley Street due to noise and glare from truck and ambulance traffic, in addition to the adverse impact on residents from the bulk of the tall hospital building. *See id.* at 73, 82.

Mr. Doggett described it as a negative to put the addition towards Grant Street rather than towards Old Georgetown Road – a marked contrast with the Hospital's planners, who tried to suggest that a building 500 feet from Old Georgetown Road and 70 feet from houses on Southwick Street is located "towards Old Georgetown Road." He stated that with the expansion, Grant Street residents will face a "monolithic barrier of a hospital which has a different character, different materials, different scale, different transportation system." *Id* at 87. Losing the houses across the street also means residents lose the opportunity for human interaction. Going from modest-sized homes to an institutional use would, in his view, totally change the character of the street. Mr. Doggett is not persuaded that the extensive landscaping proposed would be a better buffer than the existing houses with their mature trees and gardens, as well as the connectivity of a similar house on the other side of a narrow, rather pleasant street. *See id.* at 88-90. He emphasized that trees do not replace buildings as a major design component in a neighborhood, and they are not neighbors. *See id.* at 104-105.

Mr. Doggett opined that homes on the south side of Southwick Street would face adverse impacts as well. Currently, the backs of Lincoln Street houses and their trees take the edge off the institutional character of the Hospital. The proposed addition would come almost to the backyards, of Southwick homes and would make quite an impact without the houses and trees. In Mr. Doggett's opinion, it will totally change the experience of living in those houses; the house you bought had a view of houses and trees, and the one you get has an institutional building with very little distance and very little landscaping. *See id.* at 93-99. He added that houses on the north side of Southwick would face the same uncertainty effects as those on the west side of Grant.

Mr. Doggett considers the proposed parking garage isolating for the neighborhood, particularly compared to the existing garage, which is only about a story and a half. He is skeptical about the lighting testimony, and expects that there will be a glow, especially from the glass entryway. *See id.* at 65-66, 83-84. He noted that the house on Lot 30, closest to the proposed garage, would get all the impacts of the other Southwick Street homes plus having to look at a four-story parking garage. Mr. Doggett described these combined impacts as appalling, and he expects that if the expansion is approved, the house will be sold right away. He voiced a concern that the three houses closest to the garage on the south side of Southwick will be isolated, separated from the neighborhood by a public space that could become an entryway in the future. *See id.* at 99-100.

The HTCA pointed out a 1974 Board opinion that required Suburban to set aside as open space (in a covenant filed with the County land records) a small open area north of Lincoln Street, between the surface parking lot and the rear lot lines of Grant Street homes. The Board described that open space as a necessary buffer between houses and the surface parking lot. Mr. Doggett argued that the need for protected green space between hospital facilities and the homes on Southwick and Grant is even greater now, with the prospect of two large structures. *See id.* at 76-78.

Mr. Doggett opined that closing the first block of Lincoln Street would have an adverse impact on Huntington Terrace because residents consider it their “main street,” which has a distinct identity for a community. *See id.* at 163-64.

Mr. Sokolove argued for the HTCA that either of the proposed garages would place a massive parking structure at one of the remaining entrances to Huntington Terrace off of Old Georgetown Road. *See Tr.* 5-5-09 at 32-33. In his view, the garage would dominate the streetscape, and its height and bulk would be visible for blocks into the neighborhood. He does not consider this compatible with nearby one and two-story homes. Mr. Sokolove stated that no other public parking garage in downtown Bethesda even approaches the size of this garage. This testimony was supported with written information about various parking garages in the Bethesda Central Business District, all of them located next to commercial buildings similar in mass and height, and none of which exceeds the 937 spaces the

Zoning Ordinance considers necessary for a Hospital of the size proposed here. *See id.* at 33; Ex. 341. The garages Mr. Sokolove identified have, respectively, 747 spaces, 853 spaces, 927 spaces and 740 spaces.

On cross-examination, Mr. Sokolove acknowledged that he compared the proposed garage only to garages in the Bethesda CBD, not to garages outside the CBD such as at other hospitals, or at NIH. *See* Tr. 5-5-09 at 223-24.

Mr. Sokolove pointed out testimony from the Hospital's engineer on cross-examination that some parking garages are built below the water table, using more expensive construction methods. *See id.* at 36, citing Tr. 2-6-09 at 175. HTCA pointed to underground parking at the National Cathedral, for both cars and buses, as an example of an institution handling parking in a way that is compatible with its neighborhood. *See* Tr. 5-5-09 at 38; Ex. 342. Mr. Sokolove also cited parking garages at Holy Cross Hospital as examples of garages that are heavily bermed and landscaped to obscure their view from neighboring houses. *See* Tr. 5-5-09 at 39; Ex. 343. Photographs that Mr. Sokolove presented, like the one below, demonstrate that Holy Cross Hospital has made good use of berms and trees to obscure the view of its buildings.

Holy Cross Hospital Parking Garage and Berming, Ex. 343(a)

Numerous opposition witnesses testified that they believe the proposed expansion will destroy the character of Huntington Terrace due to the impact of closing the first block of Lincoln Street, the additional traffic and noise, and the size and bulk of the proposed addition and parking garage.

4. Hearing Examiner Analysis

Compatibility is the crux of any special exception case. Having carefully reviewed the record, the Hearing Examiner concludes, based on a preponderance of the evidence, that the proposed modification and expansion would be incompatible with the general neighborhood in several 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 Hearing Examiner also concludes, based on a preponderance of the evidence, that a revised plan could be designed that would meet compatibility requirements while retaining the general outline of the plan, including the abandonment of one block of Lincoln Street, the construction of a hospital addition with the square footage proposed, and the creation of roughly the number of parking spaces proposed.

The following photographs provide useful context for an analysis of compatibility.

Current Hospital Entrance with Helipad in Use. Ex. 246(a), Photo 14.

South Side of Existing Hospital, Facing McKinley Street. Ex. 246(a), Photo 5.

Easternmost Hospital Entrance on McKinley Street. Ex. 246(a), Photo 7.

Westernmost Hospital Entrance on McKinley Street and Adjacent House, Ex. 246(a), Photo 8

NIH Seen from Intersection of Southwick Street and Old Georgetown Road. Ex. 246(a), Photo13.

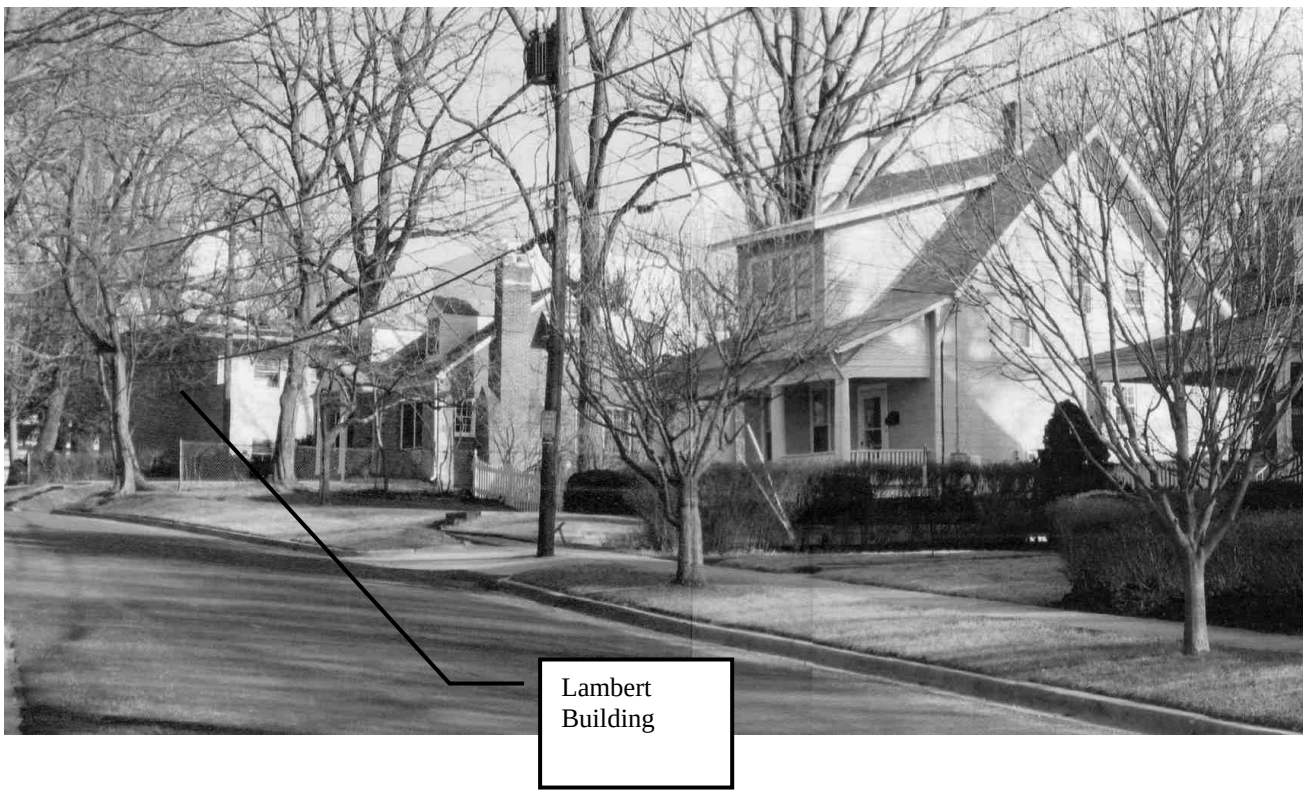
Existing Southwick Street Hospital Entrance. Ex. 246(a), Photo 12.

House on Southwest Corner of McKinley Street and Old Georgetown Road. Ex. 246(a), Photo 3. (Used as a Medical Office Building.)

Parking Area at Rear of House Above, Ex. 246(a), Photo 4.

First Block of Southwick Street with 3 Houses Proposed for Removal Marked with an X. Ex. 156.

First Block of Southwick Street, view of Lambert Building and Adjacent Houses. From Ex. 198.



Rear Yard View from 5514 Southwick (Lot 28). Back of Lincoln Street Houses in Foreground, Hospital in Background. From Ex. 202

View Southeast Towards Hospital from Corner of Madison and Grant. Hospital View Buffered by Houses. Ex. 181(c)

View East on Hoover Street Towards Hospital, Readily Visible Through Winter Trees. Hospital Parking Lot on Other Side of Fence. Only Fence and Trees to Buffer View. Ex. 182(a)

The Hearing Examiner was not persuaded, in the end, by the initially appealing argument that the plan proposed here is the best solution to the thorny problem of a busy hospital in a residential neighborhood because it would create a "green transition zone" between the two uses. The persuasive impact was ineffective in part because the green transition zone is incomplete – there is no transition zone for the houses the Hospital does not own on the south side of Southwick and the west side of Grant. The only way the Hospital's team could think to reduce the adverse effect on those houses of large, institutional buildings being constructed a short distance from their property lines was to install a thick line of evergreens along the property lines, visually cutting off the residential properties from any view in the direction of the Hospital. That does not create a green transition zone, it creates a green wall.

The Hearing Examiner finds that in addition to being inconsistent with the Master Plan, removing the 23 homes proposed here would have serious adverse effects on the immediate neighbors and the

character of nearby streets. As Mr. Doggett stated, the 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 the effects of any long-term impact on the property value. For some people, the chance to rent a house for a reasonable rate in a nice neighborhood is a perfectly fine trade-off for living in the Hospital's backyard. The current relationship between buildings is a successful buffer for most of the neighborhood. Trading that for the hope that landscaping will one day provide a successful buffer, after the trees grow, is a change that the undersigned considers most definitely adverse. In addition to their buffering value, testimony from residents of Grant and Southwick Streets indicates that the houses Suburban proposes 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 its human connections and would suffer a distinct detriment from losing 23 houses' worth of them.

As discussed in Part III.C 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.

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. That uncertainty would be increased if the Hospital carried out its plan to remove 23 houses, showing that it can actually happen. 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 certainty would do a great deal to mitigate and balance the inevitable adverse effects of a hospital expansion.

Given that large institutional buildings are inherent features of a hospital, the Hearing Examiner considers the proposed hospital addition largely compatible with the community, except for its proximity to certain homes. The addition was planned with a drop in height where it would face the largest number of residences, and at 50 feet in height, the bulk of the building would be taller than nearby homes, but shorter than the existing Hospital building. The Hearing Examiner is not persuaded, however, that the addition would have a compatible relationship with the closest homes on Southwick and Grant. The Southwick Street property lines are about 75 feet from the addition, and Grant Street Lot 19 is about 50 feet away. The house on Lot 30 is in a particularly untenable situation, with the hospital addition 75 feet away and the new garage roughly 65 feet away. While it is true that Lot 30 is only 60 feet from the Hospital's existing surface parking lot north of Lincoln Street, *see* Ex. 251(a), that is a far cry from being the same distance from a large parking structure. The Hearing Examiner is not persuaded that the row of evergreens proposed as a visual buffer would sufficiently protect the most heavily affected homes from unacceptable adverse impacts. The evergreens would be a partial screen when planted, and there are no guarantees of how many would survive to maturity or how attractive or effective they would be. The Hearing Examiner agrees with Mr. Doggett that one should not rely on trees alone to resolve a fundamentally incompatible building relationship.

In considering how much distance would be necessary to establish a compatible relationship, the Hearing Examiner noted that the hospital special exception permits hospital buildings to be built as little as 50 feet from a property line (the setback must be the greater of 50 feet or the height of the building). A 50-foot setback could be sufficient for a relatively small hospital building, but cannot be so

for a building that is 200 to 300 feet on a side and contains over 200,000 square feet of space and a predominant height of 50 feet, or for a parking garage that measures nearly 200 feet by 300 feet. Additional distance and space for landscaping is needed to create a compatible relationship between small houses and such large institutional buildings.

The Hearing Examiner looked to the Zoning Ordinance for guidance, and found some in the PD (Planned Development) Zone. The PD Zone is primarily residential, permitting single-family detached and attached homes as well as multi-family homes and, for very large projects, commercial uses. It does not prescribe minimum setbacks or maximum building heights. To ensure compatibility with single-family residences, it imposes two requirements where a lot proposed for development abuts one that is recommended in a master plan for a single-family detached home:[28] (1) no building other than a single-family detached house may be built within 100 feet of the property line, and (2) no building may be constructed to a height greater than its distance from the property line. *See* Code §59-C-7.15. The Hearing Examiner finds this instructive, as it represents a judgment by the County Council about parameters that will preserve harmony between a single-family detached home and a neighboring building with a different kind of use. Although the standards of the PD Zone do not apply to the subject site, the Hearing Examiner considers it appropriate to borrow them as a useful parameter here. Doing so would require the Hospital to increase the distance between the addition and the closest residential lots on Grant and Southwick, and well as the distance between the parking garage and Lot 30. Greater distance in these locations should significantly reduce adverse impacts, and potentially create the opportunity for other landscaping options in the event that a homeowner wants a more open view than a close-in evergreen screen.

The Hospital's experts focused their compatibility opinions on the hospital addition rather than the parking garage. The Hearing Examiner does not share the concern voiced by some Huntington Terrace residents for the visual impression of Southwick Street as an entry point to their community – with the very large, institutional buildings of NIH across busy Old Georgetown Road, it would be difficult

to create a residential image on this corner. Nonetheless, even with the 35-foot height that Suburban offered for the shorter alternate garage (a significant improvement), the combination of the height and the bulk of a garage that is 300 feet long and nearly 200 feet wide would create an imposing presence at this visually prominent location. A smaller building at that location would avoid the impression of a football-field-sized structure looming over Southwick Street. How much smaller would be best determined in conjunction with deciding how to situate the garage at least 100 feet from the nearest house. The two goals may well work together. Moreover, there could be a trade-off between distance and size; a dramatic reduction in the size of the above-ground parking garage, for instance, might so significantly reduce adverse impacts on Southwick Street that the full 100-foot distance recommended for the garage and the addition might not be necessary. Alternatively, pulling the addition farther away from Southwick Street homes could balance out a smaller reduction in the size of the above-ground parking garage.

The Hearing Examiner finds that with the exception of the proposed Southwick Street entrance, the Hospital has met its burden of demonstrating that neither closing 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. While some Huntington Terrace residents clearly have a sincere attachment to Lincoln Street as their "main street,' an objective review of the evidence of record supports the conclusion that the proposed abandonment would have minor adverse impacts. The people making 500 trips a day on that block by car would be very slightly inconvenienced by having to use a different street. Bicyclists who prefer to ride on streets rather than in gardens would be somewhat more inconvenienced than motorists, and pedestrians more so than bicyclists. Still, 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.

[28] These requirements do not apply in close proximity to a central business district, where expectations of space and privacy are much reduced. The Hearing Examiner would not consider Huntington Terrace close enough to the Bethesda CBD to warrant those reduced expectations.

Traffic impacts would be similarly modest. As outlined in Part III.D, the changed circulation patterns and increased traffic generation would result in more traffic on some local streets and less on others, spreading the impacts around in a different way than they are now. The evidence supports a conclusion that without the Southwick Street employee entrance, none of the local streets would experience sufficient traffic increases to cause a significant adverse effect. The Hearing Examiner considers the Southwick Street entrance problematic for two reasons. First, it would bring steady streams of traffic past the first two buildings on the north side of Southwick and adjacent to Lot 30, very early in the morning for the first shift. Second, it would run the risk of some employees using neighborhood streets to reach the Hospital and violating the left in/right out turn restrictions. Mr. Wells' testimony indicated that the geometry of the turn would make it difficult to violate the turn restrictions, but not impossible. The efficiency benefit of having an employee entrance at that location does not justify the potential adverse impacts. For these reasons, the Hearing Examiner recommends that any revised plan not include a Southwick Street entrance.

Some opposition witnesses argued that Hospital entrances should not be permitted on McKinley Street because of its residential character, or that at least emergency ambulances and trucks should not be permitted. The Hearing Examiner disagrees. While it is far from ideal to route ambulances and trucks through a residential street, it is clear that the Hospital has an urgent need to separate its many streams of traffic, and the evidence is undisputed that having more than one entrance on Old Georgetown Road is not feasible. The only way this important safety goal can be accomplished, therefore, is to route some of the traffic to a side street. Moreover, the context of this application is all-important: it is a modification, so potential impacts must be compared to current impacts, not to an absence of impact. McKinley Street currently receives a significant amount of hospital traffic, including shuttle bus trips throughout the day. With the proposed modification and expansion, it would experience only a small increase in trips, and would benefit from an extra lane to improve traffic flow and much stronger measures to deter drivers from violating the right turn in/left turn out restriction. The emergency ambulance entrance is proposed so close to Old Georgetown Road that ambulances would

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. Westerband (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

exception standards focus on whether a proposal will have an acceptable level of adverse impacts, not on how the applicant gets there.

L. Alternatives

The HTCA devoted a great deal of its direct testimony and cross-examination to an effort to demonstrate that the Hospital did not adequately explore alternative ways of accomplishing its expansion goals without closing the first block of Lincoln Street or tearing down 23 houses. Hospital counsel Barbara Sears objected to any questioning about alternatives on relevance grounds. Ms. Sears is correct that alternatives to a special exception proposal are not directly relevant to the decision before the Board; the Board's responsibility is to evaluate whether the applicant's proposal satisfies the standards outlined in the Zoning Ordinance, not whether there is a better way to achieve the applicant's goals. Moreover, the Zoning Ordinance does not require that a property owner design its proposal with the least possible adverse impacts, merely that the adverse impacts not exceed a level considered acceptable under the standards. The Hearing Examiner permitted questioning on alternatives nonetheless, based on the argument that if there are alternative ways to meet the Hospital's goals with less adverse impact on the Huntington Terrace community, the adverse impacts associated with the present application should be considered unacceptable under the applicable standard of evaluation. Due to the limited relevance of alternatives, the voluminous evidence presented during the hearing is discussed here only briefly.

HTCA counsel Norman Knopf questioned Mr. Hagerty at great length about whether the facilities desired as part of the expansion could fit on the existing site south of Lincoln Street. He and HTCA witnesses suggested numerous possibilities such as removing part of the existing Hospital and re-building it as part of the expansion; putting the surgery department entirely underground and the new nursing beds between the existing hospital and Old Georgetown Road; moving the loading dock or putting it underground to be able to move the addition farther south; moving the central utility plan to a different part of the site because part of it was not built to accommodate additional building stories above; moving just the one-story part of the central utility plant that cannot accommodate additional

building stories, or cantilevering over it to be able to put a building on that footprint; putting the entire addition in a several-story structure along Old Georgetown Road; saving Lincoln Street from abandonment by looping it around the new building, tunneling under it or bridging over it; building all parking underground, or half underground and half above; or putting more levels of the addition underground. Mr. Hagerty testified that none of these options was feasible, for various reasons – not enough space for the footprint he recommends; too difficult and expensive to move all or part of the central utility plant; too difficult to move the loading dock and it's in a good place right now; not feasible from an engineering perspective; too difficult to create the recommended direct connections between surgery and the Emergency Department; too difficult and expensive to put all the parking underground; and space shortages do not allow the Hospital to temporarily close any part of its facility, even to reconstruct it in a better building. Mr. Hagerty noted, for example, that putting an addition between the existing hospital and Old Georgetown Road would require closing the main/emergency entrance to the Hospital and creating a temporary entrance, but there is no space on the site for a temporary entrance, or for a temporary helipad.

The recommended footprint for the surgery department became a central focus of questioning. Mr. Hagerty insisted that the nearly-square footprint he recommended, with all of the operating rooms and almost all of the surgical support on the same floor, is optimal and what he recommends for Suburban. Mr. Knopf questioned Mr. Hagerty about two alternative layouts for the surgery department that HTCA developed, using footprints that were less square than Mr. Hagerty's recommendation, more rectangular or L-shaped. HTCA Board member Amy Shiman attempted to demonstrate, using models of the alternative layouts at the same scale as some of the large site maps, that these layouts could fit within the current site, south of Lincoln Street. Mr. Hagerty testified that the models couldn't actually fit, and that he could not recommend those layouts because operating rooms would be too far from recovery rooms, there would not be enough space for all the support functions that need to be on the same floor, and in some respects they simply did not function, lacking, for example, adequate hallway and sterile core connections, or a way for staff to access the elevator.

Wayne Goldstein, representing the Montgomery County Civic Federation, introduced evidence that other hospitals in various parts of the country sometimes have operating rooms on more than one floor, and/or on a different floor from the Emergency Department. This was supported by evidence from a local resident that Shady Grove Hospital has its operating rooms on a different floor from its Emergency Department. The Hearing Examiner notes that Shady Grove is not a Trauma Center, so the urgency of a direct connection between Emergency and Surgery may not be as great as it is at Suburban. The need for proximity and a direct connection between those functions was testified to persuasively by Mr. Hagerty, Mr. Corapi and Dr. Westerband, head of Trauma Services at Suburban. Suburban witnesses with broad hospital experience testified that while some very large hospitals may have operating rooms on more than one floor, none of them had ever seen a hospital with 15 operating rooms split between two floors. They explained that splitting them between two floors would require duplicating all the support services and equipment, which would be very expensive. Nursing staff indicated that managing operating rooms on two floors would be very complicated, and could require more nurses than the Hospital can find, given the current shortage of nurses. Hospital staff also testified that splitting operating rooms onto two floors would reduce flexibility in emergencies, when they need the right type of operating room to be available.

Mr. Knopf questioned the Hospital's engineer about some feasibility issues, and both the HTCA and Suburban presented letters and memoranda from the Department of Permitting Services and the Office of the County Attorney to support arguments for and against the proposition that a hospital facility such as a surgery department could be built entirely underground, potentially underneath Lincoln Street, and the proposition that one could get permission from the County to build a pedestrian bridge over Lincoln Street. The evidence was largely inconclusive, suggesting that under some circumstances some of these ideas might work, but with no guarantees of legal or practical feasibility. Mr. Hagerty testified persuasively, for example, that a surgery department should not be built underneath a street due to the potential for excessive vibration.

Two Huntington Terrace residents who are architects testified about alternatives that the Hospital could pursue. The first, Jay Davies, lives one block from the Hospital on Lincoln Street. He has been an architect for 20 years and has worked on over 75 projects worth anywhere from $2 million to $200 million. *See* Ex. 266; Tr. 3-20-09 at 110. Four of his projects were hospitals and medical clinics, although Mr. Davies does not consider himself a hospital architect. Most of his work has involved office buildings and associated parking garages and loading docks.

Mr. Davies argued that there is a satisfactory solution to Suburban's expansion needs that the neighbors, the larger community and the Hospital can achieve by working together in a process that is "open and fair to all concerned." Ex. 266 at 1. He noted that Suburban has not accommodated any of the four goals that the HTCA identified by vote of its members:

- Do not close Lincoln Street
- Do not demolish 23 homes
- Do not purchase any more houses for demolition
- Do not develop an office building in this residential neighborhood

Mr. Davis advocated that the Hospital engage in a process known as "value engineering." Mr. Davies frequently heads architectural teams on value engineering studies to improve project design. *See* Ex. 266. The process typically involves a presentation on the current design, brainstorming sessions among members of the value engineering team, assigning ratings to each idea, developing further the ideas with the highest scores, and making a presentation to the designers/property owners to select ideas for a final design. Mr. Davis described this as a four- to five-day process that "always is a surprising and successful event which happily discovers new ideas and improvements to every project studied." Ex. 266. He noted that the HTCA has already brought up a number of interesting ideas, and suggested that the Hospital and the HTCA brainstorm together. Mr. Davis provided sketches of two alternatives: (i) looping Lincoln Street around the Hospital addition (the Hospital's engineer testified that the Hospital considered that possibility, but there is not enough distance between Grant and Old Georgetown to make a curve that people can safely drive); and (ii) replacing the houses

the Hospital currently owns with multi-story townhouses to serve as a transition between the Hospital and single-family homes.

Mr. Hagerty testified that while value engineering can be a useful process, he expects that all of the ideas Mr. Davies talked about for this project would be shot down very early in any discussion of alternatives. In his view, the plan submitted with this application is the best one, both for the Hospital and for the community. He testified with evident sincerity, noting that his personal residence is within a short distance of Suburban so he is very familiar with the neighborhood, that if people could "get over the emotion of removing houses," they would see that the proposed plan represents a long-term improvement for the neighborhood, because it would create a green transition zone between the hospital campus and the neighborhood that would allow the two to co-exist nicely. *See* Tr. 11-18-08 at 92. Mr. Hagerty added that the proposed plan would foster the greater public interest in providing the best health care possible. *See id.*

The second Huntington Terrace architect who testified was Mitch Weber, who has been an architect since 1976 and has lived in Huntington Terrace since 1995. Before moving to Montgomery County, Mr. Weber lived in D.C. across the street from the National Cathedral, and was very involved with the neighborhood regarding expansion plans for the Cathedral schools and parking garage. He testified that the design that was ultimately accepted was not the first one proposed, and is extremely compatible with the neighborhood, using underground parking with green roofs that enhances the neighborhood. *See* Tr. 4-17-09 at 14-15. Following that experience, Mr. Weber was very involved in discussions about hospital expansion at Suburban in the late 1990s and early 2000s. He met with Hospital representatives and participated heavily in neighborhood input on expansion plans, serving as what he called an unofficial consultant to the HTCA Board.

In 2000, Mr. Weber prepared on a Hospital expansion plan, working with the Hospital and the HTCA Board, which he thought was excellent given the size of the needed expansion and the sensitivity of the neighborhood. The plan involved an East Tower addition between the existing Hospital and Old Georgetown Road. It also involved a trade-off: in exchange for what Mr. Weber

expected would be the neighborhood's agreement to closing the first block of Lincoln Street, the Hospital would turn the portion of Lincoln Street that faces the neighborhood into a gateway to a new Huntington Terrace Community Center. *See id.* at 20. The community center, a pool and a park were to be built on current Lincoln Street right-of-way and the existing Hospital-owned open space north of Lincoln Street. *See id.* at 21, Ex. 277-B. All but one level of parking was to be underground, some of it underneath the East Tower. *See* Tr. 4-17-09 at 44. At that time, preserving the homes on Grant Street as a buffer was a guideline established with the Hospital architect that was considered inviolate. *See* Tr. 4-17-09 at 18. The plan Mr. Weber worked on required removing only three houses. It was rejected by the HTCA membership, however, because it involved closing Lincoln Street. *See id.*, HTCA Newsletter at Ex. 284. Shortly after the Huntington Terrace community rejected the 2000 plan, the head of the Hospital changed, and the 2000 plan was shelved. Mr. Corapi objected to even referring to a "2000 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 2000 plan was not viable then and is not viable now.

Mr. Weber was sharply critical of the current expansion plan, which he believes would destroy the neighborhood. In his view, a hospital expansion this close to residences needs an "out of the box" design that respects the neighborhood, and this one is not. *See* Tr. 4-17-09 at 24. Mr. Weber has had many communications with Hospital representatives, providing suggestions to soften the impact of the expansion like planting ivy on grills along a building façade, or surrounding a parking garage with buildings so people don't have to look at a garage. He feels that the Hospital has done no more than pay lip service to his input. *See id.* at 25.

One of the reasons the Hospital proposes to remove 23 houses is to be able to add the building square footage for the Hospital addition and the parking garage without exceeding the applicable building coverage cap. The proposed modification, with removal of the houses and inclusion of their land in the special exception site, would result in building coverage just slightly below the 35% maximum under the special exception standards. Mr. Knopf questioned the Hospital's land planner

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 "___". *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

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

trauma services, more private rooms, larger operating rooms that can accommodate modern technologies, adequate parking and convenient on-site physician offices. *See* Exs. 74-76. 78,80, 81, 126, and 127 (each containing a number of letters). Fifty of these letters were addressed to the County Council. *See* Ex. 126. A few letters from Hospital employees noted that closing Lincoln Street would create a unified campus and the large, square configuration needed for new operating rooms, as well as improved landscaping, improved circulation and access and building locations closer to Old Georgetown Road. *See* Ex. 79. Thirty letters from patients in the cardiac rehabilitation program to the County Executive described parking and other problems at Suburban that are consequences of an aging, undersized campus, and urged support for proposed road abandonment. The support expressed by witnesses and in letters rests on a desire to make it possible for Suburban to provide the best quality healthcare possible to its patients. This is, of course, a desire shared by all participants in this process, including the Hearing Examiner.

In addition to four HTCA board members, 28 community members testified in opposition to the proposed expansion. Most are residents of Huntington Terrace, many of whom live within sight and sound of the Hospital. Opposition also included representatives of the Montgomery County Civic Federation and the Citizens Coordinating Committee on Friendship Heights. The latter, Robert Cope, testified about a rezoning case several years ago in which GEICO proposed to redevelop for mixed use a site in the Brookdale residential neighborhood where it had built an office building. Over time, GEICO had bought 17 homes on streets near its property. *See* Tr. 12-8-08 at 21-33. Mr. Cope testified that GEICO's home purchases had a destabilizing effect on the neighborhood. Existing residents showed reluctance to add improvements to their homes, and buyers tended to deterred from buying in the area, out of fear that GEICO would redevelop its property and expand commercial development towards the community. The community participated in the rezoning case in opposition, with a big focus on GEICO's long-term home ownership in the community. Ultimately, the rezoning was approved with a binding element that required GEICO to sell all of its properties in the neighborhood within a specified period of time from construction of the first unit in connection with its redevelopment. Mr. Cope argued

that the same conditions should be imposed on Suburban, to support the residential character and viability of Huntington Terrace. *See id.*

Margot Cook, a resident of the neighborhood immediately surrounding Holy Cross Hospital in the Forest Glen neighborhood of Silver Spring, also testified in opposition. Ms. Cook described the evolution of Holy Cross, a huge battle between Holy Cross and the neighborhood in the 1980s over hospital expansion, which result in denial of a special exception application by the Board, and more harmonious expansion plans that have been worked out since then between Holy Cross and the immediate neighborhood. *See* Tr. 5-5-09 at 56-61. Holy Cross' most recent special exception modification, processed in 2009, proceeded with the support of the local community. Ms. Cook opined that the key to the recent cooperation between Holy Cross and its neighbors is that the hospital has met with neighbors very early in the process of planning an expansion, before any design decisions have been made, to get the neighbors' views on what kind of expansion would be acceptable, and has actually incorporated the neighbors' priorities into its plans. *See id.* at 58-59. In Ms. Cook's view, a hospital in a residential neighborhood should not have the right to do anything it wants.

The record contains 245 letters in opposition, most of which address only the abandonment of the first block of Lincoln Street, arguing that it should not be closed because the writers (and other local residents) use it regularly. *See* Exs. 321(a) through (d).

IV. SUMMARY OF HEARING

This report departs from OZAH's usual format by not including a summary of the hearing. The Hearing Examiner found it impossible to summarize the 7,000 pages of hearing transcript in this case in any useful format. Below is a list of witnesses with the dates on which each testified and their affiliations. The substance of their testimony relevant to issues the Board must decide is reflected in the factual background set forth in Part III of this report.

Witness List

1	11-17-08	Gene Corapi Adrian Hagerty	Hospital Chief Operating Officer Hospital architect
2	11-18-08	Adrian Hagerty	Hospital architect
3	11-24-08	Adrian Hagerty	Hospital architect
4	12-8-08	Robert Cope Jeffrey Kopp Adrian Hagerty	Opposition (Citizens Coordinating Committee on Friendship Heights) Neighborhood opposition Hospital architect
5	12-12-08	Matthew Bell Daniel Keen Maryann Brondi John Cooper	Hospital campus planner Neighborhood Support Neighborhood Support Neighborhood Opposition
6	12-15-08	Dany Westerband Mark Vogt Laura Lynn Bergfeld Jacqueline Schultz Jerome Morenoff Marilyn Mazuzan Virginia A. Miller Alan Ehrlich Douglas Wrenn	Medical Director of Trauma Services, Suburban Suburban Attending Anesthesiologist Suburban Director of Peri-Operative Services Registered Nurse and Suburban Senior VP of Patient Care Support (Bethesda-Chevy Chase Chamber of Commerce) Support (Oakmont Special Taxing District) Support (Wingate Citizens Association) Support Hospital land planner
7	12-16-08	Jerome Collins Douglas Wrenn	Neighborhood Opposition Hospital land planner
8	12-18-08	Doug Wrenn Arielle Grill Margaret Hilton Marty Wells Kate Atkinson	Hospital land planner Neighborhood Opposition Neighborhood Opposition Hospital traffic planner Neighborhood Opposition
9	1-12-09	Lori Fish Bard Marty Wells	Neighborhood Opposition Hospital traffic planner
10	1-16-09	Lesley Hildebrand Robert Resnik Galina Knopman David Mangurian Stuart Borman Marty Wells John Coventry	Neighborhood Opposition Neighborhood Opposition Neighborhood Opposition Neighborhood Opposition Neighborhood Opposition Hospital traffic planner Hospital lighting expert
11	1-30-09	Greg Harris Stephen Godwin Ryland Mitchell	Neighborhood Opposition Neighborhood Opposition Hospital real estate appraiser
12	2-2-09	Amy Royden-Bloom Nicole Morgan Howard Sokolove Scott Harvey Frank Bossong	Neighborhood Opposition Neighborhood Opposition HTCA Board Member Hospital noise consultant Hospital engineer
13	2-6-09	Frank Bossong	Hospital engineer
14	2-20-09	Jane Pryzgocki Gene Corapi Frank Bossong	Hospital consultant Hospital Chief Operating Officer Hospital engineer
15	3-9-09	Matthew Leakan	Hospital landscape architect

16	3-13-09	Matthew Leakan	Hospital landscape architect
17	3-20-09	Matthew Leakan Jay Davies	Hospital landscape architect Opposition (architect)
18	3-23-09	Adrian Hagerty	Hospital architect
19	4-3-09	Adrian Hagerty	Hospital architect
20	4-17-09	Mitchell Weber Wayne Goldstein	Neighborhood Opposition (architect) Neighborhood Opposition (Montgomery County Civic Federation)
21	4-24-09	Wayne Goldstein	Neighborhood Opposition
22	4-27-09	Jean Ann Dorough Bob Deans Amy Shiman	HTCA Board Member HTCA Board Member HTCA Board Member
23	5-1-09	Bob Deans	HTCA Board Member
24	5-4-09	Susan Nancy Labin Jeff Baron Frances May Ulmer Bob Wisman	Neighborhood Opposition Neighborhood Opposition Neighborhood Opposition Neighborhood Opposition
25	5-5-09	Howard Sokolove Margot Cook Bob Wisman	HTCA Board Member Opposition Neighborhood Opposition
26	5-29-09	Amy Shiman	HTCA Board Member
27	6-1-09	Frances Ulmer Amy Shiman Robert Sievers Howard Sokolove	Neighborhood Opposition HTCA Board Member Neighborhood Opposition HTCA Board Member
28	6-5-09	Michael Wohl Amy Shiman Howard Sokolove	Neighborhood Opposition HTCA Board Member HTCA Board Member
29	6-8-09	Kenneth Doggett	HTCA land planner
30	6-9-09	Susan Snyder Martin Wells	Neighborhood Opposition Hospital traffic planner
31	6-30-09	Ryland Mitchell Martin Wells	Hospital real estate appraiser Hospital traffic planner
32	7-13-09	Ryland Mitchell Martin Wells John Coventry	Hospital real estate appraiser Hospital traffic planner Hospital lighting expert
33	7-23-09	Frank Bossong	Hospital engineer
34	7-24-09	Gene Corapi	Hospital Chief Operating Officer

Martin Klauber, People's Counsel for Montgomery County, participated in questioning during the hearing and submitted a closing statement. In his statement, he advocated a remand of the present application to allow the Hospital to submit a revised plan that would be more compatible with the general neighborhood. *See* Ex. 445. Mr. Klauber contended that the "public interest in this case dictates that the competing needs of the Hospital and the residential neighborhood be balanced so that a compromise that benefits all can be achieved." Ex. 445 at 1. Mr. Klauber suggested that the need to

tear down 23 homes could be removed through a zoning text amendment revising the applicable building set back and coverage requirements. *See id.* at 2. He described the Hospital-owned homes on Grant as a successful buffer and "a basic part of the character of the Huntington Terrace neighborhood." *Id.* Mr. Klauber identified a vista composed of a canopy of tree branches spreading over Grant Street, which he described as a repeated pattern throughout Huntington Terrace. In his view, the best possible buffer between the Hospital and the neighborhood is this canopy, which is one of the neighborhood's distinguishing characteristics. *See id.*

Mr. Klauber argued that the traffic impacts of the proposed expansion go beyond the Hospital's traffic analyses. He noted that traffic impacts will have a direct effect on neighborhood stability, character and preservation, as well as residents' peaceful enjoyment of their homes. Mr. Klauber considers the Hospital's goal of a 14 percent non-auto-driver mode split inadequate because it is the same goal that the Planning Board established for Washington Adventist Hospital, which lacks Suburban's proximity to Metro and to an established residential neighborhood. Mr. Klauber suggests Holy Cross Hospital, which has a similar distance to Metro and is in an established residential neighborhood, as a better comparison. Mr. Klauber also suggests that the Hospital's submitted transportation mitigation measures seem to focus on increasing the non-auto driver modal split, whereas their goal should be to mitigate or decrease Hospital-related trips using Huntington Terrace streets. *See id.* at 4. (The Hearing Examiner considers both worthy goals.)

Mr. Klauber recommends that the Hospital's Community Liaison Council act as a forum for the Petitioner to finalize a Transportation Management Plan, citing Condition 12 from a recent Holy Cross modification approval. *See id.* at 5. He offers specific recommendations regarding such a plan, which should be reviewed closely if the Board votes to approve the present modification. If the Board remands the petition for changes, Mr. Klauber's recommendations may be considered on remand.

Mr. Klauber argues, further, that the character of the area surrounding the Hospital cannot be maintained if the Hospital-owned residences on Grant Street are demolished. Replacing those houses with three acres of green spaces is not, in his view, in character with Huntington Terrace. He describes

stability as more than a list of sales prices on a chart, but rather a mindset based on perception. He questions what the perception will be in Huntington Terrace if the proposed plan is implemented. Mr. Klauber noted that the Hospital's plans "reflect its exquisite sensitivity to its needs (which is a logical orientation) but are not sensitive to the stated needs, issues, and concerns of neighborhood residents about the demolition of 23 residences and the [continued] purchase of residences in this adjacent neighborhood." *Id.* at 7.

Finally, Mr. Klauber suggests several ways to preserve the existing Grant Street residences: the Hospital could propose a zoning text amendment and a new plan that retains the residences; the HTCA could request a zoning text amendment that would allow the houses to be preserved; both entities could propose a zoning text amendment together; the Board could impose a condition of this special exception requiring the Hospital to retain the residences; or the Board could impose a condition that excludes the land underlying the Grant Street homes from the special exception site (the Hearing Examiner notes that this would still leave the proposed plan with a building coverage exceeding the statutory limit). *See id.* at 8-9.

V. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (*see* Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed special exception would not satisfy all of the specific and general requirements for the use.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. 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-1.21. 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 have 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 a hospital. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use 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, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

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

(1) a large, high-bulk physical plant, with some visual and noise impacts 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) physicians' 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; and

(10) an optimally located landing site for emergency helicopters.

See Staff Report at 13. Mr. Wrenn used the same list of inherent characteristics, citing the Hearing Examiner's Report in the recent Holy Cross Hospital modification, AS-420-H. This Hearing Examiner is troubled by the inclusion of physicians' offices on this list. While Suburban is the only hospital in Montgomery County that does not have on-site physicians' offices, the fact that it has operated for 60 years without them is a strong indicator that physicians' offices are not "necessarily associated with" the use. This question need not be decided here, however, since there clearly are other non-inherent adverse effects from the proposed expansion – whether the physicians' offices are inherent or non-inherent is immaterial. With that caveat, the Hearing Examiner adopts Technical Staff's list of inherent characteristics.

Technical Staff considered the proposed abandonment of the first block of Lincoln Street and the removal of homes to accommodate an expansion to be non-inherent adverse effects, and the Hearing Examiner agrees. *See* Staff Report at 13. Mr. Wrenn's attempt to classify these as inherent characteristics seriously undermined his credibility and the weight accorded to his opinions. There can be no question that it is not necessarily associated with a hospital to tear down a large number of homes and close a public street, given that many hospitals operate without taking these steps.

Setting aside the proposed physicians' offices, the Hearing Examiner considers all of the other aspects of the proposed modification to be inherent characteristics of a hospital. The Hearing Examiner also accepts Technical Staff's determination that the helipad is optimally located to minimize noise and other related impacts from emergency helicopter operations. The only unusual site condition that should be considered a non-inherent adverse effect is the lack of space that leads to the need to build over Lincoln Street.

Taking into account the inherent and non-inherent adverse effects of the proposed modification, the Hearing Examine finds that the preponderance of the evidence does not support approval. For the

reasons stated in Parts III.C and K, the Hearing Examiner concludes that the removal of 23 homes as proposed would have serious adverse impacts on the immediate and general neighborhood, well beyond the type and level of adverse effects that can be expected from a hospital in a residential neighborhood. For the reasons stated in Part III.K, the Hearing Examiner concludes that the construction of two large institutional buildings at the locations and sizes proposed would have unacceptable adverse impacts on the closest residential properties, beyond the level of adverse effects that can be expected from the use. For the reasons stated in Part III.K, the Hearing Examiner finds that the proposed Southwick Street employee entrance would have adverse effects beyond the level that can be expected from the use. Finally, the Hearing Examiner finds that the Hospital's refusal to accept the two-block campus it has identified in this application as a permanent expansion limit has serious destabilizing effects on the Huntington Terrace neighborhood, imposing a type and degree of adverse impact beyond what can be considered acceptable for the use. For all of these reasons, the Hearing Examiner cannot recommend approval.

The Hearing Examiner acknowledges that the Suburban has amply demonstrated a need to expand and update its physical facilities. It is clearly in the public interest to allow an appropriate expansion and modernization. Accordingly, the Hearing Examiner recommends a remand of the application to allow the Applicant to revise its proposal in line with the findings in this report, to the extent those findings are adopted by the Board.

B. Specific Standards

The specific standards for a hospital are found in §59-G-2.31. The evidence supports a finding that the proposed modification and expansion would not be fully 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; 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:

Conclusion: The evidence supports a 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. For the reasons stated in Part III.K, the Hearing Examiner finds that the certain aspects of the proposed modification and expansion would have unacceptable adverse impacts on the present character and future development of the surrounding residential community, and should not be permitted as proposed.

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

Conclusion: The Hospital's approximately 15 acres of land satisfies this requirement.

(2) Minimum frontage. Frontage, 200 feet.

Conclusion: 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.

Conclusion: Except for the original garage structure, all of the proposed structures would satisfy these setback requirements. For the reasons stated in Part III.B.2, the Hearing Examiner finds that the evidence does not support a decision to grant the variance necessary to allow the original garage. Except for this conclusion regarding the variance request, the Hearing Examiners analysis and conclusions take into account only the alternate garage and the shorter alternate garage.

(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: 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. Site constraints do not allow Suburban to limit front-yard parking. 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 extensive green areas proposed in this petition would maximize landscaping features and achieve a general effect of openness on some parts of the site. The proposed green areas would provide some screening for nearby residents, but for the reasons stated in Part III.K, the Hearing Examiner concludes that the screening offered by the landscaping would be inferior to what is currently available from 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.

Conclusion: If the modification is approved, Suburban will be required to submit a site plan to the Planning Board for approval.

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

Conclusion: 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.

C. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The preponderance of the evidence indicates that the general standards would not be fully 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: A hospital is a permitted special exception 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.

Conclusion: The proposed use would not fully comply with the standards and requirements set forth for the use in Code §59-G-2.31, as detailed in Part V.B. above.

(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: For the reasons set forth in detail in Part III.C, the Hearing Examiner finds that the proposed modification an expansion would not be consistent with the *Bethesda/Chevy Chase 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: For the reasons stated in Part III.K above, the Hearing Examiner concludes that the proposed modification and expansion would not be in harmony with the general character of the neighborhood due to the proposal to remove 23 homes, the combined scale/bulk/location of the proposed structures and the proposal for an employee entrance on Southwick Street. The adequacy of public facilities is discussed under subparagraph (9) below.

(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: For the reasons stated in Parts III.J and K, the Hearing Examiner finds that certain aspects of the proposed modification and expansion would be detrimental to the use, peaceful enjoyment, economic value and development of surrounding properties and the general neighborhood to a degree that does not support approval.

(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 evidence supports the conclusion that the proposed modification and expansion would 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 is an inherent part 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. For the reasons stated in Part III.K, the Hearing Examiner concludes that the proposed Southwick Street employee entrance would cause objectionable physical activity that should not be permitted.

(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 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.

One nearby intersection would exceed the applicable CLV standard with the additional traffic from the proposed modification. The Hospital has committed to fund or participate in a roadway improvement to bring that intersection into compliance with the CLV standard.

(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, 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.

Conclusion: If the modification is approved the Hospital will be required to 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.

Conclusion: 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.

(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.

Conclusion: 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.

Conclusion: The record substantiates a finding that Petitioner has not met the burden of proof and persuasion on all points.

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.

Conclusion: As detailed in Part V.B above, the proposed development would satisfy all development standards applicable under the specific standards for the use. The proposed modification would more than satisfy the parking requirements under Chapter 59-E, which the Hospital considers inadequate for its needs. As noted in Part III.H, the proposed modification would satisfy forest conservation and stormwater management requirements. The Hospital will be obligated to obtain a sign variance if any of its proposed signage exceeds what the Sign Ordinance permits. As discussed in Part III.H, the proposed lighting would satisfy the applicable requirements. It is not practical for large institutional buildings to be residential in appearance. For the reasons stated in Part III.K, the Hearing Examiner finds that the new structures proposed in this petition would not be adequately well related to the surrounding area in terms of size, bulk and location.

V. RECOMMENDATIONS

Based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-274-D, which requests approval for a modification to the existing special exception for Suburban Hospital, located at 8600 Old Georgetown Road, Bethesda, Maryland, be ***remanded*** to give the Hospital the opportunity to submit revised plans consistent with the following parameters:

1. The Hospital campus will be permanently limited to the two-block area between Old Georgetown Road, McKinley Street, Grant Street and Southwick Street.
2. The only homes that may be removed to support hospital expansion are those that front only on Lincoln Street between Old Georgetown Road and Grant Street.
3. Absent strong justification, such as reduced adverse impacts on the general neighborhood, no building other than a single-family detached house shall be built within 100 feet of any property line shared with a lot that is used, zoned or recommended in an approved and adopted master plan for residential use, and no building shall be constructed to a height greater than its distance from such a property line.
4. Vehicular entrances shall be limited to Old Georgetown Road and McKinley Street.
5. No parking garage shall be proposed at a height greater than approximately 35 feet. The size and bulk of the parking garage shall be reduced from the levels shown on the Alternate Garage Site Plan, Exhibit 73(ddd), and/or the distance between the garage and the nearest homes significantly increased, to create a compatible relationship between the parking garage, any hospital addition that may be proposed, and nearby residences.

If the Board elects to approve the present modification request, the Hearing Examiner recommends that the Board review proposed conditions of approval submitted by the Hospital (Exs.

442 and 443(a) at 112), the HTCA (Ex. 444 at 98) and the People's Counsel (Ex. 445) for guidance in crafting appropriate conditions of approval.

Dated: June 18, 2010

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner