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APPENDIX

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MCPB 09/25/08
Item #4 B and 4C

MEMORANDUM

DATE:	September 15, 2008
TO:	Montgomery County Board of Appeals
FROM:	Renée M. Miller, AICP, Senior Planner Development Review Division (301-495-4723)
VIA:	Rose Krasnow, Chief, Development Review Division Ralph Wilson, Zoning Supervisor
SUBJECT:	A. Preliminary Forest Conservation Plan B. Special Exception Modification Request (S-274-D: Suburban Hospital)
MASTER PLAN:	Bethesda/Chevy Chase Master Plan
FILING DATE:	February 7, 2008
PLANNING BOARD:	September 25, 2008
PUBLIC HEARING:	October 6, 7, 14 & 17, 2008

STAFF RECOMMENDATION

A. Staff recommends **APPROVAL** of the revised Preliminary Forest Conservation Plan (PFCP) for the above referenced special exception, subject to conditions, as identified in Section XII of this report.

B. Staff recommends **APPROVAL** of Special Exception Petition S-274-D for expansion and modernization of Suburban Hospital, subject to conditions, as identified in Section XII of this report.

In summary, staff finds 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. The adjusted project design specifically addresses the relationship between the adjacent residential dwellings and the hospital, by providing improved design elements, such as, a low brick wall along the

in the neighborhoods. The guidelines support special exceptions that contribute to the service and health objectives of the Master Plan and recognize the importance of meeting these needs through hospital services and hospice centers that are appropriately sized to be compatible with the surrounding neighborhoods. The plan as a general objective does not support assemblage of parcels or the removal of houses to accommodate a special exception, but recognizes that assessment of the appropriateness of a special exception is on a case-by-case basis.

Community-Based Planning Staff, in its review of the application, found that hospital expansion plan was "unacceptable and should be denied". (See Attachment 7.) Community-Based Planning staff believes that the hospital expansion proposal is inconsistent with the recommendations of the 1990 approved and adopted Bethesda/Chevy Chase Master Plan because the master plan discourages the removal of homes for special exceptions uses and encourages the protection of the neighborhood from further encroachment of special exception uses except for local community need.

Notwithstanding the comments of Community Based Planning, the master plan recognizes that some existing special exceptions along the Old Georgetown Road corridor may need to be modified and, if such expansion is necessary, recommends that any building addition should not be larger than 50% of the existing building. The proposed hospital expansion does not exceed 50%. In context of the master plan, it is important to note that Suburban Hospital is not specifically addressed in the discussion of special exceptions, which is surprising since the hospital has been an existing special exception since the 1950's and has needed modifications over the years. It should also be noted that important improvements consistent with recommendations of the master plan would be implemented through the expansion as proposed. The applicant is proposing to reconstruct the sidewalks along Old Georgetown Road, provide separation between the sidewalk and the back of curb, and provide proper pedestrian cross-walks and curb cuts across Old Georgetown Road. Variances would no longer be needed for the setbacks between the hospital structures and single family residences. Zoning staff believes these are important elements to be considered in determining consistency of the hospital expansion with master plan recommendations.

VIII. TRANSPORTATION ANALYSIS

A. Traffic Analysis

With certain improvements, the proposed Hospital expansion as described in the special exception application satisfies the LATR and PAMR requirements of the APF review. The intersections were examined to determine whether or not they met the applicable congestion standard of 1,600 Critical Lane Volumes (CLV) for the Bethesda/Chevy Chase Policy Area. The traffic study includes the trips related to the abandonment of Lincoln Street and the redistribution of those trips on the local network. All intersections identified are currently operating at an acceptable congestion standard and are expected to continue to meet the CLV for the total future traffic conditions, with the exception of West Cedar Lane at Old Georgetown Road during the P.M. peak-hour. In order to address the over congested condition, the applicant has proposed to construct a third westbound lane on West Cedar Lane. With this proposed improvement, the West Cedar

MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

September 26, 2008

Ms. Allison I. Fultz, Chair
Montgomery County Board of Appeals
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

Re: Special Exception Petition S-74-D, Suburban Hospital

Dear Ms. Fultz:

At its regular meeting of September 25, 2008, The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission reviewed Special Exception Petition S-74-D for modernization and expansion of Suburban Hospital. On a motion of Vice-Chairman Robinson, seconded by Commission Cryor, with Chairman Hanson voting in favor and Commissioners Alfandre and Presley, dissenting, the Board recommended (3-2) that Special Exception Petition S-74-D be approved. The Board majority supported staff's analysis with the following additional conditions:

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.

The Board accepted clarification of staff's recommended condition "F" on page 25 of the staff report. As revised condition "F" now reads as follows: "The applicant must obtain subdivision approval. At that time, a finding of adequate public facilities will be necessary".

Apx. 3

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

The majority of the Planning 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 the adjustments made by the applicant to the initially submitted plans, and with the conditions of approval proposed by staff and Board. The Board believes that neighborhood compatibility would be improved by the removal of the proposed approximately 105 surface parking spaces (87 employee spaces and 18 fleet/vendor spaces) along the western property line and southern property line (west of the new cardiac entrance) and relocation to an expanded parking structure. The Board indicated that it would support approval of a variance to the minimum setback requirement from Old Georgetown Road for this purpose. Additional tree planting and landscaping should be provided in lieu of the relocated surface parking area. In the Board's view, abandonment of Lincoln Street will require the applicant to improve McKinley Street, between Old Georgetown Road and Grant.

Those Board members in opposition to the application expressed the view that removal of the 23 homes would have serious destabilizing effect 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. Those Board members who opposed the application 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.

The attached report is a true and correct copy of the technical staff report. The foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission at the Board's regular meeting held in Silver Spring, Maryland, on Thursday, September 25, 2008.

Sincerely,

Royce Hanson
Chairman

MATERIALS FROM PROCEEDINGS

BEFORE THE BOARD OF APPEALS

IN THE COUNTY BOARD OF APPEALS FOR MONTGOMERY COUNTY, MARYLAND

IN THE MATTER OF THE APPLICATION OF	*	
SUBURBAN HOSPITAL, INC. TO	*	Case No. S-274-____
MODIFY ITS HOSPITAL SPECIAL EXCEPTION	*	

STATEMENT OF SUBURBAN HOSPITAL, INC.
IN SUPPORT OF SPECIAL EXCEPTION MODIFICATION

Petitioner, Suburban Hospital, Inc. (the "Hospital"), by its attorneys, Linowes and Blocher LLP, submits this Statement in Support of Special Exception Modification ("Statement") to demonstrate conformance of the proposed modification to the existing Hospital special exception use (the "Modification") with all applicable review requirements and criteria. As outlined on the tax map attached as Exhibit "C", the property that is the subject of the Modification consists of approximately 15.2 acres,[1] and is known as Lots 15, 1-A, 2-5, 6-A, 7-A, 8-A, 9-A, 10-13, Block 15, and Lots 7, Part of Lot 8, 12[2]-17, 20, 21, 27, 32, Block 8, with the main property address being 8600 Old Georgetown Road, Bethesda, Maryland 20814 (the "Property"). As shown on the Certified Zoning Map, attached as Exhibit "D", the Property is classified in the R-60 (Residential, One-family Detached) Zone, as set forth in Section 59-C-1.1 of the Montgomery County Zoning Ordinance 1994 (as amended) (the "Zoning Ordinance"). Section 59-C-1.3 of the Zoning Ordinance permits the operation of a hospital use in the R-60 Zone by grant of a special exception. The Hospital is currently in operation by grant of a special exception (Case No. 285), approved on April 15, 1955, which has been amended on several occasions, as described more fully below.

[1] This area calculation includes 36,126 square feet of Lincoln Street, between Grant Street and Old Georgetown Road, that Petitioner is seeking to have abandoned.
[2] The Memorandum of Option Agreement for this property, evidencing the Hospital's interest as contract purchaser, is included in this application as Exhibit "RR".

The Modification is necessary to provide an upgraded Hospital facility and Campus to better serve the healthcare needs of the community. Specifically, the Modification will enable the Hospital to (1) modernize operating rooms and related surgical facilities; (2) provide more private patient rooms to address and improve infection control, patient care, privacy and family participation; (3) enhance patient care through additions and changes to its facilities to accommodate medical advances in technology, changes in healthcare practices and evolving code regulations; (4) satisfy its responsibilities as a designated trauma facility[3]; (5) improve access to the emergency/trauma center; (6) provide adequate parking for patients, visitors, employees and physicians; (7) maintain and attract well qualified physicians and other healthcare employees to the Hospital staff who provide high-quality care; (8) provide on-Campus office space for physician services to provide patients and other physicians with direct access to such physicians and hospital services and technology; (9) improve pedestrian and vehicular safety; (10) enhance operational efficiencies of the Hospital through improvements to internal and on-site circulation systems, loading dock areas, building systems, departmental adjacencies, etc.; and (11) create a campus environment incorporating attractive landscaped buffers, open spaces, plazas, gardens and walkways to be used and enjoyed by Hospital staff, patients, visitors and surrounding residents.

[3] Designated trauma centers are responsible and certified in their ability to provide advanced medical and surgical services 24 hours a day; this includes specialized trauma resuscitation care, and available operating rooms and surgical teams for trauma patients around the clock. This designation means that, within an assigned geographic region, regardless of the location of an incident and the proximity of another hospital, if the Emergency Medical System determines in the field that the patient is a trauma, the patient is directed to a trauma center such as Suburban Hospital (with exceptions for children, burn victims, and severe head injuries). Suburban Hospital may also accept trauma patients from other jurisdictions when another trauma center is at capacity.

Suburban Hospital

Modification of Montgomery County Special Exception

Case Number S-274-D

Exhibits supporting Petitioner's Testimony at Board of Appeals Hearing

November, 2008

Designated Trauma Center

- The only designated trauma center in Montgomery County
- One of only 9 trauma centers in Maryland
- Over 1500 trauma patients are treated annually
- Named one of only 5 "most highly prepared" trauma centers in the nation (National Foundation of Trauma Centers)

- *What it means:*
  - Responsible and certified to provide advanced care 24 hours per day
  - Regardless of location or proximity to another hospital, trauma patients in Montgomery County are directed to Suburban Hospital by the Emergency Medical System

STATEMENT OF BOARD MEMBER CATHERINE G. TITUS IN REPONSE TO REQUEST FOR RECUSAL BY HUNTINGTON TERRACE CITIZENS ASSOCIATION

Huntington Terrace Citizens Association has requested that I recuse myself from participation in Case Nos. S-274-D and A-6254 based on my husband's prior service on the Board of Suburban Hospital, his charitable contributions to Suburban and a vote by me on a legal issue at our work session on October 8, 2008. Before responding to this request, I would like to give some basic background information about my husband's former involvement with Suburban Hospital, as well as my vote during the work session of the Board held on October 8, 2008.

I take my responsibilities as a member of the Board seriously, and my votes as a member have always been, and will continue to be, based solely on the record before the Board and the applicable law. I do not have any bias in favor of or against any party before this Board, including Suburban Hospital and Huntington Terrace Citizens Association.

My husband is a native of Montgomery County and practiced law here for 37 years before becoming a United States District Judge in 2003. He has long believed in community service and served for 14 years on the Board of Suburban Hospital, but his service ended almost nine years ago. Suburban has a different president than it did when he stepped down in 2000, and, because of term limits, no present member of its Board was serving when he did.

For many years, he has made contributions to a number of charitable organizations in this County, including Suburban Hospital, which is a charitable corporation. He has no financial interest in Suburban Hospital and earns no money from the hospital. He and I have occasionally been patients and have paid for hospital services as a result. Neither he nor I would benefit or be harmed in any way by the Board's decisions in these cases, regardless of the outcome.

On October 8, 2008, there was a work session of this Board concerning these cases, and an issue arose as to the necessary number of votes required to dismiss a special

exception application. Some members of the Board interpreted the supermajority of four votes required for granting a special exception to be applicable to a vote for dismissal of an application, while I did not. My vote was based solely on my interpretation of a law that does not expressly state that it applies to a dismissal. Reasonable minds can differ, and here they did. I respect the views of my colleagues who took the opposite view, and I am sure that they respect mine. My vote was not intended to benefit Suburban or harm Huntington, but rather was an expression of my view as to how a law should be interpreted.

Our Board of Appeals does not have alternate or substitute members who can step in when a member is unable to serve in a particular case. Some other Maryland counties do have alternate members, such as Garrett County. This difference is an important one, especially in light of our supermajority requirement for approval of special exceptions. If one member is unable to serve, then the supermajority requirement effectively becomes a requirement for unanimity, and could vitally affect the outcome of a case as well as the ability of the Board to function.

There are parallel differences in the court system. A single circuit court judge in Maryland can easily be replaced by another judge, and a judge who is a member of one of Maryland's two appellate courts can be replaced by another judge or a retired judge, without any effect on the ability of the court to function or on the outcome. Our Board is different, and is more like the Supreme Court of the United States. If a member of that court is unable to participate, there is no ability to call upon a substitute, and therefore recusals must, of necessity, be viewed from a different perspective. This important distinction was addressed by the late Chief Justice Rehnquist in his opinion in the 2000 case of Microsoft v. United States.

Neither the Code of Ethics for this Board nor the County Ethics law requires my recusal in this case. My husband and I do not have, nor have we ever had, a financial interest in Suburban Hospital, nor do we have an economic interest in the subject matter of this case.

Nor do recusal principles used in the courts and applied to administrative agencies require my disqualification. In the courts, there is a strong presumption that judges are impartial. The decision on whether to recuse is to be made by the judge whose recusal is

sought. It is a discretionary decision where the basis of the request to recuse is, as here, the appearance of impropriety as opposed to an allegation of personal misconduct. A judge's ruling on a question of law is not a basis for recusal.

Court decisions emphasize that a recusal request must be timely filed as soon as the basis for it becomes known and relevant. The reason for requiring promptness in the filing of recusal requests is to avoid disruption of a case, or the possible withholding of a recusal motion to be used as a weapon only in the event of some unfavorable ruling. Courts note that improperly filed motions without any factual basis may be designed merely to get rid of a certain judge, but that lawyers filing such motions may be subject to sanctions or discipline.

I conclude that the request in these cases is both untimely and lacking in merit. These two cases have been pending since March of this year, and a related matter involving Suburban has been pending since May of 2007. Two of the three reasons for seeking my recusal have been widely known since I began my service on this Board in 2006, while the third [my vote on a question of law] is not a proper basis for recusal.

My husband's service ending almost nine years ago on Suburban's Board is a widely known fact. His identity as a member of the Board was shown on numerous mass mailings to the community during his tenure. Moreover, his membership in the past on Suburban's Board has been posted publicly on the website of the United States District Court for the District of Maryland for almost five years. [It was attached to the recusal request.] Finally, the fact of his contributions has been publicly listed on donor reports that also were mass mailed to the community. In short, there is nothing new in the request for recusal, and these cases have been pending for far too long to consider the request to be a timely one.

Applying these principles, I decline to recuse myself in these cases. My continued participation is not in violation of any County law or any principle applied by the courts, and the request is untimely. I have been and will continue to be fair to both sides in these cases.

Catherine G. Titus

November 5, 2008

Montgomery County, Maryland Hospitals
Parking Comparison Chart

Hospital	Existing or Proposed	Building Area (S.F.) Hospital	POB	Total	Parking Spaces Required	Parking Spaces Provided	Difference	Zoning	Spaces per 1,000 S.F.
Suburban	Existing	435,887	-	435,887		1,081		R-60	***2.480***
Suburban	Proposed	630,879	38,000	668,879	937	***1,417***	***480***	R-60	***2.118***
Suburban	Proposed	630,879	38,000	668,879	937	***1,369***	***432***	R-60	***2.047***
Holy Cross	Existing	613,373	71,627	685,000	1,346	1,832	***486***	R-60	***2.674***
Holy Cross	Proposed	893,266	71,627	964,893	1,555	1,999	***444***	R-60	***2.072***
WAH	Proposed	570,235	233,335	803,570	1,596	2,138	***542***	I-3	***2.661***
Mont. General	Proposed	514,650	31,000	514,650	697	1,181	***484***	RE-2, R-200, R-60	***2.295***
SGAH	Proposed	561,973	134,074	696,047	1,170	2,063	***893***	LSC	***2.964***
All	Average	630,699	108,333	732,832	1,273	1,843	***570***		***2.533***

(1) The WAH calculation shown utilizes Section 59-E-3.7 of the Montgomery County Zoning Ordinance which is consistent with the standard used by all other hospitals in Montgomery County.

Apx. 12

0000514

Ex. 236a

Carrier, Francoise

From: Kim, Ki [Ki.Kim@mncppc-mc.org]
Sent: Wednesday, February 04, 2009 2:43 PM
To: Carrier, Francoise
Cc: Etemadi, Shahriar
Subject: RE: Suburban Hospital case

Françoise,

I have reviewed your inquiries and the following is my response.

When Transportation Planning Staff reviewed the special exception modification of the suburban Hospital and the abandonment of Lincoln Street and prepared our memos, we were aware that Garfield Street, Jefferson Street and Grant Street terminate at Roosevelt Street. The existing street configurations were assumed in our analysis.

The employee entrance/exit on Southwick Street is proposed as "left-in/right-out only" and the projected traffic volumes are relatively low since the entrance/exit driveway is restricted to the employee-use only. It is our opinion that the loop roads at the main entrance off Old Georgetown Road have roadway capacity to accommodate additional traffic volumes as a result of closing the proposed employee entrance/exit on Southwick Street. However, it is also Staff's opinion that separating the employee's traffic from the patient/visitor/emergency vehicles would enhance the efficient flow of traffic in and around the new main entrance and parking garage. If the Southwick Street entrance were not built, the northern entrance to the proposed parking garage would seem not necessary.

Please let us know if you would like to have any additional comments and/or further clarification on our response.

Thanks.

Ki

Ki Kim
Planner/Coordinator
Transportation Planning Division
M-NCPPC
8787 Georgia Avenue, MD 20910
(p) 301-495-4538 (f) 301-495-1302
ki.kim@mncppc-mc.org

From: Carrier, Francoise [mailto:Francoise.Carrier@montgomerycountymd.gov]
Sent: Wednesday, January 21, 2009 4:55 PM
To: Kim, Ki
Cc: Miller, Renee; Wilson, Ralph
Subject: Suburban Hospital case

Dear Ki,

I am currently conducting a multi-day public hearing on the Suburban Hospital case. As you know, many members of the local community oppose the hospital's plans, including the proposed closing of one block of Lincoln Street. At a recent hearing session, a community member pointed out that the three north-south streets closest to Old Georgetown Road immediately west of the hospital – Garfield Street, Jefferson Street and Grant Street – terminate at Roosevelt Street. As a result, to go from Greentree Road to Huntington Parkway on Garfield or Grant (Jefferson is a very short street and does not reach Greentree), one would have to take

EXHIBIT NO. 223
REFERRAL NO. S-2741-D

STATEMENT OF BOARD CHAIRMAN CATHERINE G. TITUS IN RESPONSE TO RENEWAL OF REQUEST FOR RECUSAL BY HUNTINGTON TERRACE CITIZENS ASSOCIATION

Huntington Terrace Citizens Association has requested again that I recuse myself from participation in Case Nos. S-274-D and A-6254 based on grounds previously asserted and on the "new" ground that I will necessarily be ***"placed in the position of evaluating the weight to be given to"*** my ***"husband's testimony compared to the weight to be given the evidence presented by the opposition."*** Recusal request, p. 3. [emphasis in original] As explained below, this renewed request is based on nothing that is new, and is without factual or legal merit.

My husband has been a United States District Judge for almost seven years. Before becoming a judge, he provided service to the community in which he has lived for his entire life by serving on Suburban's Board. That service ended ***over ten years ago*** when there was a different hospital president and an entirely different Board of trustees.

In its renewed request, Huntington Terrace Citizens Association cites testimony given by my husband ***over twenty-three years ago*** in a completely different special exception case for a different project that was abandoned by Suburban Hospital. Evidence that was considered long ago by this Board in that twenty-three year old case is not before the Board in this case. Indeed, this Board is required by law to restrict itself to consideration of the evidence developed before the Hearing Examiner in ***this case***. It would be improper for me or any member of the Board to consider, much less evaluate the weight of, evidence from other cases, and I have no intention of doing so.

As I stated previously in response to the first recusal request by Huntington Terrace Citizens Association, I take my responsibilities as a member of the Board seriously, and my votes as a member have always been, and will continue to be, based solely on the record before the Board and the applicable law. I do not have any bias in favor of or against any party before this Board, including Suburban Hospital and Huntington Terrace Citizens Association.

I conclude again that the renewed recusal request in these cases is both untimely and lacking in merit for the reasons and on the basis of the principles set forth in my November 5, 2008 statement. A copy of my earlier statement is attached.

Applying these principles, I decline again to recuse myself in these cases. My continued participation is not in violation of any County law or any principle applied by the courts, and the renewed request is untimely. I have been and will continue to be fair to both sides in these cases.

June 30, 2010

Catherine G. Titus

STATEMENT OF BOARD MEMBER CATHERINE G. TITUS IN REPONSE TO REQUEST FOR RECUSAL BY HUNTINGTON TERRACE CITIZENS ASSOCIATION

Huntington Terrace Citizens Association has requested that I recuse myself from participation in Case Nos. S-274-D and A-6254 based on my husband's prior service on the Board of Suburban Hospital, his charitable contributions to Suburban and a vote by me on a legal issue at our work session on October 8, 2008. Before responding to this request, I would like to give some basic background information about my husband's former involvement with Suburban Hospital, as well as my vote during the work session of the Board held on October 8, 2008.

I take my responsibilities as a member of the Board seriously, and my votes as a member have always been, and will continue to be, based solely on the record before the Board and the applicable law. I do not have any bias in favor of or against any party before this Board, including Suburban Hospital and Huntington Terrace Citizens Association.

My husband is a native of Montgomery County and practiced law here for 37 years before becoming a United States District Judge in 2003. He has long believed in community service and served for 14 years on the Board of Suburban Hospital, but his service ended almost nine years ago. Suburban has a different president than it did when he stepped down in 2000, and, because of term limits, no present member of its Board was serving when he did.

For many years, he has made contributions to a number of charitable organizations in this County, including Suburban Hospital, which is a charitable corporation. He has no financial interest in Suburban Hospital and earns no money from the hospital. He and I have occasionally been patients and have paid for hospital services as a result. Neither he nor I would benefit or be harmed in any way by the Board's decisions in these cases, regardless of the outcome.

On October 8, 2008, there was a work session of this Board concerning these cases, and an issue arose as to the necessary number of votes required to dismiss a special

sought. It is a discretionary decision where the basis of the request to recuse is, as here, the appearance of impropriety as opposed to an allegation of personal misconduct. A judge's ruling on a question of law is not a basis for recusal.

Court decisions emphasize that a recusal request must be timely filed as soon as the basis for it becomes known and relevant. The reason for requiring promptness in the filing of recusal requests is to avoid disruption of a case, or the possible withholding of a recusal motion to be used as a weapon only in the event of some unfavorable ruling. Courts note that improperly filed motions without any factual basis may be designed merely to get rid of a certain judge, but that lawyers filing such motions may be subject to sanctions or discipline.

I conclude that the request in these cases is both untimely and lacking in merit. These two cases have been pending since March of this year, and a related matter involving Suburban has been pending since May of 2007. Two of the three reasons for seeking my recusal have been widely known since I began my service on this Board in 2006, while the third [my vote on a question of law] is not a proper basis for recusal.

My husband's service ending almost nine years ago on Suburban's Board is a widely known fact. His identity as a member of the Board was shown on numerous mass mailings to the community during his tenure. Moreover, his membership in the past on Suburban's Board has been posted publicly on the website of the United States District Court for the District of Maryland for almost five years. [It was attached to the recusal request.] Finally, the fact of his contributions has been publicly listed on donor reports that also were mass mailed to the community. In short, there is nothing new in the request for recusal, and these cases have been pending for far too long to consider the request to be a timely one.

Applying these principles, I decline to recuse myself in these cases. My continued participation is not in violation of any County law or any principle applied by the courts, and the request is untimely. I have been and will continue to be fair to both sides in these cases.

November 5, 2008

Catherine G. Titus

TRANSCRIPTS OF HEARINGS

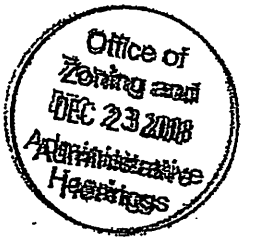
BEFORE THE BOARD OF APPEALS

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

PETITION OF SUBURBAN HOSPITAL	:	Case No. S-274-D

A hearing in the above-entitled matter was held on December 15, 2008, commencing at 9:37 a.m., at the Council Office Building, Rita Davidson Memorial Hearing Room, 2nd Floor, 100 Maryland Avenue, Rockville, Maryland 20850 before:

Francoise M. Carrier, Hearing Examiner



124 we see different things identified if we start in the new construction area to the upper middle of the page there where it says space to recovery, post-procedural and observation space and pre-PACU and then we see operating rooms. Now, is it in order to give the proper trauma care that you believe is necessary, should these things all be together on one floor?

A Absolutely.

Q And is the flow through those different elements important and when you look at Exhibit 124 do you see an arrangement in the flow that suits your needs for the best delivery of trauma care?

A Absolutely.

Q And why is that?

A For multiple reasons, first of all I think about patient safety. It's a primary concern of everybody. It is extremely important to have your operating rooms adjacent to the recovery rooms or across anesthesia care recovery or PACU as they call it, and adjacent also to your pre-operating areas. It is clear that those recovery room areas, for example, are not staffed typically by physicians. In fact, I've never seen that in any hospital. They are staffed by nurses who are extremely well trained in taking care of surgical patients. However, when again an unexpected occurs, some unexpected event, something happens

immediately after surgery whether it's significant respiratory distress or unexpected recurrent bleeding from some, following certain surgeries, the nurses cannot deal with that. They have to quickly obtain the assistance of the physician and anesthesiologist, surgeon, depending on the situation. So the closer the physicians are to these areas, the better. And it's not unusual for us to hear from the recovery room, any anesthesiologist to the recovery room STAT or any surgeon available to the recovery STAT. That means that there is a situation that requires somebody to be right there right this minute. And if you have to travel from another floor to get there, or if you have to travel a long hallway to get there, this is not safe, this is really bad. So, you know, from a safety standpoint I think, you know from the efficiency I think it's extremely important too, because in order to deliver great patient care these days you have to be efficient.

Q Dr. Westerband, we also had -- part of the proposal here is to also build I think it's approximately 38,000 square feet of onsite physician office space. And in delivery of the trauma care for Suburban and for just general delivery of trauma care at the hospital, what are your views on having physician space on the acute care campus?

A I think it's a must in 2009 basically. In fact,

Direct Testimony of Dr. Dany Westerband on Cross by Norman Knopf

THE WITNESS: Right.

MR. KNOPF: Thank you. That was going to be my next question.

BY MR. KNOPF:

Q And would it be fair to say that the 1600 trauma center patients, each one of them on the average demands a lot more services, operating room time and so on than say your emergency room patient?

A Yes.

Q Because you have such an extensive trauma center with so many patients, do you have more employees, professional and otherwise that the hospital has on staff or has hired than if you didn't have a trauma center?

A Certainly.

Q Could you give a rough estimate of the number of additional employees,.staff?

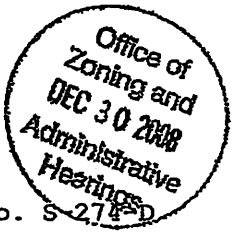
A I can't tell you the number, but I can tell you that because we're a trauma center we have to have a number, by regulations we have to have a number of physicians and nurses and technicians available at all times. It's like you can't be a trauma center if you don't have an anesthesiologist within the hospital at all times, 24 hours a day, with a backup anesthesiologist at all times. Can't be a trauma center if you don't have a trauma center able to respond to your trauma center within 30 minutes at all times

with backup system in place. So, when we say we're a trauma center we have not only trauma surgeons, but trauma nurses, trauma technicians all 24 hours, anesthesiologists, surgical residents, physician assistants to help with the delivery of care. We also have laboratory services that are available 24 hours, technicians 24 hours for the x-ray department. It's a huge teamwork. And in fact when trauma is called as we say and there is trauma team activation you have, you know, depending on the situation, 7 to all the way to 12 people who actually respond to the trauma bay to be available. In addition to that you also have the support services. You have the blood bank and operating room capabilities. You have nurses in the operating room waiting there sometimes and be available, things that you don't find in other hospitals. If you go to Greater South -- not Greater Southeast, but Doctor's Community Hospital where I go occasionally, at night you don't have, you know, nurses in the operating room waiting for patients. You have to call them in to do any surgery.

Q Could you give us a very rough estimate of the number of increased staff employees that you have at the hospital because it is a trauma center?

MS. SEARS: I'm going to object to that question. I think the numbers of all of the employees and admissions and so forth, the exact numbers have been submitted and they

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY



PETITION OF SUBURBAN HOSPITAL	:	Case No. S-2714

A hearing in the above-entitled matter was held on December 18, 2008, commencing at 9:38 a.m., at the Council Office Building, Rita Davidson Memorial Hearing Room, 2nd Floor, 100 Maryland Avenue, Rockville, Maryland 20850 before:

Francoise M. Carrier, Hearing Examiner

the memorandum done by Piera Weiss which is attached to the staff report which I believe is Exhibit 25 and it is attachment 7. Now the sections --

MR. KNOPP: Excuse me, I'm going to object to your characterization that Piera Weiss' staff report is part of the staff report. It's unattached to the staff report.

MS. CARRIER: It is an attachment.

MS. SEARS: It is.

MR. KNOPP: It's part of the staff report.

MS. CARRIER: As an attachment. I don't find anything pernicious in that characterization and that's what it is. It is the report of community base planning staff which is an attachment to the staff report.

MS. GIRARD: It's Exhibit 49 actually.

MS. SEARS: Oh, I'm sorry.

BY MS. SEARS:

Q Exhibit 49, attachment 7 and going back to your earlier redirect on the sections that you mentioned about healthcare, about the expansion, about mentioning Suburban, about the hospital, did Ms. Weiss address any of those sections in her report, attachment 7?

A I don't think that it was a complete assessment of all of the recommendations contained in the master plan. As I started my testimony about the master plan, I think it's very important to read the entire plan and to understand the

general recommendations, the ones that pertain to special exceptions. The one that specifically referenced Suburban Hospital as well as the portions that the staff member included.

Q So the only, if I'm looking at this and you correct me if I'm wrong, that if I'm looking at attachment 7. 7 --

A Yes.

Q The only mention I see to a specific provision of the master plan is Section 3.2, Old Georgetown Road plan pages 57 to 62.

A Right.

Q So there is no mention of any other sections or analysis of any other sections.

A Correct.

Q Just finally I just want to ask you about timing, your knowledge of timing. For example, there's a second attachment, attachment 13 to the staff report, Exhibit 49 which if you have it there is Mr. Carter's who became -- Mr. Carter previously was the Bethesda community base planning person, was he not?

A Yeah, he was actually the division chief for community base planning. He has a long history of working in Bethesda and working with the Bethesda plans.

Q And then at some point after this application was

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hospitals?

A Yes, they have.

Q All right, and have you analyzed in this case the suitability of the proposed modification on the transportation planning, the transportation engineering sampling?

A Yes I have.

Q Could you then starting with the well, why don't you just review your conclusions of your studies, how you did them and what your conclusions were.

A We conducted three studies of the special exception that is the subject of this hearing. They include a local area transportation review and policy area mobility review in the same document, a parking study and a Lincoln Street abandonment study. In brief we concluded that the traffic capacity on Old Georgetown Road and neighboring streets is adequate. There presently is a severe parking shortage on the main Suburban Hospital campus. Approximately 1459 parking spaces are needed to adequately accommodate the parking demands of the expanded hospital. The proposed parking plan generally will satisfy this projected demand. The Lincoln Street right-of-way which is proposed to be abandoned and is not necessary for present use or anticipated public use. The abandonment is necessary to protect the health, safety and welfare of nearby

residents.

The hospital currently has a substantial traffic mitigation program that results in a non-auto driver mode split of 11 percent of main shift hospital employees. A 14 percent non-auto driver mode split may be achievable with additional traffic mitigation measures.

Q Okay, those were your conclusions in brief. Then could you starting with the local area analysis that you did, could you review in more detail what you found and what your conclusions were.

A I'd be happy to do that. Wells and Associates local area transportation review and policy area mobility review originally were documented in our March 26, 2008 report. That report was updated in a November 7, 2008 memorandum to reflect certain turn and use restrictions on Southwick Street and PAMR, P-A-M-R trip mitigation measures agreed to by the hospital and MNCPPC staff. I can refer to an area wide street map. I don't know that this has been marked as an exhibit.

MS. GIRARD: No, it's not.

MS. CARRIER: No.

MS. SEARS: Will mark it.

MS. CARRIER: That would be Exhibit 157.

(Exhibit No. 157 was marked for identification.)

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

Petition of Suburban Hospital	Case No. S-274-D

A hearing in the above-entitled matter was held on January 16, 2009, commencing at 9:30 a.m., at the Montgomery County Council Hearing Room, 100 Maryland Avenue, Rockville, Maryland 20850, before:

Francoise Carrier
Hearing Examiner

(Whereupon, at 2:44 p.m., a brief recess was taken.)

MS. CARRIER: Redirect of Mr. Wells.

MS. SEARS: Yes, thank you.

REDIRECT EXAMINATION

BY MS. SEARS:

Q Mr. Wells, I just had a clarification question on your, what we're calling the new LATR charts, which have been entered as Exhibits 185 and 186. And if one were to read those, are they structured in the same way as the LATR chart in Exhibit 174 which is the August 25, 2008, summary or Executive summary of the abandonment?

A I believe they are.

Q So the links that are identified are all the same link areas that are set forth in that link chart in 174?

A Yes.

Q And you mentioned about the link chart in 174, not getting up to date with the change in the parking along Grant Street. And I would like you to tell us if the links for the peak peak, and the links for the hospital peak that are in 185 and 186 in fact do represent the current plan?

A Yes, they do.

Q Then turning to a couple of questions based on the cross-exam, and this goes back to, I guess, this Monday. And looking over my notes, I wanted to ask you a question.

You got a number of questions about the impact on the local area, several of which of them were responsive to the Examiner, but on the link on the entrance of Southwick, it is represented here on Exhibit 172, that, as you have explained several times, that access point is for staff only?

A That's correct.

Q And it's controlled, as you told, for entry and exit. And did you take a look at -- and you're recommending that the entries be disbursed, that there be that entrance on Southwick, as well as on Old Georgetown Road, as well as on McKinley?

A That's correct.

Q And you testified as to your reasons why. Did you look at what would occur if you did, in fact, not control this point of access, left it for on-site emergency and rescue only, and put all employees through the main entrance on Old Georgetown Road, what impact it would have on the CLV's and on the operations of circulations and thing of the surrounding area?

A Yes. It turns out that Old Georgetown Road and the Lincoln Street driveway, if you will, would operate within the congestion standard of 1,600, with or without the Southwick driveway.

Q And if that --

A And also, there would be sufficient cuing space in two lanes to accommodate the additional traffic that would use the main entrance.

MS. CARRIER: Sufficient cuing space in the two lanes of the entrance?

THE WITNESS: At the two lanes of the entrance.

MS. CARRIER: And that's two lanes, one in each direction, not -- is that two lanes wide on each side of that ellipse?

THE WITNESS: There are two inbound lanes and two outbound lanes.

MS. CARRIER: Okay.

THE WITNESS: It's the two outbound lanes I was referring to.

BY MS. SEARS:

Q And the hospital, again, could, because of that, it is that entrance on Southwick is access controlled and employees only, they could control the number of employees who would have use of that access point, if they wanted to, say, cut it in half?

A That's correct. You can quite directly control the volume of that driveway by how many passes you issue.

Q Now, again, as a traffic expert who has studied this site extensively, and the impacts on the various proposed access points, and the local streets, would you

recommend that?

A No.

Q And why is that?

A I think some dispersion of the traffic among three driveways is better than focusing the traffic on one or two driveways. I think in terms of separation of function, there is little difference. In other words, we're not -- without the Southwick Driveway, that would introduce more automobiles at Lincoln Street, but not trucks, not ambulances. So it's not a question of mixing functions but it's focusing traffic on two driveways, rather than disbursing it among three.

And as I testified earlier today, or two days ago, two sessions ago, the volume of traffic we would forecast on Southwick would be modest.

Q And in responding to the hearing examiner concerning the impact of the, any increases that would be experienced on the local roads at the access points, or on the areas that abut roads that lead to the access points, you testified that you felt they were modest increases and would be not, would not be, I believe you said, disruptive or adverse?

A I don't think they would overburden or disrupt the safe and efficient neighborhood circulation or otherwise be detrimental to neighboring properties or the community in

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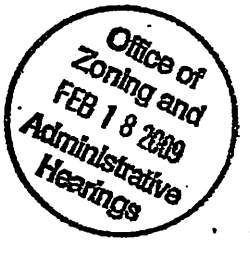
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

Petition of Suburban Hospital	:	Case No. S-274-D

A hearing in the above-entitled matter was held on February 6, 2009, commencing at 9:36 a.m., at the Montgomery County Council Hearing Room, 100 Maryland Avenue, Rockville, Maryland 20850, before:

Francoise Carrier
Hearing Examiner



either come back out to the signalized intersection at Lincoln at Old Georgetown, or they'd loop back around and go park into the garage. But it's an emergency, and then that's just not normal drop off. Then they would come into the main entrance, and this would all be signed.

They would take a left at the first break or the first street that they come to, go towards the south direction to the emergency drop off, and then come back out. And then the same as before, they could go back into the garage and that circulation pattern, or they would exit on Old Georgetown over at the main entrance.

Then we move to --

Q Well, go ahead. I'm sorry.

A I'm going to move to a simple one, it is ambulance and police circulation, where they're kind of matching, but before I want to talk about McKinley Street. The emergency ambulance entrance is off of McKinley. It's the first entrance, approximately 100 feet from Old Georgetown Road.

It's a one-way in where the ambulance would go in a northern direction, and then in the central part of the proposed hospital, as is outlined in a heavy grayish line, is the ambulance, emergency ambulance entrance.

Basically, what they would do is they would come in, they would back in, unload the patient, and then go back out through the main entrance.

Some box trucks actually do -- like I consider, you see the Pepsi, the soda types, they unload from the sides. So they don't necessarily have to always back in. So it depends on the actual vehicle itself. Some load from the side, some do load from rear. If it's a box truck that's going to be loading from the rear, most likely, depending on what they are carrying, they could use the loading dock as well.

For more of the deliveries that are not heavy, that would be the loading dock area. That's the service delivery parallel parking, which has already been discussed by some of the other people testifying.

I just want to get, make sure everybody is clear on how the circulation pattern is working for all the different type of elements, people who would be, visitors who would be coming to use the hospital services or to provide their services to the hospital.

BY MS. SEARS:

Q While you are on that, Mr. Bossong, on Exhibit 172, Mr. Wells was asking, and I don't think you were here. I think it was when you were out on your vacation, but he was asked finally whether if the entrance, the employee entrance to the garage on Southwick were, in fact, removed, and it was simply an emergency access only, whether the traffic would be safely accommodated, and the traffic and circulation on site. He answered it would, in terms of

cuing at the main entrance, and in terms of circulation and roadway links and capacity.

I believe Mr. Kim has indicated the same. From your standpoint as a civil engineer who has laid out and designed the access, would it be acceptable if it were determined that that entrance should be deleted?

A Yes. In other words, if they were to close off the Southwick entrance and exit, other than for emergency vehicles, I don't see, from a civil engineering standpoint, I don't see a problem with that.

Q Circulation around the site --

A No, circulation is fine, because you basically, you're going to use the garage as the circulation, which most people do anyway. But it's nice to have additional access. But it is, in my opinion, absolutely necessary.

MR. KNOPP: May I just ask at this point if she's willing, when you said entrance, were you referring to ingress and egress?

MS. SEARS: Yes.

MR. KNOPP: Okay. Because entrance may only imply one.

MS. SEARS: Yes, I was.

MR. KNOPP: Thank you.

BY MS. SEARS:

Q And you were, by your answer, you were referring

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

PETITION OF SUBURBAN HOSPITAL, INC.	:	Case No. S-274-D

A hearing in the above-entitled matter was held on May 29, 2009, commencing at 9:38 a.m., at the Council Office Building, Davidson Memorial Hearing Room, 2nd Floor, 100 Maryland Avenue, Rockville, Maryland 20850 before:

Francoise M. Carrier, Hearing Examiner

and then I'll give you the citation for it. In support of the hospital's application, the Board opinion noted, quote, "Roger Titus, member of the hospital Board, appeared as an individual and testified to the effect that Suburban Hospital needs to change with the others to attract good physicians," end quote. Physicians want to be at the hospital to be close to their patients and to have better access to services for their ambulatory patients. He said, Mr. Titus said, "Denial of the ACC would accelerate the closing of Suburban since it will become noncompetitive in attracting good secondary care physicians," page 24.

MR. KNOPF: And that is on page 24, the last paragraph prior to the heading findings of the majority of the Board?

MS. SHIMAN: Yes. "Denial of having physician office spaces at Suburban would accelerate the closing of the hospital." This was quoted in 1987 by an individual. What we would like to note, an individual, Mr. Titus, note that this nonprofit hospital actually has been competitive enough to pay its CEO, Mr. Gragnolati, in 2007, there's been testimony to this already by Jeff Baron, salary benefits and deferred compensation of 1.27 million in fiscal 2007 along with a $500,000 relocation loan that was forgiven over time, and this compensation is almost twice the amount paid to the CEO at Holy Cross Hospital which is a larger facility and

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(Exhibit No. 372 was received in evidence.)

MS. SHIMAN: So in summary, we disagree that it's necessary to have a physicians office space in order to properly run a hospital. On May 26th, 2009, we received documents from the hospital advising that the Board of Appeals denial of this ACC was reversed in Circuit Court in 1988, just to let you know that. However, the ACC has not been built --

MS. CARRIER: I was going to say I didn't think there was one.

MS. SHIMAN: -- despite the hospital's representation that it's essential. We note that the opinion of the Circuit Court reversal asserted that the physician offices were an integral part of the hospital. However, this opinion is prior to the 1999 enacted ordinance defining inherent and non-inherent characteristics.

MR. KNOPF: Now, I know you've been addressing solely as, so far in your testimony the 1987 opinion regarding the physician office space. Was there some other proposal in that year not relating to physician office space but to a helicopter landing that was involved? Did you mean to address that now or at another time?

MS. SHIMAN: It did state in this proposal, thank you, in 1987, that the helicopter landing site was to

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

PETITION OF SUBURBAN HOSPITAL, INC.	Case No. S-274-D

A hearing in the above-entitled matter was held on June 5, 2009, commencing at 9:35 a.m., at the Council Office Building, RDMH Room, 100 Maryland Avenue, Rockville, Maryland 20850 before:

Francoise M. Carrier, Hearing Examiner

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MR. KNOPF: Well --
MS. SEARS: Didn't he say last question?
MS. CARRIER: But, you know, famous last words.
MS. SEARS: He says that.
MR. KLAUBER: He's an attorney; he gets leeway.
MR. KNOPF: Yes. Just one minute, please. That is my last question.
MS. CARRIER: Okay. Ms. Sears, any follow up?
MS. SEARS: Yes. One question.
BY MS. SEARS:
Q Ms. Shiman, as President of the HTCA, and having worked on this case for quite some time has, to your knowledge has HTCA ever seen a concept for the hospital's expansion that it has in fact endorsed as the HTCA?
A I don't believe so.
MS. SEARS: That's my only question.
MS. CARRIER: Okay. Does anybody recall whether I put 399A and B in the record?
MS. SEARS: I don't.
MR. KLAUBER: Wait a minute.
MS. CARRIER: Well, why don't I address that now. A is the Shady Grove Hospital President's report from January of 2009, and B is the news release.
MS. SEARS: Subject to my same --
MS. CARRIER: Standard objection, Ms. Sears?

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

PETITION OF SUBURBAN HOSPITAL	Case No. S-274-D

A hearing in the above-entitled matter was held on Friday, July 24, 2009, commencing at 9:35 a.m., at 100 Maryland Avenue, Rita Davidson Hearing Room, Rockville, Maryland 20850 before:

HEARING EXAMINER:

Francoise M. Carrier

day perform surgery. They round on inpatients. They are called to the emergency unit to see patients. They see patients in their office. Trips back and forth to the hospital from even two miles away severely limits this physician's accessibility and the ability to be responsive to patient care needs. And again, I will reiterate in the testimony Dr. Westerband was very clear to that point.

I will also reiterate that Suburban is the only hospital in Montgomery County not to have physician offices onsite. And, I will emphasize from my perspective, I believe that what Suburban is requesting is minimum necessary. I testified earlier that originally we had projected almost double the amount that we would put forth in our application and we have submitted an application that cuts that amount in half. We believe that 38,000 square feet requested is the minimum necessary. If you go back to the testimony of Mr. Wrenn, it is significantly less. Even 38,000 is significantly less than what exists today in places like Shady Grove and Holy Cross. And, I believe, I just heard this the other day that Montgomery General, even though they already have physician office space on their campus, is in the process of requesting two additional medical office buildings. That I had heard from someone in the hospital.

So, I believe that the minimum that we are asking for, for physician office space is an absolute minimum and it