

**Zoning Commission of the District of Columbia
Zoning Commission Case No. 05-42 Sibley Hospital
Consolidated PUD and Map Amendment**

Statement

of

**SIBLEY NEIGHBORS FOR RESPONSIBLE
GROWTH**

February 1, 2007

**Leonard S. Spector
5224 Loughboro Road
Washington, DC 20016**

SIBLEY NEIGHBORS FOR RESPONSIBLE GROWTH

Sibley Neighbors for Responsible Growth is an ad hoc organization of 112 property owners in Ward 3D – Kent, Wesley Heights, Spring Valley, and the Palisades – who will be substantially affected by the Applicant’s proposed Medical Office Building (MOB).

We oppose this project in order to protect a low-density residential area, with historic and environmentally sensitive elements, from significant new commercial development threatened by the Applicant’s proposed MOB. Among its other impacts on the surrounding area, the MOB will bring roughly 3,000 additional persons to the Sibley site each day and cause a sudden increase in traffic equal to 10 years of normal traffic growth.

We believe that in the particular circumstances of this application, the Special Purpose District map change and Planned Unit Development (“PUD”) the Applicant is seeking are not allowable under the DC Zoning Regulations, in part because they are fatally inconsistent with Comprehensive Plan of the National Capital, District of Columbia Elements, Ward 3 Plan (“Ward 3 Plan”). While the Commission is granted considerable flexibility in establishing Special Purpose Districts and interpreting the PUD guidelines, we believe that in this specific instance, allowing a map change and PUD stretches that flexibility beyond the breaking point.

Furthermore, if notwithstanding our contentions, the Commission determines that the Applicant’s project is eligible for remapping as a Special Purpose District, we believe that the application for a PUD must be rejected because the Applicant has not met its burden of proof. Specifically, it has not established through clear and convincing evidence that the vague and unsubstantiated community benefits of *the particular project* outweigh its quantified and highly damaging impacts.¹

In the past, we have supported reasonable expansions at Sibley whose impacts have been manageable and which involved uses that were not so fundamentally incompatible with the surrounding low density residential neighborhood, including the Grand Oaks assisted living facility and the Renaissance skilled nursing facility. (BZA 4/20/95; 3/28/2001)

The Area Is Not Appropriate for Special Purpose District Treatment

Paragraph 500.1 of the DC Municipal Regulations states, “The SP District (Special Purpose) is designed to stabilize those areas adjacent to C-3-C and C-4 Districts and other appropriate areas that contain: (a) Existing apartments, offices, and institutions; and (b) Mixed use buildings.”

Paragraph 500.2 of the regulations expands on this definition to declare, “The major purpose of the SP District shall be to act as a buffer between adjoining commercial and

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residential areas and to ensure that new development is compatible in use, scale, and design with the traditional function of this zone district.”

Paragraph 500.3 continues that, “The SP District is designed to preserve and protect areas adjacent to Commercial areas that contain a mix of row houses, apartments, offices, and institutions at a medium to high density....”

MOB not a buffer against encroaching Commercial District

We believe that the Applicant fails to meet the criteria for an SP-1 zone first because the zone’s fundamental purpose is to protect a mixed-use area from adjacent commercial districts that threaten it. There is simply no near-by commercial activity that could conceivably “threaten” to alter the nature of the hospital, as contemplated by the regulations. Thus there is nothing for the MOB to “buffer” against. This requirement, which is repeated so explicitly in the above zoning regulations – and was the very reason for the creation of the special purpose district – is an essential element of establishing the legal basis for such a zone, but is utterly lacking here.

Commercial nature and intensity of activity not compatible with mixed-use zone to be protected.

Moreover, far from serving as a buffer against commercial encroachment, the MOB will, itself, will bring large-scale commercial activities to the Sibley site for the first time and will become *the most intensive activity on the campus*, as the Applicant’s traffic expert, Louis Slade testified under cross examination.

The activities in the MOB will be identical to those of a commercial office building. Specifically, while the hospital is a nonprofit organization, the medical practices that will be tenants in the MOB will be for-profit operations; doctors will not be on Sibley staff; and the hospital will charge commercial rents. Mr. Slade also testified that the MOB will have twice the traffic impact of a standard commercial office building of similar size.

While the activities in the building will be medically related, we believe that the *commercial nature of these activities and the intensity of the proposed use* overshadow the building’s medical attributes make the MOB incompatible with the underlying R-5-A zone and grossly incompatible with the surrounding residential areas.

Precedents easily distinguished

We understand that the Commission has supported the construction of MOB’s by other hospitals under the PUD process, but we believe this case is fundamentally different. Those cases involved giant teaching hospitals within much larger campuses and whose surrounding communities were significantly more densely developed than Ward 3, while this case involves a small community hospital, surrounded by the District’s lowest density residential neighborhood. Indeed, the Applicant’s own “Revised Submission” of October 16 reinforces this very point on pages 3 and 4 by failing to show a single

hospital-sponsored MOB in the District of Columbia is situated adjacent to an R-1 or R-2 zone.

Thus in relation to its setting, *the impacts of the Sibley MOB will be significantly more pronounced than the cases previously reviewed by the Commission*, and they cannot fairly serve as decisive precedents.

The protections accorded the surrounding area under the Ward 3 Plan, moreover, make it virtually impossible to justify a predominantly commercial use as a buffer or stabilizing element, because the plan Ward 3 Plan explicitly and repeatedly protects the surrounding area from intrusion of commercial activity:

- “Commercial development should be strictly limited to areas currently zoned for commercial activity and not be allowed to extend into areas currently zoned as residential.” Ward 3 Plan 1401.3
- “Any new economic development in Ward 3, because of the stable and overwhelmingly residential nature of the ward, must be evaluated in terms of compatibility and potential adverse impacts on neighborhoods.” Ward 3 Plan 1401.3 (d)

In addition, the MacArthur Boulevard historical/urban design element is specially protected. (Ward 3 Plan 1406.1.c, MacArthur Boulevard is one of ten special streets fixing quality of life in ward), and the Palisades environmental element is specially protected (Ward 3 Plan 1406.2.c; 1406.5.a.2) (areas with severe building restraints [include] the Palisades; urban design should perpetuate low density).

We recognize that while the MOB is not a classic commercial activity, like a supermarket, its impacts will be similar, because the MOB will house for-profit medical offices and retail stores. At approximately 4,000 vehicle trips per day, the traffic generated by the MOB will be roughly double that of the MacArthur Safeway, according to a June 7, 2006, study prepared by the Palisades Citizens Association, using figures derived from *Trip Generation, 7th Edition*, published by the Institute of Transportation Engineers. Indeed, the Office of Planning’s own Further Information Memorandum of September 29, 2006, highlights this point, by noting that SP-1 zones require *twice the number* of parking spaces for medical office buildings as for general office use, an incontestable commercial purpose. Therefore, we believe, the above-cited provisions of the Ward 3 Plan, in this unique setting, preclude the possibility that even quasi-commercial activities could gain acceptance as Special Purpose Districts by masquerading as “buffers” or “stabilizers.”

Applicant’s claim that MOB’s are integral parts of modern hospitals is not sufficient to justify an MOB of the size proposed by Sibley

We do not dispute that many modern hospitals have associated MOB’s and that this is an industry trend. While this may be true, however, it does not, in itself, establish the basis for authorizing a PUD and Special Purpose District *for the specific project* the Applicant

proposes: a six-story, 113,000 square foot MOB, on the Sibley campus, in the midst of the lowest density residential area of the District, and surrounded by elements specially protected by the Ward 3 Plan. To put this differently, we acknowledge that Sibley has a reasonable interest in developing an associated MOB, but we object to *this* MOB as a way to satisfy this interest.

We know that mere invocation of the industry trend is not a sufficient basis for the PUD and Special Planning District without examination of the specifics of the MOB project in question, because the Office of Planning rejected the project as originally proposed by the Applicant, even though the Applicant sought to justify it by citing the national trend. What the Applicant must establish is that *this* MOB, with its profound impacts on the community, is the appropriate means to acquire the benefits of an associated MOB, rather than an alternative that does less violence to existing zoning patterns, to the terms of the DC Special Planning District regulations, and to the Ward 3 Plan. Such options include: building a smaller MOB on campus or building or purchasing an MOB in one of several nearby commercial zones, where other privately owned MOBs are located that currently serve the Sibley patient base.² It is possible that the Applicant can, in fact, justify its revised plan for the project on this basis – but it has not done so. There is simply no evidence in the written record to indicate why *this* version of an MOB is required to meet Sibley’s interest in having an MOB.

Moreover, according to a review of MOBs associated with other area community hospitals prepared by the Ward 3D Advisory Neighborhood Commission, the considerable majority of these MOBs are smaller than that proposed here, most are off-campus, and most are owned or operated by private real estate companies.

To repeat, Applicant has provided no evidence to support its assertion that it needs a 6-story, 113,000 square foot MOB, specifically, or as to why a smaller on-campus facility would not meet its needs. The ANC and, in its original report, the Office of Planning both proposed a five-story, 60-physician facility. The Applicant has offered no substantive evidence as to why such a lower-impact option cannot meet its objectives – or why a still smaller on-campus MOB might not do the job. Nor has the Applicant provided evidence as to why an appropriately located off-campus MOB would not be sufficient. Indeed, there would be strong reasons for the Applicant to take the latter approach: an MOB in such locations could be built higher, accommodating more physicians and generating more revenue; Maryland locations would be closer to Sibley’s patient base; and Maryland locations would offer lower malpractice insurance rates.

What is also troubling is that, as noted, the Applicant used the same off-handed justification – MOBs are a part of modern hospitals – to undergird its original application seeking SP zoning for a seven-story, 120,000 square foot MOB, again without supporting

² We note that while land acquisition costs for an off-campus MOB would a significant added expense, commercial developers have found MOBs to be attractive investments. As a tax-exempt organization, Sibley would be able to receive a far better return on its investment than a commercial developer because it could benefit from lower interest rate (tax-exempt) financing, would pay no tax on the income generated by the facility, and might be able to obtain relief from property taxes.

evidence. Now, we have learned, such a large facility was not needed to meet the Applicant's goals and a smaller building will suffice. This history surely weakens the credibility of the Applicant's new unsupported assertions as to the need for a six story, 113,000 square foot facility and requires, all the more, that these new claims be justified by substantial evidence before the Applicant can obtain the benefits of a Special Planning District map change and the PUD process.

**If Special Purpose District is Granted
Applicant Has Not Met Its Burden of Proof for the Planned Unit Development**

Even if the Commission determines that is eligible for Special Planning District zone, the Applicant must nonetheless establish that the benefits to the community of the proposed MOB outweigh its negative impacts. We believe that the Applicant has failed to sustain this burden.

DCMR Paragraph 2403.2 regarding PUD evaluation standards states that "the applicant shall have the burden of proof to justify the granting of the application according to these standards."

For our purposes, the crucial standard is found in the immediately following paragraph of the regulations, Paragraph 2403.3, which states:

The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.

Further, Paragraph 2407.6 of the District of Columbia Municipal Regulations, addressing Planned Unit Developments, reiterates that the burden is on the applicant to justify its proposal:

At the public hearing, the applicant shall have the burden of justifying the proposal. Failure of groups or persons to appear does not relieve the applicant of the responsibility of demonstrating the merits of the application.

In this instance, to repeat, the Applicant has clearly failed to meet its burden.

Impacts obvious and quantified

The impacts of this project, based on the Applicant's own studies, are profound, as alluded to earlier.

Most disturbing is that commercial activities will intrude on a new area of Ward 3, the first time such activities will be allowed in this part of the city. The magnitude of the intrusion caused, essentially, by the presence of for-profit medical practices, is stunning: *some 3,000 additional persons will come to and depart from the Sibley campus every day.*

We base this on the Applicant's traffic studies which show nearly 4,000 vehicle trips will be generated by the MOB, 2,000 arrivals and 2,000 departures. We believe it is reasonable to assume that roughly half of these vehicles will carry two persons, on average – parents accompanying young children, adults accompanying elderly parents, spouses and partners accompanying one another. This is very intensive use and underscores that our above comparison of the MOB to the MacArthur Boulevard Safeway (roughly 2,000 vehicle trips per day) was by no means far-fetched.

As we also underscored earlier, this activity, from a single structure, will cause traffic increases are equal to 10 years' worth of normal traffic increase – a very substantial impact, indeed. Neighbors are concerned not only at the noise and congestion this represents, but also by the cut-through traffic on area residential streets and abuse of on-street parking rules.

We assume the Commission, under Paragraph 2304.3, will not find that these impacts are "favorable." We acknowledge that it is possible these impacts could be mitigated, possibly by further down-sizing the MOB or altering its activities in some fashion. But the key question before the Commission is whether the impacts as we now understand them are "acceptable given the quality of public benefits in the project."

No evidence to support key public benefit asserted

The central public benefit asserted by the Applicant is highlighted in a key sentence on page 16 of the Applicant's October 16 "Revised Plans:" "The MOB helps draw and retain top quality physicians and strengthens the financial position of the hospital." We state that this is the central goal of the project based on repeated public statements by the Applicant's representatives and on a conversation with individuals responsible for the hospital's governance.

However, there is no substantial evidence in the record to establish that this MOB will achieve these results – no financial projections showing that the MOB will, in fact, contribute to the hospital's fiscal well-being, rather than become a burden; no showing that patients will abandon physicians located in the numerous nearby commercial MOB's in favor of those in the Sibley structure; and only the most cursory evidence of physicians' interest in relocating to the MOB..

Said differently, Sibley has asserted that the revised MOB will achieve these public benefits, but has provided virtually no supporting evidence. In effect, Sibley is asking the community to accept an enormous burden without demonstrating that there will be public benefits commensurate with these costs.

The PUD evaluation standards also require that the Applicant establish that its proposal is "not inconsistent with the Comprehensive Plan." DCMR 2403.4 We believe that the proposal is fundamentally inconsistent with the Ward 3 Plan's extraordinary protections for this low-density residential area, including limitations on commercial development

outside of existing commercial zones, and special protections for federal lands, MacArthur Boulevard, and the Palisades.

Finally, we believe that the amenities offered by Sibley do not offset the impacts of the project.

- The area is well served by pharmacies, deli's, etc., with free parking (e.g., three CVSs nearby), and the community will not use these on-campus retailers, independent of visit to hospital/MOB, because of parking costs.
- Free medical care is an important contribution to the community, but the Applicant has not committed to maintain or enlarge this contribution if PUD/Map Change is granted. Moreover, such contributions are not a function of the location of the MOB, but of Sibley revenues; the hospital could obtain greater revenues from an off-campus MOB that adhered to Ward 3 Plan.
- Contributions to improved transportation would be unnecessary but for MOB, so Sibley can hardly take credit for them.
- The grant to Iona House is desirable and welcome, but not sufficient to offset impacts of the project

Thus without a convincing showing of public benefit, we believe the Applicant's amenities are far from sufficient, in themselves, to sustain requested PUD/Map change

Conclusion

For these reasons, we believe the Zoning Commission must reject the pending Application.

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