

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

**RESPONSE TO APPLICANT'S SUBMISSION
OF
OCTOBER 22, 2007**

Submitted

By

SIBLEY NEIGHBORS FOR RESPONSIBLE GROWTH

October 29, 2007

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District of Columbia
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Response to Applicant's Submission of October 22, 2007

Sibley Neighbors for Responsible Growth hereby responds to the recent Supplemental Submission and Proposed Revisions recently filed by Sibley Hospital ("Sibley" or the "Applicant") dated October 22, 2007. While Sibley has proposed several changes to the development plan for a Medical Office Building and associated parking garage on the Sibley campus that modestly reduce the intensity of the commercial development proposed for this site, these changes do not sufficiently remedy the severe impact of the facility on the community. Although the Sibley proposal contains several amenities and other elements, some of which are of particular importance to the hospital's immediate neighbors, the core issues raised by Applicant's former proposal remain, and we renew our request that the Zoning Commission deny the Applicant's request for a zoning change.

Regrettably, the fundamental problem presented by the Applicant's proposal remains: *Even as revised, the proposed Medical Office Building will become the most intensive use on the Sibley campus and will inundate the surrounding low-density community with more than 3,600 new vehicle trips per day – twice the impact of a commercial office building of similar size and the equivalent of nearly 10 years of normal traffic growth.*

These impacts would be *in addition* to dramatic increases in permanent truck traffic associated with the hauling of sediment from the dewatering facility that is being built adjacent to the Sibley Campus by the Army Corps of Engineers and the increased traffic that is certain to result from Sibley's planned expansion of the Hospital, itself, in the near term.

On March 12, 2007, the Zoning Commission unanimously found that it could not support the Applicant's proposal as submitted because its intensity of use threatened to overwhelm the surrounding neighborhood. The Applicant has now revised the proposal, but has reduced the number of physicians by a mere 13 positions (a 17 percent reduction). Thus the project remains fundamentally unchanged. The vast proportion of the project's impacts will continue to threaten the safety and residential character of the neighborhood. And, with a larger overall square footage and leasing for doctors at 83 percent of its former scale, the project still represents an unprecedented major commercial-style enterprise placed in the midst of an R-1A and R-1B neighborhood.

Neighbors' continuing concerns are reflected in the sampling of emails we have received, attached at Tab 2.

As discussed below, the impacts are all the more unacceptable in light of the extensive protections provided the community against commercial encroachment contained in the Ward 3 Comprehensive Plan in force at the time this proceeding was filed and also are at odds with the newly adopted 2006 Revised Comprehensive Plan. Moreover, the Applicant has utterly failed to sustain its burden of proof that the building will benefit the community by strengthening Sibley's finances and has equally failed to establish the basis for the map change to an SP-1 zone.

If the Commission nonetheless approves this application notwithstanding these serious defects, it is imperative that the Commission direct Sibley to adopt meaningful, enforceable mitigation by including the conditions set forth below that build upon those recommended by the Ward 3D Advisory Neighborhood Commission (ANC), along with other conditions that may be put forward by the Zoning Commission.

I. Despite the admonitions of Zoning Board Members, Sibley has refused to engage the community in a meaningful dialogue on its revised Proposal.

Several Zoning Commissioners took note of Sibley's failure to adequately consult with the surrounding community during the March 12 hearing on the Applicant's proposal. Commissioner Turnbull observed that "the community is not being listened to." (March 12, 2007, Hearing Transcript, p. 50.)

Despite these concerns, Sibley did not seek a single meeting with either the ANC or Sibley Neighbors for Responsible Growth (both Parties to the present proceeding) between the date of the Zoning Commission's Hearing and the submission of the Applicant's revised proposal.

In an effort to further a discussion on a possible way forward, the Sibley Neighbors requested a meeting with Sibley officials on May 23, 2007, to discuss how future development at the site could be designed to "address the needs of both the neighbors and the hospital." Regrettably, Sibley refused to meet with any representatives of Sibley Neighbors. (See Attached email correspondence from Adele Harrell and Jerry Price at Attachment 1).

In fact, it appears that the Applicant's only effort to engage the community on its revised project since the Zoning Commission last took up this matter was limited to an after-the-fact information exchange with the ANC following the formal filing of the revised Proposal. Rather than meet with the ANC to discuss the revised development plan and solicit input prior to the refiling of the revised development proposal to the Zoning Commission, the Applicant chose to move forward with a plan that failed to incorporate the input from the most directly affected segment of the community.

As a result, the ANC was forced to schedule an "emergency meeting" with only last-minute notice to interested members of the community through ad-hoc announcements on community list serves and a newspaper announcement published just days before the scheduled meeting. Sibley's actions forced the ANC to schedule an emergency meeting with the community so quickly that two interested ANC members were unable to attend given the short notice. When asked at the October 25 meeting by the ANC for the reasons Sibley had refused to meet with concerned members of the surrounding community, Jerry Price, the Chief Operating Officer, replied "We told them we had a hospital to run."

The Applicant's request for an unprecedented departure from long-standing low density zoning requirements and the protections of the applicable Ward 3 Plan demand extraordinary public outreach and consultation with adversely affected communities. Given the deliberate actions taken by Sibley to preclude any meaningful dialogue with the community on the revised development proposal and its impacts on the surrounding community, the Applicant's request should be denied, or stayed pending further public consultation.

II. The Applicant's revised proposal would impose significant and unnecessary traffic burdens on the surrounding community.

Contrary to the assertions put forward by the Applicant, the revised plan would result in significant and adverse traffic impacts. Using the Applicant's own numbers, the estimated 3971 daily vehicular trips in the original proposal would be reduced only modestly to an average of 76 trips per day. In short, under the Applicant's revised proposal, traffic would still increase dramatically as a result of this single structure with patients having to travel by car in most instances to the proposed Office Building. This travel would exacerbate the existing problems with cut through traffic on secondary roads, which is already a grave concern to neighbors and is acknowledged as a problem by District officials. The modest changes proposed by Sibley provide no meaningful reduction in the intensity of use or expected traffic impacts associated with the revised development plan.

Once again, the Sibley project must be seen in context. Many of the surrounding intersections are already at a failing grade. The Army Corps of Engineers is proceeding with the construction of a dewatering plant that will generate significant truck traffic (10 and 20 ton dump trucks daily) on area roads for decades to come, as part of a new silt disposal plan. The Corps' dewatering plant will be adjacent to the Sibley campus and the trucks will share the same routes to be used by commuters, staff, and visitors to an expanded Sibley campus. These impacts are all in addition to growing commuter traffic in the area. The traffic impacts threaten to overwhelm an area of the City that has purposefully been planned to house the lowest residential density in the City, zoning arrangement the object of which is "to protect quiet residential areas now developed with one-family detached dwellings" and "promote a suitable environment for family life." 11 DCMR §§ 200.1, 200.2.

III. The Applicant's modifications to its proposal do not alter the fundamental incompatibility of its proposed Medical Office Building with the surrounding community, in contravention of the Ward 3 Comprehensive Plan in effect at the time the project was proposed and with the current Comprehensive Plan.

Consistent with our reasoning in our March 5, 2007, Proposed Findings of Fact and Conclusions of Law, we believe the somewhat smaller Medical Office Building proposed in the revised application, is, like its predecessors, essentially a commercial enterprise. The enterprise will charge commercial rents and will be occupied by for-profit medical practices.

The applicable Ward 3 Plan called upon the Commission to evaluate new economic activity in terms of "compatibility and potential adverse impacts on neighborhoods." Moreover, Section 1401.3 of the plan declared unambiguously that, "Commercial use should not be introduced into areas where none is present...." (Ward 3 Plan, section 1401.3.)

The 2006 Comprehensive Plan, in its discussion of Rock Creek West, repeatedly stresses the need to maintain separation of commercial from residential areas. The Plan notes, "The potential impact of density increases on schools, emergency response and safety, infrastructure, traffic, parking,

environmental health and neighborhood character lead residents to conclude that the only acceptable growth rate is one which matches infrastructure capacity.” 2307. That is the crux of what is at issue in this proceeding, where 3,600 vehicle trips per day threaten to overwhelm existing roadways and intersections and spill over into low-density residential neighborhoods. The Plan also calls for preserving open area in the Palisades and around the Dalecarlia Reservoir, both neighboring to the Sibley Campus. “Any future development adjacent to these areas,” the plan states, “must be designed to respect and maintain their park like settings, and conserve their environmental quality.” 2309.3

Based on the continuing impacts of the proposed Medical Office Building summarized above, we believe the project is fundamentally inconsistent with the 1998 Ward 3 Plan and is equally at odds with important strictures of the 2006 Comprehensive Plan. We believe any decision of the Commission on the pending matter must specifically address this provision of the 2006 Plan.

IV. The Applicant still has not met its burden of establishing that it is entitled to the specific Planned Unit Development proposed under DCMR Paragraphs 2403 and 2407.

The crucial substantive standard the Applicant must satisfy is found in DCMR Paragraph 2403, which states, in essence, that the anticipated benefits of the proposed PUD outweigh its negative impacts on the surrounding community. District zoning regulations place the burden of establishing that the benefits of the project will outweigh its costs squarely on the Applicant. (DCMR 2407.6)

The Applicant has sought to justify its proposed PUD principally on the basis that the project will strengthen Sibley’s finances.

In the only sworn testimony before the Commission on this subject, however, Sibley witness Jerry Price stated that the Medical Office Building could not be profitable if its size were reduced from six stories and 75 physicians:

CHAIRPERSON MITTEN: Just answer that question. What is it? You testified that to make the additional reduction of another floor as requested by the ANC would not be financially feasible. Can you explain that testimony?

MR. PRICE: Only to say that I didn't bring the numbers with me this evening, but when we ran the numbers, we ran it with another floor out and in terms of the rates that we would charge, we can't make it pay for itself. It just won't pay. So I mean, I don't have the numbers with me. I didn't anticipate that. (Hearing Transcript, February 1, 2007, p. 116.)

In commenting at the March 12, 2007, Commission hearing, former Chair Mitten highlighted this declaration with her comment: “I was a little bit disappointed when the applicant said that the project is not feasible if it's smaller, but then they really didn't say why. And even when I asked some specific questions, they never really explained that.” (Hearing Transcript, March 12, 2007, p. 57.)

Now, the applicant asserts the project, in its reduced size, *will* provide an adequate return on investment. But again it offers no evidence of any kind to support this claim or, more importantly, to explain why a more meaningful reduction in size was not contemplated.

There is simply no record in this case to justify granting the Applicant's requested map change and Planned Unit Development and to do so would not meet legal standards for sound regulatory decisions.

Separately, the PUD evaluation standards require that the Applicant establish that its proposal is "not inconsistent with the Comprehensive Plan." DCMR 2403.4, a burden the Applicant cannot sustain because of the commercial nature of its project, as explained in the previous section.

V. Sibley's new proposal does not meet the requirements for an SP-1 district as specified in Sections 500.1, 500.2, and 500.3 of the DC Zoning Regulations.

As set out in detail in our Proposed Findings of Fact and Conclusions of Law, like the earlier versions of this project, Sibley's newest proposal does not meet the essential criterion for establishment of an SP-1 district, namely that the district serve to protect mixed use areas, as well as to provide a protective zone, or buffer, between adjoining commercial and residential areas. The area proposed for designation as SP-1 fails to meet this essential standard because there is no adjoining commercial activity that threatens the residential area to be protected by the proposed SP-1 zone. 11 DCMR §§ 500.2, 500.3.

At the Commission's March 12, 2007, hearing, the Commission appeared to reject this argument, but offered no legal analysis or reasoned justification for its position, former Chair Mitten stating only:

But I do want to address the issue about the SP zone not being appropriate here, because the -- I think that if -- in the context of a PUD, if one focuses too much on the purpose of a given zone, as if we were mapping it, just straight up mapping it, and then it's -- you care very much about the purposes of a zone in terms of buffering, and so on.

But in the context of a PUD I think we are a little more pragmatic about the zones that we select, because they are -- in the context of a PUD, they tend to be a means to an end. So they're a means to accommodating certain uses, and they're a means to getting a certain height, and they're a means to getting a certain density. But all of the extra -- what do I want to say? Purposes of that zone don't necessarily apply in the context of a PUD, and I think that the opposition was getting distracted by that.

And so I'm not troubled by the -- by zoning the SP as long as whatever we put in that -- as long as whatever we're providing for is not -- doesn't overwhelm the community. So I think that can be done, and, as I said, I think the intensity needs to be scaled back. (March 12, 2007, Hearing Transcript, pp. 54-55.)

There is no support for the view that the Commission has the authority to disregard the purpose of the relevant zones and to use the SP zone as a "pragmatic" vehicle for "accommodating" uses

that would otherwise be prohibited as incompatible with the existing zone plan. Rather Sections 500.1, 500.2, and 500.3 remain the controlling law of the District of Columbia and cannot be dismissed in this way. These regulations have not been overturned by any court of competent jurisdiction, rescinded by the City Council, or purportedly made inapplicable other means. Therefore, these provisions are binding upon the Commission and may not be disregarded in order to be more “accommodating” to developers.

In this context, the strict requirements of zone definitions trump the flexibility offered by of the PUD process. Only *after* a use has been shown to be consistent with the propose map change, can the Commission begin to introduce a measure of flexibility as to height and scale.

Former Chair Mitten’s comment that in the case of a PUD, “the zones we select... tend to be a means to an end” also appeared to embrace the disregard of codified zoning standards on a case-by-case basis. This is the essence of “spot zoning.”

At the very least, if the Commission approves the Applicant’s proposal in disregard of these regulations, we believe the Commission must provide a reasoned legal analysis supporting its position to avoid the charge that it has acted without due attention to this issue.

VI. In the event that the Commission rejects Sibley Neighbors for Responsible Growth’s arguments against permitting this project to proceed, strict conditions on the Applicant are essential to mitigate known adverse impacts and to ensure compliance with undertakings the Applicant has made.

If the Zoning Commission decides in favor of the Applicant’s request, strict conditions are needed, in part, because of Sibley’s mixed record of complying with Commission-imposed requirements in the past. Most recently, for example, despite the Commission’s explicit instructions directing Sibley to engage with the community, Sibley refused offers by Sibley Neighbors for Responsible Growth to discuss possible adjustments to its project to improve its compatibility with neighborhood needs. At the March 12, 2007, hearing, moreover, the Commission, itself, noted the Applicant’s lack of sensitivity to the community impacts of its proposal, highlighting Applicant’s failure to take steps to facilitate the relocation of busses to run behind the hospital.

In addition, the hospital’s sworn testimony that reducing the size of the Medical Office Building by one floor of physicians was financially infeasible now appears to have been inaccurate. This earlier clouding of the true finances of the project has the appearance of an effort by Sibley to maximize the hospital’s interests at the expense of the community by not disclosing to the Commission information favorable to a smaller project. Similarly, when asked at the emergency ANC meeting on October 25 whether Sibley intended to house 62 doctors or 62 practices, the responses provided by the Applicant raised questions about whether the intent is, in fact, to limit the number of *doctors* renting space in the proposed Medical Office Building to 62 versus the number of *practices*. This lack of clarity underscores the need for clear and specific conditions setting forth the Applicant’s future implementation of the mitigation measures to which it has committed.

We are particularly concerned that Sibley may be planning to introduce additional commercial medical office rentals elsewhere on its campus (beyond certain leases already in place in Hays

Hall). Such a plan may be the hidden reason why Sibley now deems the smaller Medical Office Building to be financially feasible.

New concerns were also voiced at the emergency ANC meeting over Sibley's plans to charge all visitors for parking, thereby creating added incentive for visitors to park in adjacent neighborhoods. Sibley's current parking fees for visitors are substantial: \$3.00 for the first hour; \$6.00 for two hours; \$9.00 for three hours; and \$11.00 for four hours. Sibley's revised proposal makes no effort to encourage on-site parking through complimentary parking for the new visitors that will be drawn to Sibley's proposed new commercial venture.

Given this background, if the Commission grants the Applicant's map change and Planned Unit Development, we endorse the conditions put forward the Ward 3D Advisory Neighborhood Commission, with the following adjustments and emendations (*in italics*).

1. The helipad behind Sibley Hospital will be moved into a parking lot adjacent to Little Falls Road. Sibley will work actively with DDOT and WMATA to ensure the road is upgraded and buses are rerouted behind the hospital by July 1, 2010.
2. Sibley will provide *two* hours of free parking to all users of its parking lot.
3. There will be no more than 62 doctors in the MOB in any 24-hour period, *and Sibley shall not lease additional medical office space to physicians elsewhere on campus beyond any that may be leased currently. Sibley shall provide the Commission with a baseline census of the number of physicians using leased medical office space at the hospital at this time and shall update this annually, augmented by the number of physicians utilizing the new Medical Office Building.*
4. The proposed imaging and outpatient surgery center located on the ground floor of the MOB will remain in place after the completion of the new hospital.
5. Sibley will hold quarterly meetings with the community, *including Sibley Neighbors for Responsible Growth*, during construction of the MOB and semi-annual meetings thereafter.
6. Sibley will supply ANC 3D with copies of the Environmental Intake Form and all permit applications for the duration of construction of the MOB.
7. *Sibley shall provide continuous shuttle bus service to run from Friendship Heights Metro Station to the Sibley Campus from 6:00 a.m. to 6:00 p.m., Monday through Friday free of charge for employees, visitors, staff and the neighbors. (See February 1, 2007, page 24 of the Hearing Transcript and Transcript and Applicant's October 22, 2007 Submission). Information about this shuttle bus service shall be posted at appropriate bus bays, and shall also be publicized by Sibley through its own website, through WMATA's public information systems for publicizing transportation services, and through other public outreach mechanisms, including but not limited to the ANC and community newspapers. The shuttle service shall also be included as part of the transportation plan identified in condition 8, below.*
8. *Sibley shall develop by July 1, 2010 2009 a transportation plan in coordination with the ANC 3D, Sibley Neighbors for Responsible Growth, DDOT and WMATA that seeks to reduce the average number of vehicular trips generated by hospital employees, service providers,*

patients, and visitors to the new Medical Office Building. The transportation plan shall include measurable goals and benchmarks to be achieved by the Applicant and shall be reviewed with community members and updated annually.

Attachments:

- 1. Copy of email Exchange between Adele Harrell (Sibley Neighbors) and Jerry Price (Sibley Hospital) (May 23 and 25, 2007).**
- 2. Sampling of views on Applicant's revised proposal from members of the Sibley Neighbors for Responsible Growth.**
- 3. Sibley Neighbors for Responsible Growth Revised Proposed Findings of Facts and Conclusions of Law.**