

**Zoning Commission of the District of Columbia
Zoning Commission Case No. 05-42
Sibley Hospital
Consolidated PUD and Amendment
Square N-1448, Lot 26**

**PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

**Submitted
by**

**SIBLEY NEIGHBORS FOR RESPONSIBLE
GROWTH**

March 5, 2007

PRELIMINARY STATEMENT

1. This proceeding concerns an application for approval of a Planned Unit Development and related map amendment, filed by Sibley Hospital (hereinafter called "Sibley" or the "Applicant") seeking to re-zone Lot 26 in Square N-1448 from R-5-A to SP-1 in order to construct a medical office building on the campus of Sibley Hospital. The application was set down for a hearing by the Zoning Commission, and was advertised as involving a map amendment to SP-2 rather than SP-1.

2. The initial proposal was for construction of a 90-foot tall medical office building with 130,756 gross square feet of space, and a 750 car garage. During the course of the proceeding, the Applicant returned to the original proposal to re-zone the area to SP-1 rather than SP-2, and now proposes to re-zone only the location of the proposed MOB and parking garage rather than the entire 20.48 acre campus. The Applicant also reduced the height to 77 feet by eliminating one floor of doctors' offices, and reducing the number of physicians from 100 to 75.

3. On September 20, 2006, ANC 3D voted to approve the application, subject to a significant reduction in the size of the Medical Office Building by reducing the height from 90 feet to 65 feet, reducing the number of floors from 7 above grade to 5 above grade, and reducing the above-grade square footage from 130,754 to 92,624, concomitant reductions in parking, and the incorporation of conditions into the order .

4. Party status was requested by and granted to the Sibley Neighbors for Responsible Growth (SNRG), a group made up of citizens who live near the proposed PUD site and who presented uncontested evidence that they would be adversely affected by construction of the PUD based on the introduction of a commercial use into a low-density residential area, as well as increased traffic. Advisory Neighborhood Commission ("ANC") 3D was automatically granted party status.

5. SNRG, as a party in opposition, opposed the Applicant's proposal to re-zone the site to SP and approve the PUD.

6. Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on October 12, 2006, February 1, 2007, and February 21, 2007.

Findings of Fact

1. 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).
2. Sibley Memorial Hospital (the "Applicant") seeks approval of a Planned Unit Development ("PUD") and a corresponding amendment to the Zoning Map for the purpose of constructing on its campus a five-story, medical office building (“MOB”) and associated five-level, 750-space, 155,000 square foot parking facility. The medical office building will be 65 feet tall.
3. The medical office building will house offices, in four stories of the building, for 62 physicians in for-profit private practices. Sibley Hospital will charge these tenants rents at commercial rates. The physician-tenants will not be on the staff of Sibley Hospital.
4. One additional story of the medical office building will house multiple retail enterprises.
5. These factors give the proposed medical office building pronounced commercial attributes.
6. Currently there is no significant commercial activity on the Sibley campus.
7. The project site is in Square N-1448, consisting of approximately 20.48 acres of land within the R-5-A zone district. Applicant is seeking to have 2.86 acres rezoned from R-5-A to SP-1. The project site is located north of the Kent neighborhood of Ward 3 in Upper Northwest.
8. The Sibley campus is bounded by federally owned land to the north and east (Dalecarlia Reservoir grounds and parkway), by a low-density R-1-B residential zone to the south, and by the Dalecarlia water treatment plant to the west, beyond which is land overlooking the scenic Potomac River. The land to the north and east consists of open space or woods. The nearest residential area to the east of the proposed MOB site is zoned R-1-A.
9. The 1998 Comprehensive Plan of the National Capital, District of Columbia Elements, Ward 3 Plan (“Ward 3 Plan”), the plan in effect at the time the Application was filed, states that Ward 3 is the lowest density ward in the District of Columbia.
10. There is no C-3-C or C-4 commercial activity within more than a mile of the site of the proposed MOB. The closest commercial area is comprised of a handful of neighborhood enterprises (dry cleaner, restaurant, mini-mart) a half-mile distant.
11. No adjacent commercial activity threatens the moderate-density, mixed-use character of Sibley Hospital or its stability.

12. The proposed MOB will not be a buffer between adjoining commercial and residential areas.
13. Ward 3 has several well defined higher intensity commercial areas within a brief drive of the Sibley campus, including zones on Massachusetts Avenue and New Mexico Avenue, both of which include medical office buildings.
14. The medical office building will be the most intensive use on the Sibley campus.
15. The medical office building will generate a total of 3,671 vehicle trips daily, roughly 1,800 trips to the building and 1,800 trips leaving the building, according to Sibley traffic consultants. This would result in an average of approximately 400 vehicle trips per hour, over a ten-hour work day. Assuming 1.5 passengers per vehicle, some 5,000 additional individuals will come to the Sibley campus daily, as a result of the proposed medical office building.
16. Sibley Hospital is poorly served by public transportation. It is not located on the Metrorail system, and is served by only two bus routes: the M-4 from Pinehurst Circle (which does not run on week-ends) and the D-3/6 line from the Stadium-Armory.
17. The traffic generated by the medical office building will be twice that of a standard office building of comparable size devoted to other uses and will create an immediate five percent increase in traffic in the surrounding area. Currently traffic is projected to increase at .5 percent per year. Thus the impact of the new Sibley MOB would be the equivalent of 10 years of normal traffic increase.
18. The intersection at Dalecarlia Parkway and Loughboro Road currently has a District of Columbia Department of Transportation (D-DOT) level of service rating of F. The level of service at the intersection will be worsened by the traffic impacts of the new medical office building, notwithstanding the improvements the Applicant proposes to make to the intersection.
19. Cut-through traffic and abuse of parking rules are currently encroaching on the adjacent R-1-B residential neighborhoods (Kent and the Palisades) and nearby R-1-A residential neighborhood (Spring Valley) and will be significantly exacerbated by the new traffic generated by the MOB.
20. No hospital-sponsored medical office building in the District of Columbia is adjacent to an R-1 residential zone.
21. Previous medical office buildings approved by the Zoning Commission on hospital campuses involved significantly greater open space or institutional uses buffering the residential neighborhoods and/or surrounding areas with higher density zones. For example, the George Washington University Hospital's Medical Faculty Associates building is located in a split C-3-D/R-5-D zone; the lowest density zone surrounding the site is R-5-D.

22. In relation to its setting, the impacts of the Sibley MOB will be significantly more pronounced than the MOB cases previously decided by the Commission. The facility is more commercial in its activities than other buildings approved by the Commission and the surrounding area is lower in density than was true in these cases. The zoning issues presented by the Applicant's proposed MOB are therefore unique.
23. The central public benefit identified by the Applicant that will result from the requested PUD and map change is that, "the MOB helps draw and retain top quality physicians and strengthens the financial position of the hospital." (Applicant's "Revised Plans," October 16, 2006, p. 16.) These benefits are principally economic in nature and intended to advance the interests of Sibley Hospital.
24. The community served by Sibley Hospital is adequately served by existing medical office buildings.
25. Sibley has one of the highest operating margins of any hospital in the District of Columbia.
26. Sibley possesses more than \$400 million in cash and cash equivalents.
27. The record of this proceeding does not include a projection of the Applicant's revenues and expenditures demonstrating that it requires the income from the medical office building in order to remain solvent and to be able to continue its services to the community.
28. The Applicant has testified that a medical office building of the size now proposed will not be profitable. It states that it has reexamined this issue and now believes that the facility can make an adequate return on investment, but offers no substantiating evidence.
29. The record in this proceeding does not include projections of the anticipated net revenue from the proposed medical office building so as to demonstrate that it will "strengthen the financial position of the hospital" or that the benefits from its operation will offset the impacts on the community.
30. Physicians whose practices are housed in the MOB will pay significantly higher malpractice insurance premiums than those whose principal offices are in Maryland.
31. Applicant will not be able to pre-lease all of the physician-office space MOB before construction.
32. No community hospital in the area is believed to have an MOB as large as that proposed by the Applicant.
33. Most community hospitals in the area have MOBs off-campus in zones permitting commercial activity.

34. There are six medical office buildings within 2.5 miles of Sibley Hospital. All are in commercially zoned districts. The Sibley MOB would be the first to be allowed in a residential zone.
35. The presence of a helipad in the middle of Little Falls Road, which road will accommodate most of the 4,000 daily vehicle trips caused by the MOB, is inconsistent with DDOT practice and unprecedented in the District of Columbia. Applicant has pledged to move the helipad to a new location and to assist in the upgrading of Little Falls Road to facilitate the redirection of bus traffic to be mostly behind the hospital
36. There are no mitigation measures that can adequately address the adverse impacts on adjacent R-1 residential properties that would result if Sibley were allowed to exceed its current zoning. Furthermore, Sibley has failed to fully comply with the mitigation measures required in the BZA Order 16654, January, 2001 for the Sibley oncology center zoning variance.

CONCLUSIONS OF LAW

1. Sections 500.1, 500.2, and 500.3 of the Zoning Regulations set forth the essential requirements for designating areas as SP-1 districts.
2. An essential element for establishment of an SP-1 district is that the district serve as a protective zone, or buffer, against intensive commercial development that threatens a mixed use residential area.
3. The area proposed for designation as SP-1 fails to meet this essential criterion because no commercial activity threatens the area to be protected by the SP-1 zone.
4. The 1998 Comprehensive Plan of the National Capital, District of Columbia Elements, Ward 3 Plan (“Ward 3 Plan”) in force at the time the application was filed is the District of Columbia Comprehensive Plan that applies to this Application.
5. The proposed map change must be considered in the context of the Ward 3 Plan, to which the Commission must give great deference.
6. The Plan’s fundamental goal is to protect the low-density residential character of Ward 3, a point that is reiterated in numerous sections of the Plan. Many elements of the 2006
7. The Ward 3 Plan identifies the low-density residential character of Ward 3 as the Ward’s “outstanding characteristic.” Because the proposed SP-1 zone is being sought by Sibley Hospital and would be a part of the Sibley Hospital campus, it is inherently illogical for the Commission to inquire whether the proposed rezoning would be inconsistent with other uses permitted under the R-5-A zoning on the campus site, since it must be presumed that the hospital would not seek to injure itself by undertaking such inconsistent activities. Accordingly, the appropriate inquiry for the Commission is whether the proposed SP-1 map change is inconsistent with the low-density residential character of the community surrounding the Sibley Hospital campus – not with uses on the Hospital campus itself.

8. The fact that the Applicant is proposing to re-zone the area from a residential to the SP zone reflects the inescapable fact that the MOB is a commercial use that is inconsistent with the current residential zoning of the site, and could not be approved as an accessory use to the hospital so long as the hospital is zoned residential.

9. Recognizing the inherently commercial nature of a medical office building, the Board of Zoning Adjustment has refused a request construct a Medical Office Building in an R-4 district providing office space for 15 physicians as an accessory use to the Capitol Hill Hospital. See Application 13779 of C & P Building Limited Partnership (June 14, 1983).

10. The fact that the Commission has in the past approved a PUD and SP re-zoning to allow the construction of a medical office building on the Washington Hospital Center campus does not provide a precedent for this case. That MOB was located within the Washington Hospital Center's 39-acre campus, which is served by several major arterial roadways and major bus routes, and the higher density residential neighborhood is completely buffered by significant open space areas, including the McMillan Reservoir site, the U.S. Soldiers and Airman's home, and the Veteran's Administration Hospital. For that reason, there was no community or ANC opposition to the re-zoning and PUD request. Here, by contrast, the opposition by the community reflects the fact that Sibley Hospital, unlike Washington Hospital Center, is a much smaller campus that directly abuts a stable, low density residential neighborhood and is very poorly served by public transit.

11. Because of the novel fact setting, the Commission must undertake a careful evaluation of the competing institutional and commercial aspects of the proposed facility.

12. Whether considered "institutional" or "commercial," the proposed MOB constitutes "economic activity," within the terms of the Ward 3 Plan, a matter beyond dispute given that Applicant has justified the MOB on the basis of the economic contribution it will make to the Hospital's fiscal well-being.

13. The Ward 3 Plan calls upon the Commission to evaluate new economic activity in terms of "compatibility and potential adverse impacts on neighborhoods."

14. The Ward 3 Plan, section 1401.3, declares that, "Commercial use should not be introduced into areas where none is present..." Given that the MOB would represent the most intensive use on the Sibley campus, would have traffic impacts equal to 12 years of normal traffic growth, would have impacts double that of a commercial office building, and has pronounced commercial attributes, the proposed MOB is inconsistent with the Ward 3 Plan.

15. Section 1409.1.f of the Ward 3 Plan calls upon the Commission to be particularly attentive to activities on the Sibley campus that might go beyond those currently authorized, stating that "expansion should be carefully controlled and changes to neighborhood related uses encouraged." Because of the high intensity and pronounced commercial attributes of the proposed MOB and the particularly low-density residential character of the surrounding neighborhood, the proposal fails to meet this mandate.

16. The requested map change is tantamount to “spot zoning” in that it involves “wrenching a small parcel of land from its environment for the benefit of a single owner without benefit to the public at large or the area affected.” *Daro Realty, Inc. V. District of Columbia Zoning Commission*, 581 A.2d, 295, 299. Although there will be indirect public benefits from this project, they are negligible in comparison to the private benefits accruing to Sibley and are so characterized in Applicant’s submissions; the application involves a “limited” area – only a small portion of the Sibley campus is at issue; and the proposed use is inconsistent with the surrounding R-1-A and R-1-B residential uses.

17. Even if the Applicant were deemed to have met the standards necessary to authorize an SP-1 map change, the Applicant would still have the burden of establishing that it is entitled to the specific Planned Unit Development proposed.

18. In a contested case such as this, the Applicant cannot meet its burden through assertions and declarations, but must do so through the presentation of clear and convincing evidence.

19. 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.

20. The Applicant has justified its proposed PUD principally on the basis of the economic contribution it will make to the hospital’s operations, stating, “The MOB helps draw and retain top quality physicians and strengthens the financial position of the hospital.”

21. Because the Applicant has not introduced clear and convincing evidence of the economic contribution the MOB will make to the hospital in comparison to its projected revenue needs, while the Applicant and other parties to this proceeding have introduced clear and convincing evidence of the significant adverse impacts the proposed MOB on the community, the Applicant has failed to sustain its burden of proving that the public benefits of the proposed PUD outweigh such impacts.

22. DCMR 2304.3 states that 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. The Commission finds that the intensity of activity that the proposed PUD will introduce and its pronounced commercial attributes are not capable of being mitigated, but inherent in the nature of the project. The reduction in the scale of the project recently agreed to by the Applicant would still leave it as the most intensive activity on the Sibley campus, with predominantly commercial attributes, and impacts on the community that include 3,600 vehicle trips daily, or 360 per hour throughout a ten-hour work day.

23. The PUD evaluation standards also require that the Applicant establish that its proposal is “not inconsistent with the Comprehensive Plan.” DCMR 2403.4. The Commission finds 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.

24. The Commission finds that the amenities proposed by the Applicant are insufficient to offset the adverse impacts of the project on the community.

25. Accordingly, the Commission denies the Applicant's requested map change and Planned Unit Development.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia ORDERS that the application for a consolidated Planned Unit Development and map amendment from R-5-A to SP-1 for Square N-1448, Lot 26 be DENIED.

The Commission on _____, 2007, voted to deny the application on a vote of __-__ (_____).

This Order was ADOPTED by the Zoning Commission at its public meeting on _____, 2007, by a vote of __-__ (_____).

In accordance with the provision of 11 DCMR 3028, this Order shall become final and effective upon publication in the D.C. Register, that is on _____.

Chairperson,
Zoning Commission

Jerrily R. Kress, FAIA
Director,
Office of Zoning

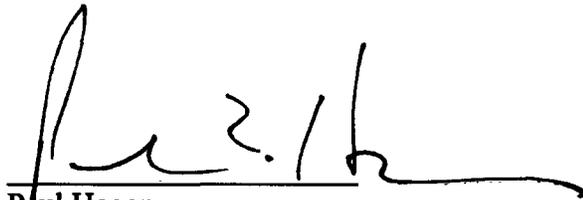
CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2007, a copy of this Submission and Enclosures was served by hand or first-class mail on:

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A handwritten signature in black ink, appearing to read "Paul Hagen", written over a horizontal line.

Paul Hagen
On Behalf of Sibley Neighbors For
Responsible Growth