GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA
Case No. 16654
Exhibit No. 24

IN RE: Sibley Memorial Hospital 5255 Loughboro Road, NW Square: 1447N Lot: 25 Zoned: R-5-A)	Application No.: 16654 Hearing Date: 1/16/2001

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BRIEF OF APPLICANT

I. Background

This matter is before The Board of Zoning Adjustment, pursuant to the Application of Lucy Webb Hayes National Training School for Deaconesses and Missionaries for:

1. Variance from Section 404.1, the minimum rear yard setback requirements in the R-5-A zone district. (Section 3103.2).

2. Variance from Section 402.4 to allow transfer of excess floor area ratio granted under BZA Order #16312 for construction of CBRF on subject site to proposed addition of radiation oncology to an existing hospital use in the R-5-A zone district. (Section 3103.2).

The Applicant, doing business as Sibley Memorial Hospital ("Sibley"), has been in operation for over one hundred (100) years as a private, not-for-profit, full service, three hundred and forty-four (344) bed community hospital. Pursuant to BZA Order #16312 issued on March 13, 1998, Sibley was approved by the Board to establish a Community Residence Facility with one hundred twenty four (124) beds and a Health Care Facility with ninety six (96) beds. On April 12, 1995, the BZA granted a special exception of the zoning regulations to permit the nursing unit to add an

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additional three (3) beds in order to operate an eighteen (18) bed skilled care nursing facility.

II. Discussion

As noted above, the current Application of Sibley Memorial Hospital is before the BZA pursuant to 11 DCMR §3107.2 for (1) a variance from Section 404.1, the minimum rear yard setback requirements in the R-5-A zone district, and (2) a variance from Section 402.4 to allow transfer of excess floor area ratio granted under BZA Order #16312 for construction of a CBRF on the subject site to a proposed addition of a radiation oncology unit to an existing hospital use in the R-5-A zone district.

Over the last few years, Sibley has undertaken efforts to strengthen and improve its radiation oncology program. Due to the efforts of its staff, the number of patients in the radiation oncology unit has increased two fold, from approximately 35 patients per day to roughly 70 patients per day. To better handle these new patients, Sibley has recruited Radiation Oncologists from Johns Hopkins Hospital and Duke University Medical Center.

Despite the presence of new, well trained staff, Sibley's facilities are insufficient for the additional patients now being treated. The installation of replacement equipment for better cancer treatment. The radiation oncology unit is presently designed to handle 35 patients a day and the hospital has, for the last year, been treating 70 patients per day. The new radiation oncology unit will be large enough to accommodate the additional patients being treated at the hospital. Additionally, due to the

vast improvements in technology, new equipment will be purchased by the hospital. Due to its increased size the newer equipment will not fit in the current vaults. If the hospital were required to enlarge its vaults at their present site, the hospital would have to close its radiation oncology unit while construction took place, thereby increasing the anxiety for people who are undergoing cancer treatment. Because the facilities are already presently too small for patient population being served, if the vaults are enlarged at their present site, the extant conditions would be further exacerbated. To ameliorate the existing conditions in the unit, Sibley proposes to build a radiation oncology unit that will comfortably accommodate the seventy (70) patients per day.

Presently, Sibley has pending before the District of Columbia State Health Planning and Development Agency a Certificate of Need application for Relocation of the Radiation Therapy Service Suite. Additionally, the Army Corps of Engineers has requested that Sibley go before the National Capitol Planning Commission for approval of its radiation oncology department. (See Exhibit 1 attached hereto).

A. Legal Tests for a Variance

This application requests two (2) area variances -- that is, variances relating to height, setbacks, floor area ratio and lot occupancy. Palmer v. BZA, 287 A.2d 535, 541 (D.C. 1972). The standards by which the Board of Zoning Adjustment can, and should, approve an area variance has been clearly defined by the District

of Columbia Court of Appeals. An area variance should be granted when the following conditions are shown to exist:

(1) The property is unique because of its size, shape, topography and other extraordinary or exceptional situation or condition;

(2) The owner would encounter exceptional practical difficulties as a result of the strict application of the Regulations to its particular property; and

(3) The variances would not cause substantial detriment to the public good and would not impair the intent, purpose and integrity of the Zone Plan. Carliner v. BZA, 412 A.2d 52, 53 (D.C. 1980); Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment, 534 A.2d 939 (D.C. 1987).

(1) Variance from §404.1 to Permit the Applicant to Construct an Oncology Unit Within the Twenty (20) Foot Rear Yard Setback

Pursuant to DCMR, Title 11 §404.1, a rear yard of a property in a R-5-A zone district must have a minimum depth of twenty (20) feet. Due to the proposed construction of the new radiation oncology unit, a portion of the rear yard, behind Hayes Hall, would be dedicated for this project.[1] The rear yard for the hospital is in excess of one thousand (1000) feet wide and the proposed project will utilize the twenty (20) foot depth of the rear yard for only one hundred fourteen and 5/10 (114.5) feet. (See plats attached hereto as Exhibit 2).

[1]The proposed addition will project a maximum of twenty four (24) feet into the adjacent property owned by the Army Corps of Engineers. There is legislation that has been passed by Congress and signed by the President that allows Sibley to purchase the adjacent property. Negotiations between Sibley and the Army Corps of Engineers on the purchase price will begin after the property has been appraised.

No further construction could occur at Sibley as the property presently exists. Land that is of sufficient size to build the radiation oncology unit would cause the displacement of valuable parking spaces, necessary for staff, patient and visitor parking. Without the construction of the new radiation oncology unit, patients will be limited to facilities too small for the number being treated and denied access to state-of-the-art treatment equipment. Due to the present configuration of the hospital, the new equipment could not be included in the existing structure without other viable operations of the hospital being displaced.

The determination of the "exceptional condition" in the variance context typically refers to the unusual conditions of the property and not merely to unusual circumstances personal to the owner and related to the property only in the sense that the owner's personal situation makes it difficult to develop the land consistently with the zoning regulations. See Capitol Hill Restoration Society v. District of Columbia Board of Zoning Adjustment, 398 A.2d 13, 16 (D.C. 1979). However, existing structures on the land are part of the "property" and may be "exceptional conditions" for variance purposes. Clerics of Saint Viator, Inc. v. District of Columbia Board of Zoning Adjustment, 320 A.2d 291, 293-294 (D.C. 1974). In a situation nearly identical to the matter at hand, the Court has held that the need to expand an existing building may constitute the kind of exceptional condition of a property that justifies a variance:

> /W/hen a public service has inadequate facilities and applies for a variance to

> expand into an adjacent area in common ownership which has long been regarded as part of the same site, then the Board of Zoning Adjustment does not err in considering the needs of the organization as [a] possible "other extraordinary and exceptional situation or condition of a particular piece of property."

Monaco v. District of Columbia Board of Zoning Adjustment, 407 A.2d 1091, 1099 (D.C.1979) (quoting D.C. Code §5-424(g)(3)(1981)) (emphasis added). Although the adjacent property is presently owned by the United States Government, legislation has been signed by the President to transfer the land to Sibley. The adjacent property, pursuant to an agreement with the Army Corps of Engineers, already contains parking and storage for the hospital.[2]

Here, the need for the new construction is critical since the number of patients being treated exceeds the space available for their treatment. Additionally, coupled with the fact that new equipment must be installed to better serve the needs of those patients being treated, new facilities are a must. If the requested variance is denied, Sibley would be faced with an inability to adequately provide radiation oncology services to its patients in the future. For a hospital, such as Sibley, it is incumbent that it recognize its patients' needs and strive to meet them, or, if it fails, face its possible extinction.

The Applicant is seeking only to enlarge its facilities so that it can better serve its patients. Since the size of the

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[2]If the property had already been conveyed to Sibley, there would not have been any need for this variance. However, since the official conveyance of the property has not occurred, the variance is needed.

structure would not increase beyond that already approved by the Board in BZA Order No. 16312, the change in the structure would not impair the intent, purpose and integrity of the Zone Plan.

(2) Variance from §402.4 to Permit the Applicant to Transfer the Excess Floor Area Ratio Granted Under BZA Order #16312 for Construction of a CBRF on Subject Site to a Proposed Addition of a Radiation Oncology Unit.

Sibley, in a R-5-A district and has a permitted floor area ratio (FAR) of 0.9. The property is presently bounded by Loughboro Road and Delcarlia Place on the south and east sides, MacArthur Boulevard on the west side and by a parcel owned by the Army Corps of Engineers on the north. The hospital in its present configuration occupies only twenty-six and 8/10 percent (26.8%) of the property (§403.2 permits a lot occupancy of up to forty percent (40%)), however, it exceeds the floor area ratio requirements. Pursuant to §402.4 the subject property has a FAR of 469,692 sq. ft. and with the proposed construction the property would have a FAR of 541,508.00 sq. ft. In BZA Case No. 16312, Sibley sought and received an order permitting it to increase its FAR to 566,819.00 to construct, inter alia, an assisted living facility. After some value engineering, the actual FAR totalled exceeds 527,508.00 sq. ft. With the new construction, the FAR would increase to only 541,508.00 still less than the 566,819.00 allowed by BZA Order #16312.

Legislation has been signed by the President that would allow the adjacent piece of property owned by the Army Corps of Engineers to be sold to Sibley. Sibley is presently in the negotiation stage

with the Army Corps of Engineers over the price. Until price has been agreed upon, the sale of the property is not a fore-gone conclusion. Presently, there are no other properties contiguous to the applicant's property available for sale which the applicant could purchase to reduce its FAR. Without any additional land, unless a variance is approved, there is no way in which the applicant can expand the hospital for any reason. Sibley is seeking to build a new radiation oncology facility to better serve its patients. At present, the facilities utilized are too small for the number of patients being served and the vaults containing that radiation equipment are of insufficient size to accommodate new equipment. See Clerics of Saint Viator, Inc. at 293-294 and Monaco at 1099.[3]

If the requested variance is not approved it would cause a dilemma for Sibley. The waiting area dressing facilities in the radiation oncology unit are inadequate for the number of patients being seen. Sibley has recognized the need of new diagnostic equipment in treating patients' illnesses. The new equipment for the radiation oncology unit is larger than the vaults presently located at the hospital and therefore the need for new vaults. If the hospital were to be required to enlarge its vaults at their present site, it would have to close its program while the vaults were enlarged and the waiting and dressing areas, already too small

[3]If Sibley and the Army Corps of Engineers can agree as to a price for the property and Sibley purchases the property, no variance would be needed. However, to require Sibley to wait until that process is completed would unnecessarily jeopardize patient care and potentially cause construction costs to be prohibitive.

for the number of patients being treated, would be further reduced in size to accommodate the new vaults. If the hospital were required to close its radiation oncology program while enlarging its vaults, it could potentially be the death knell for a very important hospital program.

In view of the fact that the board had previously approved a FAR in excess of that being requested now, it is inconceivable that the increase in FAR would cause substantial detriment to the public good nor would the increase in FAR impair the intent and integrity of the Zone Plan.

III. Community Support for the Application

The Applicant notes that the Advisory Neighborhood Commission 3D voted to support the instant Application at its December 13, 2000 meeting. The Palisades Civic Association also voted to support application.

IV. Conclusion

For the reasons set forth herein, the Applicant respectfully requests that its request for variances under §§404.1 and 402.4 be granted.

Respectfully submitted,

CRAIG ELLIS & ASSOCIATES, L.L.C.

CRAIG ELLIS #250779
1436 Fenwick Lane
Silver Spring, MD 20910
(301) 608-0571

Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of the Applicant was mailed first-class, postage prepaid on this 2nd day of January, 2001 to:

Advisory Neighborhood Commission 3-D
P.O. Box 40846
Palisades Station
Washington, DC 20016

CRAIG ELLIS, Esquire
Craig Ellis & Associates, L.L.C.
1436 Fenwick Lane
Silver Spring, MD 20910
(301) 608-0571

EXHIBIT 1

DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
WASHINGTON AQUEDUCT DIVISION
5900 MACARTHUR BOULEVARD, N.W.
WASHINGTON, DC 20315-0220

REPLY TO
ATTENTION OF

December 29, 2000

Office of the Chief

Ms. Shiela Cross Reid, Chairperson
Board of Zoning Adjustment
441, 4th Street, NW Suite 210
Washington, DC 20001

RE: Application Number 16654, Sibley Memorial Hospital, 5255 Loughboro, Road, NW

Dear Ms. Reid:

The land upon which Sibley Memorial Hospital proposes to build the addition to its Oncology Clinic is owned by the United States Army and managed by the Washington Aqueduct, the US Army Corps of Engineers' water treatment operations. That land is currently leased to Sibley Memorial Hospital.

The Washington Aqueduct does not oppose the building of the structure on the leased parcel, such a building is allowable under the terms of the lease, and Sibley Memorial Hospital has agreed to comply with the terms of the lease.

Because this federal parcel is subject to the National Capital Planning Act of 1952, this project is subject to review by the National Capital Planning Commission. Washington Aqueduct is now preparing documentation to comply with the Act and is recommending approval of the project as consistent with the both the operations of the Washington Aqueduct and the land use plans contained in the master plan on file with the Commission.

If you have any questions, please contact me at 202-764-0031.

Sincerely,

Thomas P. Jacobus
Chief, Washington Aqueduct

Copy Furnished: Mr. Jerry Price, COO, Sibley Memorial Hospital

EXHIBIT 2

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., 09/19, 2000

Plat for Building Permit of SQR N-1443 LOT 25

Scale: 1 inch = 200 feet Recorded in Book 175 Page 102

Receipt No. 0521

Furnished to: OUDENS & KNOOP

Surveyor, D.C.

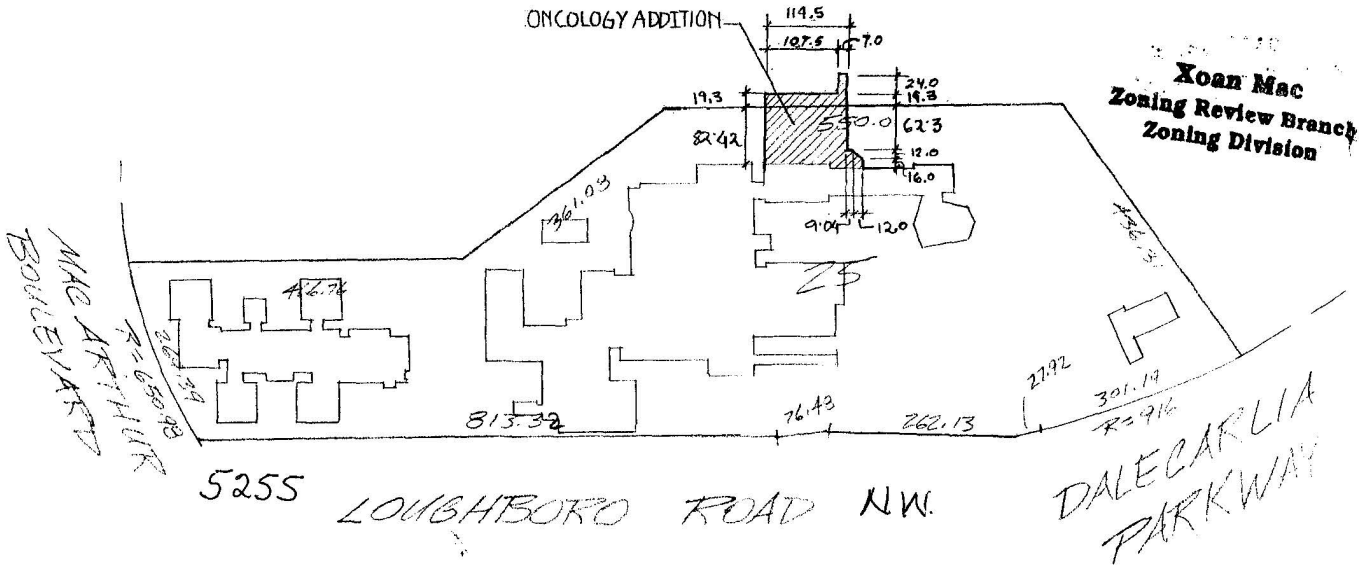
By: RTD VW

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 9-20-00

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



Xoan Mac
Zoning Review Branch
Zoning Division

This permit does not authorize existing public sidewalk work.

FAX TO: Director of Board of Zoning Adjustment
FAX # 202.727-6072
PH 202. 727-6311

FROM: Linda Graves Shaughness
PH 202.586-1851 voicemail
PH 202.364-9657
5236 Loughboro Rd NW
Washington, DC 20016

DATE: January 2, 2001

RE: Request to be heard as Party Opponent to Application #16654 Sibley Hospital Hearing January 16, 2001

I request to be heard as a Party Opponent to the subject zoning variance application. I live directly opposite the subject property which is located in the 5200 block of Loughboro Rd NW. I and the 25 signatories of a petition oppose this variance unless Sibley Hospital agrees to perform all the terms specified in our petition. I and the other neighbors within close proximity to Sibley Hospital are still reeling from the negative economic, environmental, and aesthetic impacts of the hospital's expansion from its two most recent projects–zoning variances that allegedly would NOT adversely impact our neighborhood. We have made some progress in negotiating mitigation measures with the hospital, but the hospital has not yet agreed to do all that is necessary. In the past two years my own home has incurred a $52,000 drop in assessed value, despite an extremely robust real estate market.

I would like to present the signed petitions to the board and make a presentation on the negative impacts that have recently occurred and which would be exacerbated by further Sibley hospital expansion unless mitigation measures are a condition of variance approval. I will also have written explanatory materials with photos to explain the conditions and concerns of the immediate neighbors.

Linda J. Graves Shaughness