

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF:

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Case No. 05-42

SIBLEY MEMORIAL HOSPITAL 5

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Thursday,
October 12, 2006

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No.
05-42 by the District of Columbia Zoning
Commission convened at 6:30 p.m. in the
Office of Zoning Hearing Room at 441 4th
Street, N.W., Washington, D.C., Carol J.
Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
GREGORY JEFFRIES	Commissioner

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN Secretary

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
KAREN THOMAS

The transcript constitutes the minutes from the Public Hearing held on October 12, 2006.

I N D E X

Call to Order	4
Preliminary Matters	8
Witnesses, Sibley Neighbors for Responsible Growth	
Leonard Spector	9
Linda Shaughness	12
Motion to grant party status	14
Vote to grant party status	14
Requests for continuance	15
Rachel Thompson, ANC 3D04	17
Vote to continue case February 1, 2007 .	24
Adjourn	25

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1 accordance with the provisions of 11 DCMR
2 Section 3022.

3 The order of procedure will be as
4 follows. We'll take up any preliminary
5 matters. Then we'll have the presentation
6 of the Applicant's case; the report by the
7 Office of Planning; reports by any other
8 government agencies; the report by the
9 affected Neighborhood Advisory Commission,
10 in this case, it's 3D; organizations and
11 persons in support; and organizations and
12 persons in opposition.

13 The following time constraints
14 will be maintained in the hearing: the
15 Applicant will have 60 minutes;
16 organizations will have 5 minutes; and
17 individuals will have 3 minutes. The
18 Commission intends to adhere to the time
19 limits as strictly as possible in order to
20 hear the case in a reasonable period of
21 time.

22 The Commission reserves the right

1 to change the time limits for presentations,
2 if necessary and notes that no time shall be
3 ceded. All persons appearing before the
4 Commission are to fill out two witness
5 cards. They look like this. They're on the
6 table by the door.

7 Upon coming forward to speak to
8 the Commission, please give both cards to
9 the reporter who is sitting to our right and
10 then you can take a seat at the table.

11 Please be advised that the
12 proceeding is being recorded by the Court
13 Reporter and is also be web-cast live.
14 Accordingly, we ask you to refrain from
15 making any disruptive noises in the hearing
16 room.

17 When presenting information to
18 the Commission, please turn on and speak
19 into the microphone, first stating your name
20 and home address. When you're finished
21 speaking, please turn the microphone off
22 because they tend to pick up background

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1 noise.

2 The decision of the Commission in
3 this case must be based exclusively on the
4 public record. To avoid any appearance to
5 the contrary, the Commission requests that
6 persons present not engage the members of
7 the Commission in conversation during a
8 recess or at any other time. Ms. Schellin
9 will be available throughout the hearing to
10 answer any procedural questions you might
11 have.

12 We ask you to turn off all
13 beepers and cell phones at this time, so as
14 not to disrupt the proceedings. And I'd ask
15 anyone who is planning on testifying tonight
16 to stand now, raise your right hand and
17 direct your attention to Ms. Schellin and
18 she will administer the oath.

19 MS. SCHELLIN: Do you solemnly
20 swear or affirm that the testimony you'll
21 give in this evening's proceeding will be
22 the truth, the whole truth and nothing but

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1 the truth?

2 (The witnesses were sworn.)

3 MS. SCHELLIN: Thank you.

4 CHAIRPERSON MITTEN: Thanks. Now
5 we have some preliminary matters and first
6 up, I'd like to address the party status
7 requests and then we can move into the other
8 matters, once we've established who our
9 parties are.

10 So we have party status requests
11 from Linda and Patrick Shaughness and I
12 apologize if I mispronounce anyone's name.
13 And then we have a request that was amended
14 from Leonard Spector and the amended request
15 is to add several neighbors that are, I
16 guess, being constituted as Sibley Neighbors
17 for Responsible Growth. I just want to
18 explain something to everyone because it's
19 an element of being qualified for party
20 status is that you are somehow uniquely
21 affected by the case that's before the
22 Commission. And when we have a number of

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1 neighbors coming in and asking for
2 individual party status, it erodes the
3 unique quality of the request.

4 So what I would suggest is that
5 if this group were to be a solid group, so
6 if the Shaughnesses were to join Sibley
7 Neighbors for Responsible Growth, that
8 group, including Mr. Spector, as an
9 individual, could qualify, but no
10 individuals would qualify. The group as a
11 whole could qualify as being a uniquely
12 affected group.

13 So I need either Linda and Patrick
14 Shaughness to come forward, Mr. Spector, on
15 behalf of Sibley Neighbors just to see if we
16 could effectuate that consolidation.

17 Have a seat and identify yourself
18 for the record, please?

19 MR. SPECTOR: Yes, I'm Leonard
20 Spector. I'm here representing the Sibley
21 Neighbors for Responsible Growth. We're
22 actually a group of 60 persons.

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1 CHAIRPERSON MITTEN: Oh, okay.

2 MR. SPECTOR: In front of you we
3 listed those who are within 200 feet.

4 CHAIRPERSON MITTEN: Okay.

5 MR. SPECTOR: Of the hospital.
6 Linda Shaughness is also within 200 feet.

7 CHAIRPERSON MITTEN: Okay.

8 MR. SPECTOR: We can certainly,
9 we'd be delighted to incorporate her into
10 our group and if it would be permissible,
11 then give her a portion of the time which
12 the group might be allocated because I think
13 she has some distinctive points to raise
14 regarding the history of the behavior by
15 Sibley and so forth.

16 CHAIRPERSON MITTEN: Right.
17 You'll have to designate a lead person for
18 purposes of cross examination, because we
19 don't like to do that, having multiple
20 individuals cross examining the witness for
21 the other side because we like to have one
22 representative. But if you could

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1 consolidate that way, that's the way that
2 this group will qualify.

3 MR. SPECTOR: That would be fine.
4 What we had planned to do before we had the
5 opportunity to -- if Ms. Shaughness is
6 prepared to do that, we would have, would
7 were going to have one individual cross
8 examine one witness and another, a
9 colleague, Mr. Paul Higg, who is part of our
10 group, was going to take over some of the
11 other cross examination responsibilities,
12 but it would just be one of us for each of
13 the witnesses. It would just be a different
14 individual.

15 CHAIRPERSON MITTEN: Would you
16 have any objection to that, Mr. Tummonds? I
17 know we ask for some flexibility some times
18 with community groups.

19 MR. TUMMONDS: I'm comfortable,
20 as long as it's just not multiple people
21 asking the same witness multiple questions.

22 MR. SPECTOR: No, no. We would

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1 switch off and I really can't speak for Ms.
2 Shaughness.

3 CHAIRPERSON MITTEN: Okay. I
4 need you to turn the microphone on by
5 pressing the button on the base. There you
6 go. Identify yourself for the record.

7 MS. SHAUGHNESS: Yes, I am Linda
8 Shaughness and I live at 5236 Loughboro
9 Road, N.W., D.C. Yes, I'm amenable to being
10 just part of the overall group. I am also
11 an attorney and I had anticipated doing some
12 cross examination. But I could acquiesce to
13 ground rules of only that we would divide up
14 who does cross examination and only one of
15 us per witness doing it.

16 CHAIRPERSON MITTEN: Okay, that
17 sounds like what we --

18 MS. SHAUGHNESS: I would like to
19 be able --

20 MR. SPECTOR: Or perhaps we would
21 make sure there wasn't repetition of
22 questions. I know Ms. Shaughness is very

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1 familiar with the history and would be the
2 best person to some cross examination on
3 that issue. We have prepared cross
4 examination on some of the very current
5 issues and the relationship to the various
6 provisions of the zoning code and so forth.

7 CHAIRPERSON MITTEN: I think as
8 long as it's organized and it doesn't appear
9 to be overly taxing on the process, I think
10 we'll be fine.

11 MR. SPECTOR: Thank you.

12 MS. SHAUGHNESS: I would also ask
13 if we could function, seated together like
14 co-counsel so that normally you can slip a
15 note to your co-counsel, that sort of thing.

16 CHAIRPERSON MITTEN: Sure. We're
17 not that strict.

18 MS. SHAUGHNESS: Thank you. I'm
19 fine with that.

20 CHAIRPERSON MITTEN: Great.

21 MR. SPECTOR: May I -- sorry. We
22 have then been accepted as parties?

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1 CHAIRPERSON MITTEN: That's what
2 I was going to move into next. So maybe you
3 just have a seat and then if there are other
4 matters, we can have you come forward.

5 So I would move that the Sibley
6 Neighbors for Responsible Growth which would
7 include Mr. Spector and the Shaughnesses and
8 the rest of the folks that are part of the
9 group as Mr. Spector had represented to us
10 be granted party status.

11 VICE CHAIRMAN HOOD: I second
12 that motion.

13 CHAIRPERSON MITTEN: Any
14 discussion? All those in favor, please say
15 aye.

16 (Chorus of ayes.)

17 CHAIRPERSON MITTEN: Ms.
18 Schellin.

19 MS. SCHELLIN: Staff would report
20 the vote to 3 to 0 to 2 to grant party
21 status to Sibley Neighbors for Responsible
22 Growth which will include Mr. Spector and

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1 Mr. and Mrs. Shaughness. Commissioner
2 Mitten moving, Commissioner Hood seconding,
3 Commissioner Jeffries in favor,
4 Commissioners Turnbull and Parsons, not
5 present, not voting.

6 CHAIRPERSON MITTEN: Okay, thank
7 you. So now we have requests for
8 continuance and why don't I let Mr. Tummonds
9 start off with that since he's here.

10 MR. TUMMONDS: Thank you very
11 much. Paul Tummonds for the record,
12 Pillsbury Winthrop Shaw Pittman.

13 Earlier this afternoon, on behalf
14 of Sibley, the Applicant in this case, we
15 submitted a request for continuance in this
16 case. The basis is that we just received
17 this morning, approximately 10 a.m. the DDOT
18 memorandum in this case. As you know, all
19 agency reports are required to be provided
20 at least 10 days in advance of the hearing,
21 really to provide us the opportunity to
22 respond to the issues that are raised in

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1 this DDOT memo.

2 We think that the DDOT memo
3 really calls for more information from us.
4 It didn't say it doesn't what you tell us,
5 we can't get to a point. It says we need
6 more information. The Traffic Impact Study
7 presented by the Applicant is to provide us
8 with more information. So we think that the
9 process would be better served by granting
10 this continuance, allowing us to work with
11 DDOT. Any help that we could get from you
12 to encourage timely responses from DDOT
13 would be appreciated and we think that
14 continuance in this case would also be
15 beneficial to present a coherent, complete
16 project.

17 CHAIRPERSON MITTEN: Okay, that
18 sounds good.

19 Ms. Gates, are you here for the
20 ANC or is it someone else?

21 MS. THOMPSON: I'm Rachel
22 Thompson. I'm Advisory Neighborhood

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1 Commission representative for ANC 3D04 and I
2 live at 5835 Sherrier Place. Are you
3 interested to ask my view of the --

4 CHAIRPERSON MITTEN: Yes, of the
5 motion.

6 MS. THOMPSON: I just want to
7 emphasize that we're prepared to move ahead,
8 however, I recognize that Sibley Neighbors
9 has asked for a continuance as has the
10 hospital.

11 I don't think we have any
12 objection to that. I do want to point out,
13 however, that it appears just from -- we
14 also received actually DDOT's report.

15 CHAIRPERSON MITTEN: You're
16 farther along than we are, because we
17 haven't gotten that.

18 MS. THOMPSON: I think we got it
19 at 4:30 this afternoon. So it was already a
20 great concern to us as to others who are a
21 party to this that it was important
22 information in there that we don't have

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1 privy to.

2 I would also add though that the
3 DDOT report clearly is responding to a new
4 proposal by the hospital that we have not
5 seen and I am concerned if we do grant a
6 continuance that there have been multiple
7 changes, sort of Sibley's proposal now seems
8 to be kind of a moving target. It's
9 different square footage. There are
10 different intersection configurations and so
11 forth.

12 To the extent that the ANC needs
13 to have an opportunity to review all of
14 this, I would really like your help to make
15 sure that the information that is
16 circulating is also provided to the ANC on
17 an equally timely basis.

18 CHAIRPERSON MITTEN: Okay. Let
19 me just ask Mr. Tummonds. Is there a new
20 proposal?

21 MR. TUMMONDS: Yes. We are
22 prepared to give to all the parties this

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1 evening the proposal, the project that were
2 going to present this evening, so everyone
3 here, the parties will walk away with the
4 proposal that we were going to present
5 tonight and that we envision presenting in
6 the future.

7 CHAIRPERSON MITTEN: Okay. The
8 request is really that in advance of showing
9 up here they would like to be made aware,
10 if, in fact, when we reschedule if there was
11 to be future changes.

12 MR. TUMMONDS: Sure. And
13 actually, the way it came about is the
14 somewhat oddity in the zoning regulations
15 that really has that 20-day blackout period,
16 if you will, that requires any changes that
17 the Applicant is going to make to an
18 application files those 20 days in advance
19 of the hearing, then you're not permitted to
20 file it up until the day of the hearing.
21 That's where we were, but yes.

22 CHAIRPERSON MITTEN: You could

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1 still show it to them.

2 MR. TUMMONDS: Absolutely.

3 (Laughter.)

4 MS. THOMPSON: And indeed, I know
5 others have asked for it and we didn't ask
6 for it directly, but it was not made
7 available to us.

8 CHAIRPERSON MITTEN: Okay.

9 VICE CHAIRMAN HOOD: I would just
10 like to ask a question. Ms. Thompson, if it
11 is continued, is there a chance the
12 Applicant is going to make a presentation
13 again to the ANC?

14 MR. TUMMONDS: We've made, I
15 believe, six presentations to the ANC, so
16 we've been willing to --

17 VICE CHAIRMAN HOOD: I'm talking
18 about your current changes.

19 MR. TUMMONDS: I'm sure the ANC
20 would probably like to see us again.

21 VICE CHAIRMAN HOOD: I would
22 strongly encourage that. Hopefully we won't

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1 come back, if it's reconvened in the same
2 position we are.

3 MR. TUMMONDS: Okay.

4 VICE CHAIRMAN HOOD: Of people
5 not having different information.

6 MR. TUMMONDS: That absolutely
7 won't happen.

8 VICE CHAIRMAN HOOD: Okay.

9 CHAIRPERSON MITTEN: So Mr.
10 Spector, just on the motion.

11 MR. SPECTOR: Thank you, I'm
12 Leonard Spector of 5224 Loughboro Road.
13 Well, of course, we had the motion for
14 continuance also and that was because of the
15 refusal of Sibley to provide its revised
16 proposal to us which we thought would
17 deprive us of the opportunity to do
18 effective cross examination in our case in
19 chief.

20 So if they're going to give it to
21 us this evening and if it's frozen now,
22 that's what we're going to be working

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1 against or that we'll have notice of any
2 changes, in a timely fashion, I think we
3 would be very pleased to have the
4 continuance. But we would also be very
5 pleased if the Commission would take the
6 appropriate step to direct the Applicant
7 perhaps to give us any new material at least
8 one week before a future hearing date.

9 CHAIRPERSON MITTEN: It's always
10 a -- I don't know how the changes came
11 about, but there's always this sort of thing
12 where an Applicant -- your point is well
13 taken and I'm not trying to dispute it, but
14 they want to be responsive and yet they want
15 -- you want to see things in advance. So it
16 shouldn't be moving at such a pace that
17 people can't keep up with it is really your
18 point.

19 MR. SPECTOR: I did request
20 specifically of them that I get a copy of
21 this two days ago and they declined and so
22 forth. So I hope that won't happen again.

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1 CHAIRPERSON MITTEN: That's not
2 helpful, Mr. Tummonds, when you don't share
3 things. But I'm sure you know that already.

4 Okay, and there's a couple of
5 issues with DDOT and we are going to be
6 reaching out to DDOT to explain to them the
7 importance of timely filing of reports for
8 everyone's benefit and also the need to be
9 represented by knowledgeable individuals at
10 our hearing, so they can participate and
11 guide the discussion.

12 All right, the date that we have
13 next available for a hearing is the first of
14 February 2007 which is a Thursday. And
15 that's at 6:30. We're just that busy.

16 MR. TUMMONDS: That works for us.

17 CHAIRPERSON MITTEN: Okay.

18 MR. SPECTOR: I think that will
19 be fine, thank you.

20 CHAIRPERSON MITTEN: How is the
21 ANC with that date, that's fine? Okay.
22 Then I move that we grant the motion for a

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1 continuance to February 1, 2007 at 6:30 p.m.

2 COMMISSIONER JEFFRIES: I second
3 it.

4 CHAIRPERSON MITTEN: Any further
5 discussion?

6 All those in favor, please say
7 aye.

8 (Chorus of ayes.)

9 Ms. Schellin?

10 MS. SCHELLIN: Staff will record
11 the vote of 3 to 0 to 2 to continue the case
12 05-42 to February 1, 2007 at 6:30 p.m.

13 Commissioner Mitten moving,
14 Commission Jeffries seconding; Commissioner
15 Hood in favor. Commissioners Turnbull and
16 Parsons not present, not voting.

17 CHAIRPERSON MITTEN: I just want
18 people to understand that the record is open
19 now for whatever submissions people want to
20 make. The only thing that will not be taken
21 up again are party status requests. Those
22 are fixed now. And there will be no further

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1 notice or posting of the new date, so people
2 just need to take note of that and spread
3 the word.

4 MR. SPECTOR: I am just going to
5 supply a copy of the members of our group to
6 your staff.

7 CHAIRPERSON MITTEN: That will be
8 great. Thank you. Thank you all for coming
9 out tonight and we'll see you in February.

10 (Whereupon, at 6:58 p.m., the
11 hearing was continued until February 1, 2007
12 at 6:30 p.m.)