

MCPB
Item # 3
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DATE: July 16, 2004
TO: Montgomery County Planning Board
VIA: Carlton Gilbert, Zoning Supervisor *CG*
 Development Review
FROM: Greg Russ, Zoning Coordinator *GR*
 Development Review
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 Community-Based Planning
PURPOSE: Provide Information to the Planning Board concerning Options for
 Regulating Existing Hospitals and Obtain Guidance for Potential
 Legislation

PLANNING BOARD REVIEW: July 22, 2004

BACKGROUND/ISSUES

For a number of years, issues have arisen relating to the expansion of existing hospitals. Under the current process, existing hospitals must seek approval of special exception modifications from the Board of Appeals (BOA). The Planning Board makes recommendations to the Board of Appeals on Special Exceptions and staff prepares recommendations for such cases. Hospital expansion proposals have frequently engendered friction between the institutions and the neighborhoods where they are located. The most recent proposal to bring these challenges to light has been Washington Adventist Hospital. Hospital expansion is likely to remain a challenge in Montgomery County because much of the County's health care infrastructure is located in mature one-family detached neighborhoods.

Health Care Crisis

Hospital representatives have indicated to staff that two related issues drive their need to expand. The first issue is that Maryland requires hospitals to admit and treat all persons, regardless of their ability to pay. To balance the cost of uncompensated care, hospitals must remain attractive to insured clients and to do this they must attract and keep good doctors. The second issue is that increased costs, improved technology and insurance coverage have led to a growth in outpatient services, making the proximity of on-campus

medical offices a primary locational factor for medical practices. Doctors need their offices to be near the hospital to enable them to see more outpatients while being close to in-patients and the resources of the hospital. The County's existing hospitals are trying to respond to the current industry trends with the infrastructure needed for each to be competitive. The current need is for on-campus medical office space; future trends may require other infrastructure in response to other issues.

Regulatory Problem

Under the current special exception process, existing hospitals must prove the validity of the use every time they seek to modify their facility. Some hospital representatives have expressed desire for a more efficient review process for existing hospitals. They have asked why existing hospitals have to validate their use repeatedly when health care is a vital public interest. Staff has found this question to be compelling for existing hospitals where regulatory review could be limited to the design and impact of the proposed improvements. In the Analysis section below, staff has examined four different alternatives to evaluate any potential change to the current review process for existing hospitals.

ANALYSIS

Experiences in Montgomery County

The experience (to date) with the expansion of existing Montgomery County hospitals in one-family residential zones has been mixed. There are four hospitals that meet this description and all are in the R-60 zone (Montgomery General is also in the RE-2 Zone). All have had their community grow up around them. The four illustrate the challenge of having limited expansion area.

Washington Adventist – The Washington Adventist Hospital has existed since 1907. The use predates the first Montgomery County Zoning Ordinance of 1928. Although the zone for the site has changed through Sectional Map Amendments, the use has remained a special exception since zoning was established.¹ Since this time special exceptions for expansions occurred over the years. The 2000 Approved and Adopted Takoma Park Master Plan currently provides guidance for future hospital growth. Shortly after adoption of the Plan, WAH announced its intention to expand, on-site. M-NCPPC and the City of Takoma Park coordinated to form an advisory group for the hospital expansion. WAH agreed to participate and delayed submission of the major part of their special exception request until the advisory group was finished. The advisory group proceeded for the better part of a year and in the interim a minor special exception request for modular offices was submitted for review. In reviewing this special exception, the BOA observed that a condition of approval from a previous special exception that required WAH to submit a long-range plan had not been met. This led the BOA to authorize the Peoples Counsel to conduct a second advisory group that was active for about a year, until WAH submitted a long-range plan. WAH approached the

¹ The hospital use was permissible in the "A" Zone of the 1928 Zoning Ordinance as the site was then mapped but only with the assent of the District Council. This is essentially a special exception use, although current procedures differ.

Long Branch Task Force, a County Council appointed task force, regarding the location of a portion of their planned expansion on commercial land in Long Branch, a neighborhood near the WAH campus. This would allow the on-site proposal to be scaled back. WAH's representatives have also been active in advocating legislative options as discussed in this memo. To date, the major special exception proposal has not been submitted.

Suburban – Suburban Hospital opened in 1943. The Bethesda-Chevy Chase Master Plan does not provide specific guidance for proposals by Suburban Hospital.² The plan reconfirmed the surrounding residential zoning and the land use map outlined the existing hospital campus. Suburban has considered expansion but special exception proposals have faced serious opposition and even denied. Several years ago an expansion proposal led to the formation of a Task Force to examine expansion plans but this effort lost momentum.

Holy Cross - Holy Cross Hospital was founded in 1963. Expansion plans attempted over the years had put the hospital at odds with the community. The Forest Glen Master Plan provided guidance for expansion, specifically for the hospital to avoid intruding into the neighborhood by developing residential lots owned by Holy Cross. The Plan also retained the existing R-60 zoning, in which a hospital is a special exception use. Subsequent to adoption of the Plan, the hospital engaged the community to discuss on-site expansion plans. This discussion led to submission of the special exception proposal that had little opposition and was approved. The Plan sets an objective to limit growth to the present site, however the hospital has acquired lots west of Dameron Drive and north of Forest Glen Road.

Montgomery General – Montgomery General Hospital opened in 1920. The original building was expanded through 1956. A new facility on Prince Philip Drive opened in 1971. The Draft Olney Master Plan anticipates growth of the Montgomery General Hospital and the site is large enough to accommodate growth. The Draft Plan supports the existing RE-2 and R-60 zoning in which the hospital is a special exception use.

Alternative 1 – Maintain Current Process

Hospitals are only permitted by-right in the LSC (Life Sciences Center), PRC (Planned Retirement Center and MXPDP (Mixed Use Planned Development) zones. Hospitals are permitted only by Special Exception in the one-family residential zones; the PD zones; C-O and C-2; I-1, I-3, I-4 and R&D. (See Attachment to Community-Based Planning Memorandum) Our current process is consistent with many other jurisdictions. The special exception process with its required technical analysis and hearings is accessible and transparent to all affected and interested parties. The LSC, PRC and MXPDP zones provide flexibility to permit hospitals by-right because development standards and / or approved development plans ensure compatibility.

² Section 3.12 (5) does state, "Support special exception uses that contribute to the service and health objectives of the Master Plan," and continues, "... It is important to meet health needs through hospital services and hospice centers that are appropriately sized to be compatible with the surrounding neighborhoods."

Since all but one existing hospital in Montgomery County is in a single-family residential zone,³ and there are few prospects for new hospitals, each expansion of health care infrastructure is likely to require a special exception. Hospital improvements are modifications to Special Exceptions. The same findings must be made for each hospital improvement; the use, not just the physical modification, must be justified each time a modification proposal is reviewed. While the Special Exception process can be lengthy and expensive, hospitals have proven to be some of the more challenging special exception reviews.

Special Exceptions require the use to be consistent with the relevant master plan. However, since master plan policies cannot be updated frequently, they cannot usually foresee the rapidly changing health care industry or design options for specific sites. If the recommendations of a master plan prove to be inflexible for a specific site, the plan is difficult to amend for such a specific issue. Once a plan is opened, even for a specific issue like health care infrastructure; it is impossible to prevent other issues from surfacing. Consequently, the narrowest changes to a plan often require a comprehensive effort. Plan amendments taken out of sequence, in order to address a trend in the health care industry, can interrupt the Master Plan work program and redirect resources.

Alternative 2 – Modified Special Exception Process for Existing Hospitals

The first cut at a revised process would be to suggest streamlining the Special Exception process for existing hospitals. (e.g., require fewer findings) This approach responds to the reality that most hospital development in the County will entail expansion of existing hospitals. In the case of hospitals, the zoning ordinance requires the Board of Appeals to make findings in both the general special exception requirements and the specific requirements for hospitals.

A change to the specific requirements could have narrow predictable implications. However, the general conditions apply to all special exceptions, making it difficult to insert special provision through a text amendment. For this reason the option of a modified special exception process may be of limited value. The general conditions findings remain significant hurdles for special exception amendments, even if the specific findings for the use were eliminated.

Alternative 3 - Rezone existing hospitals to zones that permit them by right.

Like special exceptions, rezonings can be lengthy, expensive and uncertain. As previously noted, only three zones permit them by right and none seem appropriate for existing hospital sites outside of the Shady Grove LSC. This leads one to consider the possibility of a new hospital zone (base zone or overlay zone) and rezone the existing hospitals to this zone. This solution would require a major undertaking, but could ultimately provide a definitive resolution to the current problem.⁴ The first step would be a ZTA to create the new zone. Then amendments to the relevant master plans would be necessary to recommend the zone. Finally either Sectional Map Amendments or Local

³ Shady Grove Hospital is in the LSC zone, all others are either R-60 or RE-2.

⁴ A component of the zone approval could be adoption a plan that summarizes long-range objectives for the institution. Such a document could provide the community with better certainty.

Map Amendments would implement the zone. This option holds potential but it will be difficult to get all parties to agree to such a lengthy and expensive process.

Alternative 4 - Modify existing zones to allow hospitals by right.

This option calls for a ZTA to make existing hospitals--which have already been determined to be appropriate in the single family neighborhoods--permitted uses rather than special exceptions. Appropriate standards would be added to the land use table for existing hospitals the single-family zones. (Note: Existing special exception approvals would remain valid unless revised by the applicant.) An enhanced site plan review process would be used to address compatibility and traffic impacts.

This alternative eliminates the need to re-justify about the use every time an existing hospital makes improvements. It is necessary also to strengthen site plan standards for such uses if there is no governing development plan or project plan. Zoning text amendments for this direction would be fairly specific and therefore have few unintended effects. Staff contemplates a modified site plan review process that would require the Planning Board to make enhanced findings modeled after, but more streamlined than, the special exception standards. Notably, once the use is a permitted use, the inherent/non-inherent effects finding could be eliminated, as would findings like the use would not be detrimental to the use, peaceful enjoyment or economic value of surrounding properties; will cause no objectionable noise, odors, illumination, glare, or adversely affect the health, safety, security, morals or general welfare of residents in the area of the subject site. Findings such as consistency with applicable master plans and adequate public facilities would be retained. Such findings ensure that hospitals cannot expand their campuses beyond where approved master plans show the use to be appropriate, absent a master plan amendment. These latter findings are not currently site plan-level findings. In addition, existing site plan compatibility findings (which currently include such things as lighting and landscaping) could be enhanced by providing that the use will be in harmony with the general character of the neighborhood, and additionally allow review of building bulk, scale and design. This revised process would allow streamlined review, while delegating to the Planning Board greater site plan review, control and oversight over the project. These are general conceptual changes, and the existing special exception standards would need to be evaluated and tailored in detail, if this approach is supported.

Other Local Jurisdictions

As stated in the attached memorandum from Mark M. Viani to C. Robert Dalrymple et al. (Linowes & Blocher, LLP) dated May 20, 2003 (Appendix 2), locally, it is common practice to subject hospitals to special exception review in single-family residential zones, and in certain limited circumstances, to permit hospitals by right in certain mixed-use zones (where development plans generally accompany the approval process). Park and Planning's staff research included the following local jurisdictions: Fairfax County, Virginia, and Anne Arundel, Baltimore, Frederick, Howard and Prince Georges' Counties in Maryland. No hospitals are

permitted in the one-family residential zones in Howard and Frederick Counties. Prince Georges' County requires special exception review for hospitals in a number of one-family residential zones with review by the Planning Board (advisory) and decision by the Hearing Examiner. Appeals are granted by the District Council. Hospitals located in one-family residential zones in Anne Arundel County require public hearing with the Administrative Hearing Officer (similar to the Hearing Examiner in Montgomery County) with appeals heard by the Board of Appeals. Fairfax County requires hospitals over 50 beds to obtain a special exception granted by the Board of Supervisors (the governing body) with an advisory recommendation from the Planning Commission. Baltimore County permits hospitals by-right in the residential zones.

RECOMMENDATION

Staff has identified four alternative strategies to address issues relating to the expansion of existing hospitals through changes to the regulatory process in Montgomery County. Maintaining the status quo will continue to require these institutions to go through long and costly special exceptions for nearly every change to existing hospitals. Only one of the four existing hospitals, Montgomery General, appears to have long-term expansion capacity on-campus. Rezoning to an existing zone where the use is permitted by-right does not appear to address the immediate needs of WAH. Creating a new hospital zone has many hurdles but should remain an alternative under consideration if the required master plan and mapping can be accomplished in a reasonable timeframe. Modifying existing zones to allow existing hospitals to expand by-right with site plan control and special findings appears to be the better solution for the short term.

Under staff's recommended approach, existing hospitals would be considered appropriate uses in one family residential zones and therefore would not need to prove the validity of the use each time a modification is proposed. Instead, staff recommends that modifications to existing hospitals be addressed through a strengthened site plan review process to ensure that design, compatibility and traffic impacts are fully addressed by the Planning Board—the agency best equipped to perform such reviews.

Staff's intent for existing hospitals is not to affect existing special exception approvals that have not yet been implemented by the applicant, but instead to require any additional improvements to be reviewed through the site plan process. This approach would eliminate the need for a hospital to have a long-range plan unless such a plan is included as guidance for development as part of a master or sector plan.

Staff will be seeking broader public review and comment on the proposed approach and any possible zoning text changes to address hospital modifications should the Planning Board support such an approach. At this time, staff is requesting that the Planning Board provide guidance and comments on the general approach to zoning modifications for hospital expansions, as recommended by staff. The staff would then draft text amendment language to be reviewed by the aforementioned parties, culminating in the presentation of a proposed text amendment to the Board in September.

GR:JG

Appendices

1. Community-Based Planning Memorandum
2. Memorandum from Mark Viani
3. Master/Sector Plan excerpts regarding existing hospitals