Resolution No.: 18-289
Introduced: October 13, 2015
Adopted: October 13, 2015

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: County Council

SUBJECT: DOT Docket No. AB741
Abandonment – Huff Court
North Bethesda Office Center East Subdivision, Kensington

Background

1. By letter dated September 12, 2014 from Linowes and Blocher on behalf of its clients, Lake Waverly Associates LP, c/o Promark Real Estate Services LLC, the Applicants, a request was made for the County to abandon a portion of Huff Court in the North Bethesda Office Center East Subdivision of Kensington. The portion of the right-of-way for which abandonment is sought adjoins the Applicants' property on its west side located at 5516 Nicholson Lane. It is 5 feet wide by the length of the Applicants' lot line or 1,862 square feet.

2. A Public Hearing to consider the abandonment proposal was held on December 17, 2014 by the designee of the County Executive.

3. Verizon had no objection.

4. Washington Suburban Sanitary Commission did not respond within 60 days and therefore, consent is presumed.

5. Washington Gas did not respond within 60 days and therefore, concurrence is presumed.

6. PEPCO did not respond within 60 days and therefore, concurrence is presumed.

7. The Montgomery County Police Department did not respond within 60 days and therefore, concurrence is presumed.

8. The Montgomery County Planning Board approved the abandonment request with conditions.

9. The Department of Transportation (DOT) recommended approval of the abandonment request with conditions.

10. The Department of Fire and Rescue Services had no objection as long as the related development plan maintains existing fire department vehicular access to the surrounding buildings and creates compliant access to any proposed buildings.

11. The County Executive recommends approval of the proposed abandonment.

Action

The County Council for Montgomery County, Maryland, finds that the portion of Huff Court in the North Bethesda Office Center East Subdivision of Kensington proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment subject to the following conditions which must be satisfied at Applicants' sole cost and expense prior to the abandonment becoming effective:

1. That any related development plans maintains existing Montgomery County Department of Fire and Rescue Services vehicular access to the surrounding buildings and creates compliant access to any proposed buildings;

2. Planning Board approval of the pending Preliminary Plan and Site Plans for the East Village at North Bethesda Gateway (M-NCPPC file Nos. 120140240 & 820140180) be conditioned upon Applicant being responsible for any and all costs of modifications to the Huff Court ROW necessary to implement the proposed abandonment;

3 Planning Board approval of the abandonment conditioned upon the submission of a preliminary plan and record plat applications to consolidate the ROW into the adjacent lot(s) while meeting all requirements of Chapters 50 (Subdivision of Land) and 59 of the Code (Zoning), and the recordation of any plat(s) occurring prior to the completion date established by the County Council resolution granting the abandonment;

4. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area; and

5. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.

Linda M. Lauer

Linda M. Lauer, Clerk of the Council

Attachment to Resolution No.: 18-289

AB 741 Exhibit 2

MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject:	**Abandonment – Huff Court North Bethesda Office Center East Subdivision, Kensington**	**Executive Order No.** 178-14	**Subject Suffix** AB
Originating Department:	**Transportation**	**Department Number** AB 02-14	**Effective Date** 10/12/14

AB741

1. Pursuant to Section 49-62 of the Montgomery County Code (2004) as amended, the County Executive or his Designee shall conduct a Public Hearing

   at 8:00 p.m. on Wednesday December 17, 2014
   Executive Office Building Lobby Auditorium
   101 Monroe Street
   Rockville, Maryland 20850

   to consider an application received from Linowes and Blocher on behalf of its client, Lake Waverly Associates LP, c/o Promark Real Estate Services LLC, the Applicant, seeking abandonment of a portion of Huff Court in the North Bethesda Office Center East Subdivision of Kensington.

2. After the aforesaid Hearing, the Hearing Officer shall report his findings and recommendations to the County Executive for further consideration as prescribed by County Code.

Approved as to Form and Legality
Office of the County Attorney

By: [signature]
Eric C. Willis
Assistant County Attorney
Date: 10/2/14

APPROVED

Ramona Bell-Pearson
Ramona Bell-Pearson
Assistant Chief Administrative Officer
Date: 10/12/14

Distribution:
Department of Transportation
Department of Finance
Office of the County Attorney

Revised 4/96

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

IN THE MATTER OF: Abandonment Petition AB741

Petition for the Abandonment of a Portion of Huff Court in Kensington, Maryland

BEFORE: Michael L. Subin, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

The Applicant, Lake Waverly Associates LP, submitted a petition for the Abandonment of a Portion of Huff Court consisting of 1,862 square feet of right-of-way ("ROW") along the western border of property it owns located at 5516 Nicholson Lane, Kensington, MD.

A public hearing was held on December 17, 2014, at approximately 8:10 p.m., in the Lobby Auditorium of the Executive Office Building, 101 Monroe Street, Rockville, MD 20850. Executive Order 178-14, authorizing the hearing, was issued on October 12, 2014. (Exhibit 2) Notices were sent to nearby civic associations, residents, public utilities, and public agencies. (Exhibit 3) Public notice of the hearing appeared in *The Montgomery Sentinel* on December 4 and 11, 2014. (Exhibit 4) Signage was posted at the site of the abandonment. (Exhibit 6)

II. Summary of Testimony and Evidence

At the hearing on the proposed abandonment, Mr. Michael Cassedy, representing the Montgomery Department of Transportation ("MCDOT"), testified on behalf of the Department. He read into the record the evidence and exhibits required by the Montgomery County Code (2004), as amended (the "Code"). In addition to reading the above exhibits into the record, Mr. Cassedy testified that his office requested comments from the public, government agencies, and public utility companies in fulfillment of the requirements of § 49-62 of the Code. The remaining exhibits are as follows: an aerial photograph of the area under consideration (Exhibit 5); an e-mail from Verizon, dated December 5, 2014, offering no objection to the

abandonment (Exhibit 7); neither the Montgomery County Police Department, PEPCO, nor Washington Gas submitted any comments for the record.

Testifying for the Applicant, Mr. Robert Eisinger, with PROMARK Real Estate described the subject property and the abandonment petition. The property is part of the White Flint Sector Plan and is bounded by Nicholson Lane, Huff Court, and White Flint Mall. Mr. Eisinger indicated that the Huff Court ROW would ultimately be reduced from 80- to 70-feet. According to him, that would allow for the improvement of the streetscape, the undergrounding of utilities, and improved sidewalks.

Mr. Erwin Andres, a professional civil engineer and expert in the field of traffic engineering and transportation planning, next addressed Huff Court's current conditions. Mr. Andres stated that Huff Court consists of an 80-foot ROW with a curb to curb width of 48-feet. He stated that the White Flint Sector Plan recommends a 75-foot ROW which would reduce the curb width to 43-ft.[1] Mr. Anders indicated that the post-abandonment conditions will provide safe, adequate, and efficient access for vehicles approaching the site, including fire/rescue vehicles, while ensuring a shorter pedestrian crossing. Finally, he indicated that it is his opinion that the proposed area to be abandoned is no longer necessary for public use, now nor or in the foreseeable future.

The Applicant then called Mr. Jagdish Mandavia, an expert in the field of civil engineering, to testify on its behalf. Mr. Mandavia stated that the proposed abandonment would not impact any existing utilities in the ROW nor would it impact emergency vehicle access. As did Mr. Anders, it is his belief that the proposed abandonment would not be needed for public use for the foreseeable future.

Subsequent to the hearing, the Applicant submitted a letter for the record (Exhibit 16) requesting a modification of MCDOT's recommended conditions requiring Planning Board approval of the East Village Preliminary Plans and that the Applicant be responsible for all costs associated with the modifications to Huff Court. (Exhibit 9) In discussions with MCDOT Staff regarding the modification of the conditions, Staff recommended accepting the Applicant's modified verbiage suggesting that approval of the Petition be conditioned upon Planning Board approval of the pending Preliminary Plan and Site Plans for the East Village at North Bethesda

[1] While the ROW itself will be 70-feet, the applicant will only be requesting an abandonment of 5-feet with the additional 5-feet on the opposite side of Huff Court to be requested by the owner/developer of that property.

Gateway (M-NCPPC file Nos. 120140240 & 820140180) and that the Applicant being held responsible for any and all costs of modifications to the Huff Court ROW necessary to implement the proposed abandonment.

There was no additional testimony, oral or written, opposing or supporting the abandonment or the project.

III. Conclusions and Recommendations

The abandonment of road rights-of-way is governed by the provisions of § 49-63, Montgomery County Code (2004), as amended. Section 49-63 permits application for the abandonment of a right-of way by any person or government agency; provides for public agency and utility company review; and, requires a public hearing with notice. I find that the hearing and notice procedures have been satisfied, and that the public, public agencies, and utility companies have been given an opportunity to review the petition for abandonment and closure as described above.

Section 49-63 allows abandonment if the ROW is not needed for public use or if the abandonment is necessary to protect the health, safety and welfare of the residents in the neighborhood or the general public. In determining health, safety and welfare issues, the Council may consider: 1) any adopted land use plans applicable to the neighborhood; 2) the safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives in the immediate neighborhood for local and through traffic; or, 3) changes in fact and circumstances since the original dedication of the right-of way. In this case, I find that the abandonment turns on whether or not the ROW is needed for public use and whether there have been changes in fact and circumstance since the ROW was created. I find that the ROW is no longer needed for public use and that the further use of the entire parcel for the Capital Beltway is no longer necessary and constitutes a change in fact and circumstances.

Consequently, based on testimony and the record, I find that the proposed abandonment of Huff Court will be in the public interest in that it is no longer needed for public use, conforms to the land use plans that have been adopted for the applicable neighborhood, creates safe and efficient pedestrian and vehicular traffic patterns and flows, and meets the provisions of § 49-63. The "public interest" is a broad concept that manifests itself in a variety of contexts. When, as is the case here, the abandonment is considered to be in the "public interest" if it will do such

things as promote the general health and safety of the citizenry, protect the environment, preserve open space, or otherwise advance the community's quality of life. (*See* City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 701 (1999)) This includes providing for the safe and efficient flow of vehicular and pedestrian traffic generally. (*See*, Wheaton Moose Lodge No. 1775 v. Montgomery County Maryland, 41 Md. App. 401, 397 A.2d 280 (1979)) I find that the proposed project will protect the environment, preserve open space, and advance the community's quality of life.

However, approval of the abandonment is conditioned upon the following:

1. that any related development plans maintains existing Montgomery County Department of Fire and Rescue Services vehicular access to the surrounding buildings and creates compliant access to any proposed buildings;

2. Planning Board approval of the pending Preliminary Plan and Site Plans for the East Village at North Bethesda Gateway (M-NCPPC file Nos. 120140240 & 820140180) be conditioned upon Applicant being responsible for *any and all* costs of modifications to the Huff Court ROW necessary to implement the proposed abandonment; and,

3. Planning Board approval of the abandonment conditioned upon the submission of a preliminary plan and record plat applications to consolidate the ROW into the adjacent lot(s) while meeting all requirements of Chapters 50 (Subdivision of Land) and 59 of the Code (Zoning), and the recordation of any plat(s) occurring prior to the completion date established by the County Council resolution granting the abandonment;

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

Michael L. Subin

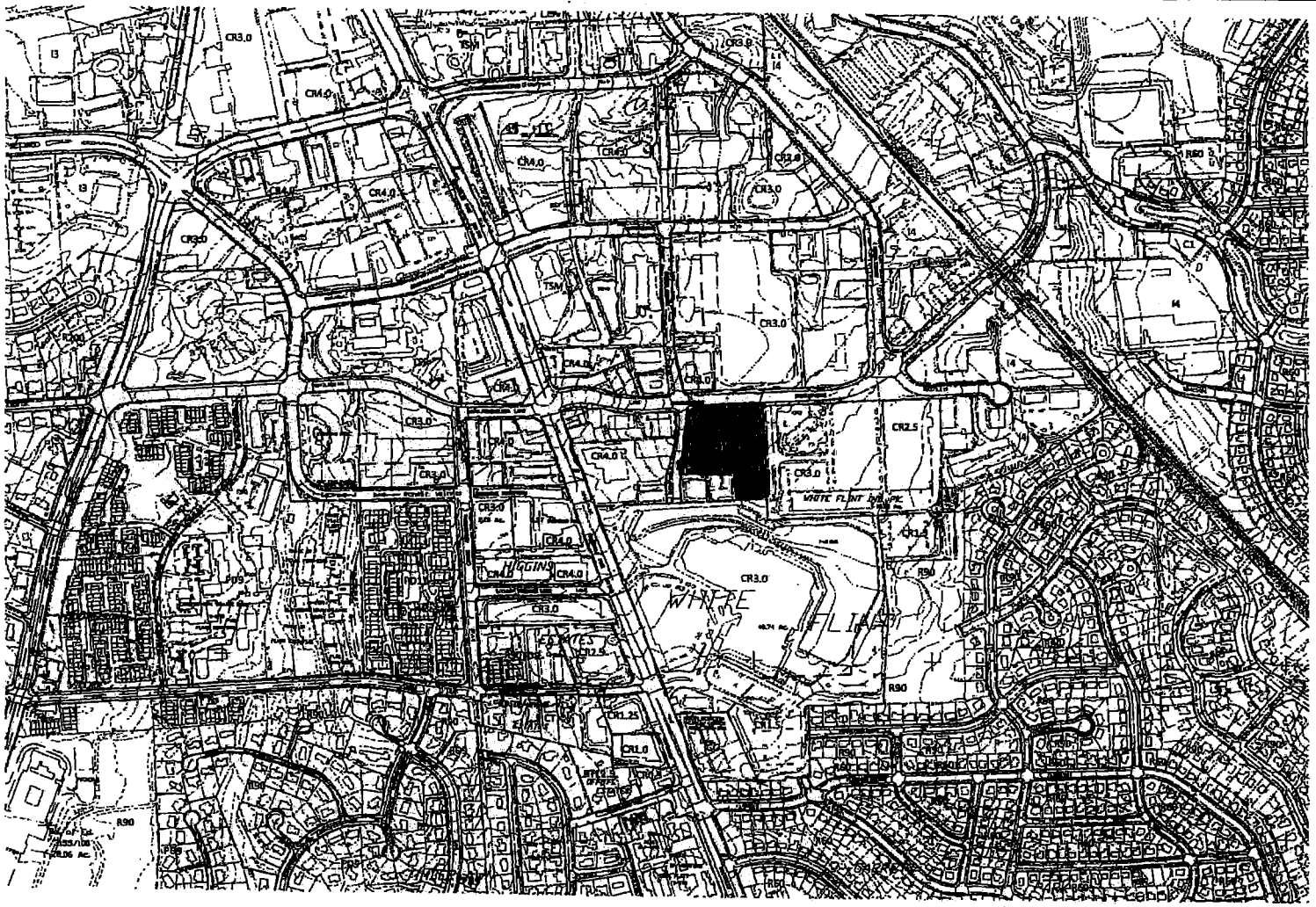
Michael L. Subin

July 30, 2015
Date

I have reviewed the Public Hearing Officer's Recommendations regarding AB741, the abandonment of a portion of Huff Court in Kensington, Maryland, and it is APPROVED.

Isiah Leggett, County Executive

Aug 3, 2015
Date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EAST VILLAGE AT NORTH BETHESDA GATEWAY
MNCPPC
120140240
LOCAL AREA MAP

Exhibit "A"

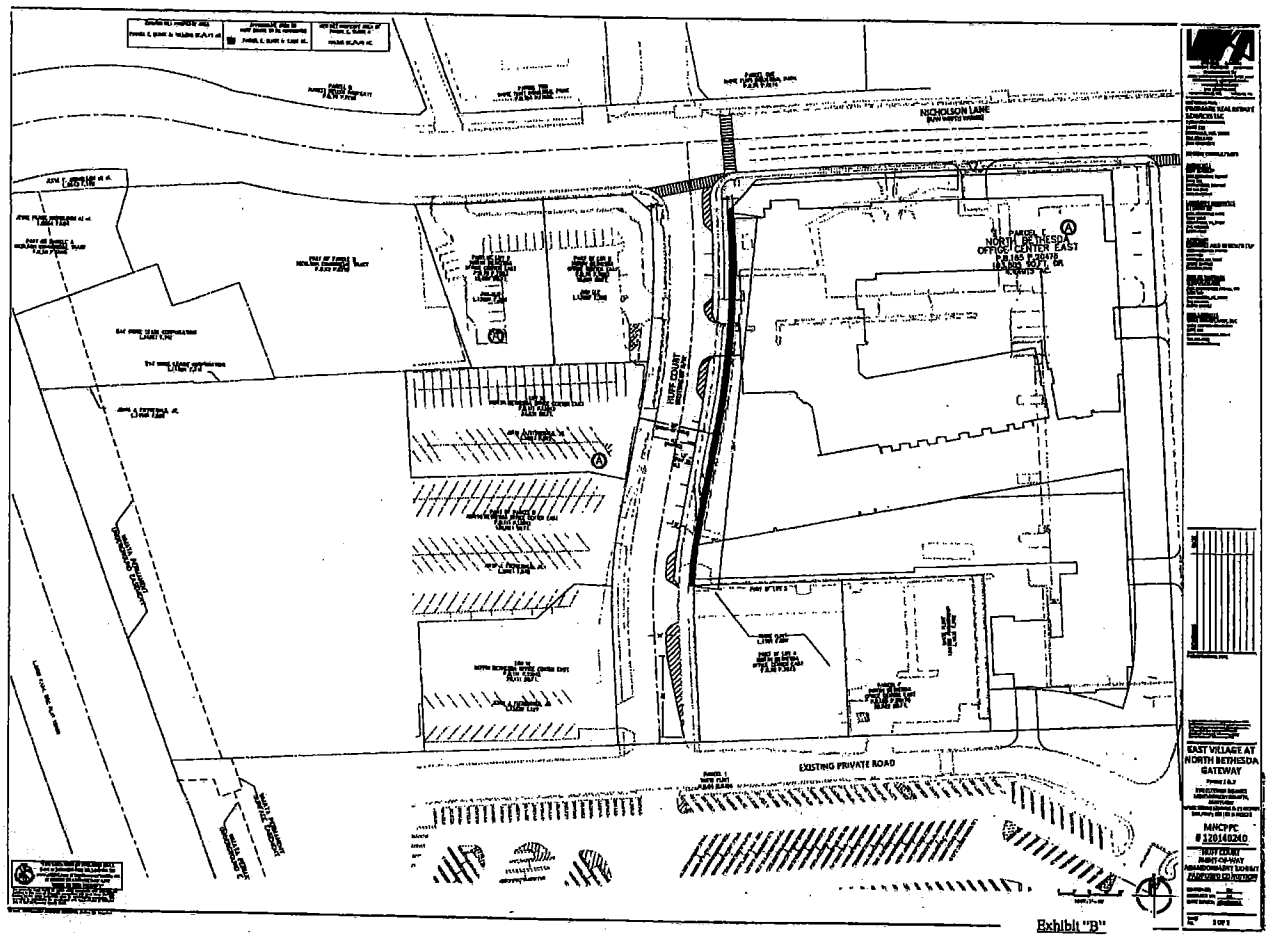
NICHOLSON LANE
NORTH BETHESDA OFFICE CENTER EAST
HUFF COURT
EXISTING PRIVATE ROAD
EAST VILLAGE AT NORTH BETHESDA GATEWAY
MNCPPC
#120140240
HUFF COURT
RIGHT-OF-WAY
ABANDONMENT SUBMIT

Exhibit "B"