

**MEMORANDUM**

November 23, 2009

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Sherry Kinikin, Legislative Analyst 

SUBJECT: Abandonment of Portion of Kensington Boulevard  
DPWT Docket No. AB716  
Kensington View Subdivision  
Kensington 13<sup>th</sup> Election District

A portion of Kensington Boulevard in Kensington has been proposed for abandonment at the Kensington View Subdivision in Kensington. There is opposition to this abandonment.

The area proposed for abandonment consists of about 3,167 square feet of unimproved right-of-way and is adjacent to property for which 11250 Veirs Mill Road, LLC has a Petition for Special Exception (S-2719) pending with the Montgomery County Board of Appeals. If the abandonment is approved, 11250 Veirs Mill Road, LLC will likely seek to incorporate a portion of its abandoned area into the property for its proposed Special Exception for off-street parking of automobiles.

The Planning Board has strongly suggested that the right-of-way must be maintained for future use as a connecting road, and that the Planning Board is in the process of reviewing the Sector Plan for the planning area. The Planning Board staff has also recommended keeping this right-of-way as a needed connection between East Avenue and Veirs Mill Road. The Department of Transportation agrees with the recommendations of the Planning Board.

According to the Hearing Examiner, Outlot A will become totally landlocked unless it is re-subdivided into one of the adjacent lots and will have no access to a public road. No evidence was offered to suggest re-subdivision of Outlot A would be undertaken. Montgomery County Code Section 49-63(d) states, a right-of-way which is the sole means of access to any property must not be abandoned or closed. The Petitioner has not made a convincing case that the abandonment is necessary to protect the health, safety, and welfare of the residents near the right-of-way, and there was abundant testimony to the contrary. Virginia Sheard, Judy Higgins, Elizabeth Barry, and Stephanie Savolaine all objected to the project, saying that cars use East Avenue and it is used as a pedestrian path for Albert Einstein and Newport Middle School and the residential communities of Kensington View, Rock Creek Palisades, College View, and the Crossway Community. They also object to a commercial use in their

neighborhood. Elizabeth Barry lives in a house located at 2901 Kensington Boulevard and the adjacent Lot A since 1947.

Attached herewith is a proposed Resolution whereby the County Council may deny the abandonment of a portion of Kensington Boulevard in the Kensington View Subdivision in Kensington.

Council staff recommends that this abandonment be denied.

Department of Transportation staff will be available for questions at the worksession.

Attachments

Executive's transmittal letter	© 1
Draft adoption resolution	© 2-3
Application letter	© 4-7
Public hearing notice	© 8
Hearing Examiner's report	© 9-17
Map A	©18
Map B	©19
Letter from David Freishtat	©20-23
Public Hearing Transcript	©24-72

f. kinikin/abandonments/AB716

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Isiah Leggett  
County Executive

OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

MEMORANDUM

November 3, 2009

TO: Phil Andrews, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive  
Office of the County Executive

SUBJECT: DPWT Docket No. AB716 Portion of Kensington Boulevard  
Kensington View Subdivision  
Kensington, 13<sup>th</sup> Election District

ENCLS IN  
FILE

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RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

For your consideration, attached herewith is a proposed Resolution whereby the County Council may deny the abandonment of a portion of Kensington Boulevard in the Kensington View Subdivision in Kensington. Supporting data are submitted as follows:

1. Council Resolution
2. Letter requesting the abandonment from Shulman, Rogers et al on behalf of its client, 11250 Veirs Mill Road, LLC, the Applicant
3. A Public Hearing was held on September 15, 2008, as announced by Executive Order No. 174-08.
4. The Hearing Examiner's Report and Recommendation
5. A location map and tax map for reference

IL:rg

Attachments

①

Resolution No: \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By County Council

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**SUBJECT:** Subject: DPWT Docket No. AB716  
Abandonment – Portion of Kensington Boulevard  
Kensington View Subdivision  
Kensington, Maryland

**Background**

1. By letter dated April 25, 2008, from Shulman, Rogers et al on behalf of its client, 11250 Veirs Mill Road, LLC, the Applicant, a request was made to the County to abandon an unimproved portion of Kensington Boulevard in the Kensington View Subdivision in Kensington, Maryland.
2. A Public Hearing to consider the abandonment proposal was held on September 15, 2008, by the designee of the County Executive.
3. Washington Gas objected unless granted an easement.
4. Washington Suburban Sanitary Commission approval conditioned upon being granted easements for its facilities.
5. PEPCO did not respond within sixty (60) days after receiving notice and therefore, concurrence is presumed.
6. The Police Department did not respond within sixty (60) days after receiving notice, and therefore, concurrence is presumed.
7. The Montgomery County Planning Board recommended denial.
8. The Department of Fire and Rescue Services had no objection.
9. The Department of Transportation recommended denial; but if approved, it should be conditioned upon the Applicant granting any necessary easements for County storm drains and public utility facilities and recording a new record plat incorporating the former right-of-way.

10. VERIZON did not respond within sixty (60) days after receiving notice, and therefore, concurrence is presumed.
11. The County Executive recommends denial of the proposed abandonment.

**Action**

The County Council for Montgomery County, Maryland, finds that a portion of Kensington Boulevard in the Kensington View Subdivision consisting of approximately 3,167 square feet, is still necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and denies the abandonment request.

1. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution denying the abandonment of the subject area.
2. Any person aggrieved by the action of the Council for denial of the abandonment request 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, Clerk of the Council

# SHULMAN ROGERS GANDAL PORDY & ECKER, P.A.

Lawrence A. Shulman  
Donald R. Rogers  
David A. Pordy<sup>+</sup>  
David D. Freishtat  
Martin P. Schaffer  
Christopher C. Robetta  
Edward M. Hanson, Jr.  
David M. Kochanski  
Robert B. Canter  
Daniel S. Krakower  
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Samuel M. Spiritos<sup>+</sup>  
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Morton A. Faller  
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Michael V. Nakamura  
Jay M. Eisenberg<sup>+</sup>

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Glenn C. Etelson  
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Timothy Dugan<sup>+</sup>  
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Sean P. Sherman<sup>+</sup>  
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Michael L. Kabik  
Scott D. Muscles  
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Michael J. Lichtenstein  
Howard J. Ross<sup>+</sup>  
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Rebecca Oshoway  
Alan B. Sternstein  
Michael J. Froehlich  
Sandy David Baron  
Christine M. Sorge  
Jeffrey W. Rubin

Simon M. Nadler  
Karl W. Means  
Mimi L. Magyar  
Glenn W.D. Golding<sup>+</sup>  
Matthew M. Moore<sup>+</sup>  
Jeannie Eun Cho  
David S. Wachen  
Stephen A. Metz  
Patrick J. Howley  
Jacob A. Ginsberg  
Christine P. "Tina" Hsu  
Aaron A. Chais  
Eric J. von Vorys  
Hong Suk "Paul" Chung<sup>+</sup>  
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Kristin E. Draper<sup>\*</sup>  
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Melanie A. Keegan  
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Lawrence M. Kramer  
Alexander C. Vincent<sup>\*</sup>  
Stacey L. Schwaber<sup>\*</sup>  
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Michelle Hunter Green<sup>\*</sup>  
Jessica O. Hepburn<sup>\*</sup>  
Mark R. Mann<sup>†</sup>  
Scott Sina<sup>†</sup>  
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*Retired*

Karl L. Ecker

*Maryland and D.C. except as noted:*  
<sup>+</sup> Virginia also    <sup>\*</sup> D.C. only  
<sup>\*</sup> Maryland only    <sup>†</sup> VA only  
<sup>\*</sup> D.C. and VA only  
<sup>†</sup> MD and VA only

Writer's Direct Dial Number:

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dfreishtat@srgpe.com

April 25, 2008

The Honorable Isiah "Ike" Leggett  
Montgomery County Executive  
101 Monroe Street, 2<sup>nd</sup> Floor  
Rockville, Maryland 20850

RE: 11250 Veirs Mill Road, LLC; Request for Abandonment  
of a portion of Kensington Boulevard

Dear County Executive Leggett:

On behalf of 11250 Veirs Mill Road, LLC, we wish to request abandonment of an area of approximately 3,167 square feet of unimproved Kensington Boulevard right-of-way from the southwestern boundary of Block F, Lot 13 (11227 East Avenue, Kensington, Maryland) to the right-of-way's terminus at the southeastern boundary of Block C, Parcel P282 (11250 Veirs Mill Road/MD Rt. 586, Silver Spring, Maryland). The portion of Kensington Boulevard requested for abandonment presents a steep topography resulting in highly impracticable right-of-way.

The owners of the properties with a boundary adjacent to the proposed abandonment area are indicated on the enclosed tax map and are listed below:

- 11250 Veirs Mill Road, LLC who is the fee simple owner of Parcel P282 with a premises address of 11250 Veirs Mill Road/MD Rt. 586, Silver Spring, Maryland;
- 11250 Veirs Mill Road, LLC who is the fee simple owner of Lot 13, Block F with a premises address of 11227 East Avenue, Kensington, Maryland;
- Mr. Granville L. Berry, et al who is the fee simple owner of Block E, Lot 11 & Block E, Outlot A with a premises address of 2901 Kensington Boulevard, Kensington, Maryland; and
- Banc Realty, LLC who is the fee simple owner of Block B, Lot 9 with a premises address of 11300 Veirs Mill Road, Silver Spring, Maryland.

The area proposed for abandonment consists of about 3,167 square feet of unimproved right-of-way and is adjacent to property for which 11250 Veirs Mill Road, LLC has a Petition for Special Exception (S-2719) pending with the Montgomery County Board of Appeals. If the abandonment is

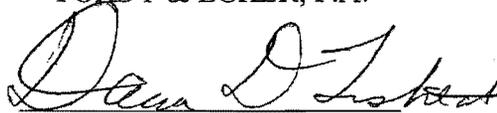
approved, 11250 Veirs Mill Road, LLC will likely seek to incorporate a portion of its abandoned area into the property for its proposed Special Exception for off-street parking of automobiles. Further, if the abandonment is approved, any utility lines or access contained within the right-of-way area proposed for abandonment will be preserved through appropriate land instruments.

We have enclosed with this request a tax map highlighting the proposed abandonment area, a list of property owners whose property abuts the right-of-way proposed to be abandoned, and a check in the amount of \$2,500.00 as the filing fee for the proposed abandonment.

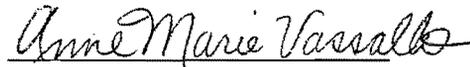
We look forward to a public hearing to review and discuss the requested abandonment. Should you or members of your Staff have any questions, please do not hesitate to contact us.

Sincerely yours,

SHULMAN, ROGERS, GANDAL,  
PORDY & ECKER, P.A.



David D. Freishtat



Anne Marie Vassallo

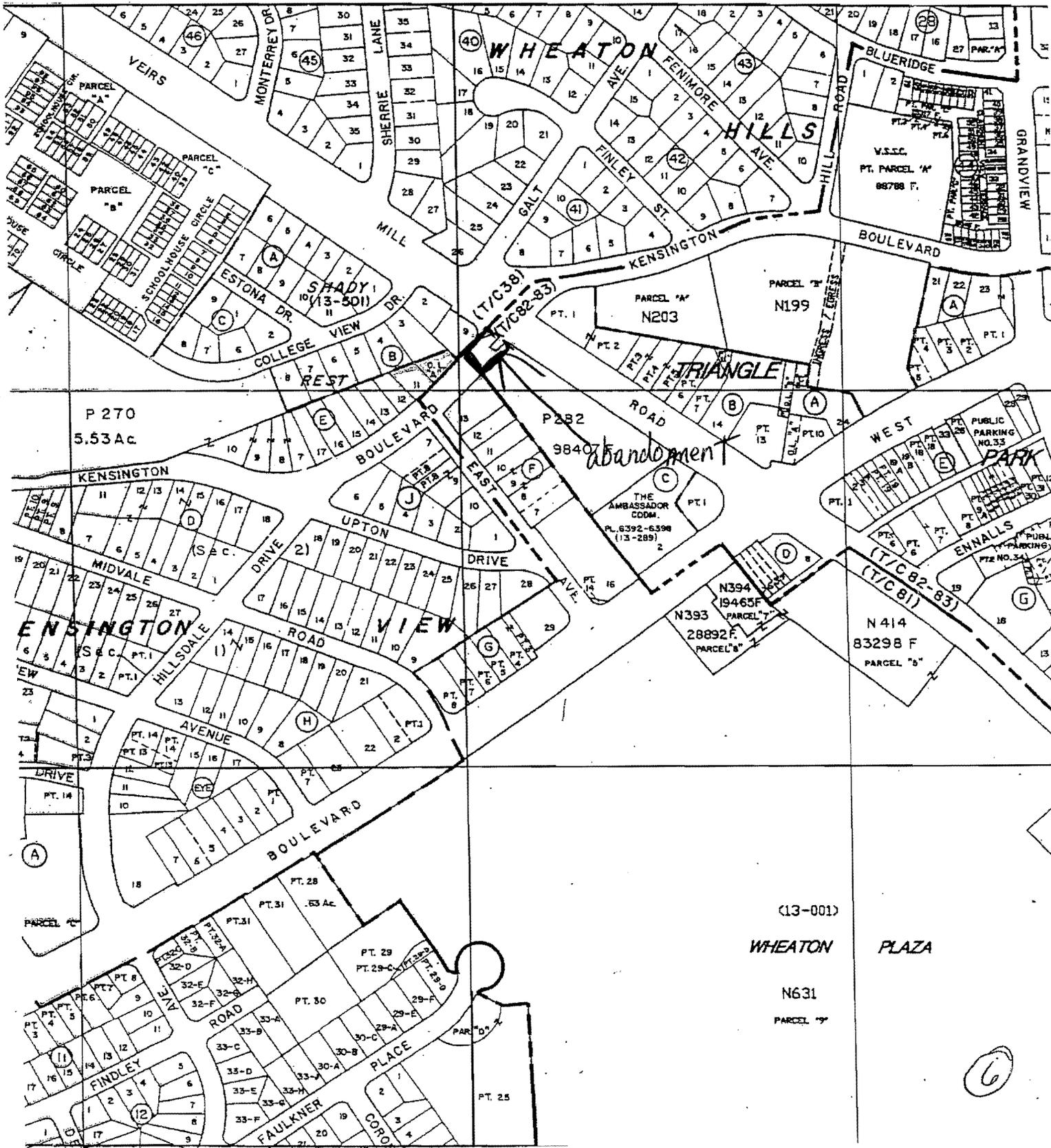
Enclosures

cc: Mr. Michael Cassedy (w/ filing fee per instruction) ✓  
Mr. Carlton Gilbert  
Mr. Rob Klein  
Ms. Virginia Sheard  
Mr. Chris Lindsay  
Mr. Brian Donnelly

Tax Map HQ 61

H 6

HQ 562



(13-001)

WHEATON PLAZA

N631

PARCEL "A"

6

Abandonment AB - \_\_\_\_\_

Filed: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

**List of property owners whose property abuts the right-of-way proposed to be abandoned**  
*List provided pursuant to Montgomery County Code Ch. 49-62 (d)*

NAME	MAILING ADDRESS	PREMISES	
		LOT/PARCEL	BLOCK
Banc Realty, LLC	11300 Veirs Mill Rd. Wheaton, MD 20902	Lot 9	B
11250 Viers Mill Road, LLC	c/o Chris Lindsay Lindsay Automotive Group 1525 Kenwood Avenue Alexandria, VA 22302	Lot 13 Parcel 282	F --
Mr. Granville L. Berry	2901 Kensington Boulevard Kensington, MD 20895	Lot 11 Outlot A	E --
David D. Freishtat, Esquire Attorney for 11250 Veirs Mill Road, LLC	Shulman, Rogers, Gandal, Pordy & Ecker, P.A. 11921 Rockville Pike, Suite 300 Rockville, MD 20852	n/a	n/a

Abandonment Request- Abutting Properties List - 11250 Veirs Mill Road LLC.doc



# MONTGOMERY COUNTY EXECUTIVE ORDER

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

<b>Subject:</b> Abandonment of Portion of Kensington Boulevard Kensington View Subdivision, Kensington	<b>Executive Order No.</b> 174-08	<b>Subject Suffix</b> AB
<b>Originating Department:</b> Public Works and Transportation	<b>Department Number</b> AB 05-08	<b>Effective Date</b> 07/11/2008

AB716

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

at 1:00 p.m. on Monday September 15, 2008  
101 Monroe Street, EOB Lobby Auditorium  
Rockville, Maryland 20850

to consider an application received from Shulman, Rogers, Gandal, Pordy & Ecker, on behalf of its client, 11250 Veirs Mill Road, LLC, the Applicant, seeking abandonment of a portion of Kensington Boulevard in the Kensington View Subdivision in Kensington.

2. After the aforesaid Hearing, the Hearing Officer shall report his or her 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: Eileen D. Basaman  
Eileen Basaman  
Associate County Attorney

APPROVED

Thomas J. Street  
Thomas J. Street  
Assistant Chief Administrative Officer

Distribution:  
Department of Public Works and Transportation  
Department of Finance

**EXECUTIVE OFFICE BUILDING  
ROCKVILLE, MARYLAND 20850**

**IN THE MATTER OF:**

PETITION OF 11250 VIERS MILL ROAD, \* DEPARTMENT OF  
LLC, Petitioners \* TRANSPORTATION  
\*  
ABANDONMENT OF A PORTION OF \*  
KENSINGTON BOULEVARD, \* PETITION NO. AB 716  
An unimproved right-of-way \*

BEFORE: Diane Schwartz Jones, Public Hearing Officer

**PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION**

**I. Background**

The hearing and public comments in the captioned matter pertain to a request dated April 25, 2008, from the law firm of Shulman, Rogers, Gandal, Pordy and Ecker, on behalf of 11250 Veirs Mills Road, LLC ("Petitioner"), to abandon a portion of Kensington Boulevard. Abandonment Petition No. AB716 seeks abandonment of 3167 square feet of unimproved area between East Avenue and Veirs Mill Road in the Kensington View community. The abandonment was sought on the basis that it is no longer necessary for public use under Montgomery County Code 49-63(e). The proposed abandonment area abuts three properties; 1) Lot 9 in Block B, owned by Banc Realty, LLC, 2) Lot 13 and Parcel 282 in Block F, owned by the Petitioner, and 3) Lot 11 and Out Lot A in Block E, owned by the Berry family.

Petitioner owns a car dealership business, Lindsay Ford, utilizing Parcel 282 in Block F. Petitioner also owns Lots 11, 12 and 13 in Block F. Petitioner has a pending application for Special Exception for Lots 11, 12 and 13 for off-street parking of automobiles. Petitioner suggests that it will likely seek to use a portion of the requested abandonment area for the off street parking of automobiles. Petitioner has offered to provide easements for access to any utilities contained in the proposed abandonment through an appropriate land instrument.

Pursuant to section 49-62(f) of the Montgomery County Code, a public hearing on the proposal was held at 1:00 pm on September 5, 2008, in the Lobby Level Auditorium of the Executive Office Building, 101 Monroe Street in Rockville, Maryland. Notice of Hearing was mailed to neighboring properties, the Kensington View Civic Association (KVCA) and was published in the *Montgomery County Sentinel* newspaper on September 4, 2008 and September 11, 2008. Testimony was received at the hearing and exhibits 1-25 were entered into the record. The record was held open for two weeks until 5:00 pm on September 29, 2008. Additional comments were received prior to closing of the records.

## **II. Summary of Testimony**

Chris Lindsay, one of the owners of the Lindsay Ford dealership, located at 11250 Veirs Mill Road, presented his statement on behalf of the Petitioner. After presenting the family history of the dealership, Mr. Lindsay emphasized that the company believes in the landscaping and cleanliness of the dealership. He described the company's involvement in the communities in which they do business and their charitable characteristic. Mr. Lindsay however acknowledged that three adjacent homes, Lots 11, 12 and 13 in Block F, which they bought when they acquired the dealership, are in terrible condition and were when they bought them. They have applied to rezone these lots. Combining those three lots with this

proposed abandonment will create the car storage facility. The Petitioner has indicated to the community that the facility will be landscaped with benches under the trees and sidewalks, all for the community to enjoy.

The Petitioner indicated that the proposed area has been designated in the Sector Plan for public use as the Kensington Boulevard Extension and pointed out that there is no accompanying explanation of this Kensington Boulevard Extension in the text of the 1989 Sector Plan.

The Petitioner called a licensed civil engineer, Steve Crum of MHG firm to testify. Mr. Crum testified that the maximum attainable grade, for a secondary road in the right of way, allowed by County regulation is 8.45% and for a primary road would be allowed a 6.2% grade. Mr. Crum stated that the grade for the road in the subject right of way would exceed these levels. He presented a grade establishment plan (Exhibits 13 and 21) in support of his argument. In both cases he assumed that the road can be built from its current terminus at East Avenue along the Master Plan route to Veirs Mills Road. MHG also submitted another grade establishment plan (Exhibit 23) for the record. In this plan Mr. Crum assumed that the terminus will be at the intersection of East Avenue and Upton Drive along East Avenue and Kensington Boulevard to Veirs Mills Road. With this grading plan, the County regulated grades are achievable, however Petitioner maintains that it may block entrances to several lots as the elevated road and retaining wall would pass in front of these houses. The Hearing Officer finds these assumptions to be conjecture and speculative. The nuances of how a road would be designed would be determined at the time of actual design and any entrances or additional right of way acquisitions would be determined at that time.

Kensington View Community, through KVCA and through individual comments, has overwhelmingly opposed the abandonment. KVCA (exhibit 19) has given three major reasons to oppose the abandonment. First, the right of way proposed to be abandoned is designated a "master plan connection" street in the 1990 Sector Plan for the Wheaton Central Business District and Vicinity for potential future use as secondary street, and that the right of way is currently used by pedestrians from Albert Einstein High School and Newport Middle School and the residential communities of the Kensington View, Rock Creek Palisades, College View and the Crossway Community. Second, the subject right of way is the only street access and street frontage for Outlot A, adjacent to 11 in Block E. Outlot A is zoned as R-60. Third, the right of way abandonment, if granted would result in a fenced and lighted commercial parking lot embedded into the residential neighborhood and immediately opposite to confronting occupied single family homes. Additionally, KVCA feels that the abandonment will undermine the residential character of the community, subvert the current Wheaton Central Business District and Vicinity Plan and will contradict the Plan's goal of concentrating commercial development. Individual comments from the residents echoed the KVCA views and reasoning.

The Montgomery County Planning Board submitted a statement recommending a denial of the proposed abandonment. The Planning Board has given four reasons for recommending denial. First, at the time of preparation of Kensington/Wheaton Master Plan; Kensington Boulevard was seen as a needed connection and is still recommended to remain so. Second, the Planning Board is in the process of updating the Sector Plan and could re-consider the need for a master planned road in this location. However, until the adoption and approval of a new plan, the Approved and Adopted Wheaton Central Business District and vicinity Sector

Plan continues to govern. Third, if the road is built based on the 1989 Wheaton CBD Sector Plan, it will be required to meet the County guidelines for grade. Fourth, the abandonment would result in the unbuilt parcel (Outlot A) being landlocked and without frontage on a public right of way, which, pursuant to Montgomery County Code section 49-63(d) would require that the abandonment be denied.

In administering the abandonment provisions of Chapter 49, the County Executive is required to solicit a response on the abandonment proposal from a variety of public agencies including each public utility authorized by the Public Service Commission to provide service within the area and any grantee of a franchise if the grantee is authorized to use or install facilities in the right-of-way. Washington Gas has objected to the abandonment (Exhibit 9) because it has a gas line in the right of way, however it will not object if the petitioner would relocate the gas lines and/or provide an easement for the gas line. Washington Suburban Sanitary Commission has granted conditional approval (Exhibit 8) if it can maintain an easement to three sewer and water lines in the right of way. Montgomery County Department of Fire and Rescue Services has indicated (Exhibit 11) that it has no objection to abandonment, as it can still access East Avenue from the direction of University Boulevard. Montgomery County Police department had not submitted any statement at the close of the record. Under Montgomery County Code 49-62(g), if an agency or other party does not respond within 60 days after notice is first published under section 49-62(e), the County Executive must presume that the agency or other party does not oppose the proposal. Finally, the Department of Transportation (DOT, formerly referred to as the Department of Public Works and Transportation) recommended denial based on the fact that the subject right of way is referenced in the Master Plan for Kensington-Wheaton as a future connection.

However, if the abandonment is still approved, DOT would require that the Petitioner grant an easement for County storm drains and public utilities and record a new record plat incorporating the former right of way.

In all, eight individuals and entities have opposed the abandonment on various grounds while one entity had no objection and two entities have conditionally favored the abandonment.

### **III. Conclusions and Recommendations**

The abandonment of rights of way is governed by the provisions of Montgomery County Code sections 49-62 and 49-63. Section 49-62 permits application for 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. The hearing and notice procedures have been satisfied, and the public agencies and utility companies have been given an opportunity to review the petition for abandonment as described above.

Section 49-63 allows abandonment if the right of way is not needed for public use or if abandonment is necessary to protect the health, safety and welfare of the residents in the neighborhood. Section 49-63(d) precludes abandonment of a right of way which is the sole means of access to any property.

In assessing health, safety and welfare issues, the Council may consider 1) any adopted land use plan 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, and 3) changes in fact and circumstances since the original dedication of the right-of-way. The Planning Board has strongly suggested that the right of way must be maintained for future use as a connecting road, and that the Planning

Board is in the process of reviewing the Sector Plan for the planning area. The Planning Board staff has also recommended keeping this right of way as a needed connection between East Avenue and Veirs Mill Road. Similarly, the Department of Transportation has echoed the recommendations of the Planning Board.

Petitioner's contention is that the right of way has been in the Master Plan as a "future" road for a very long time and implying that the County has no intention of building this road connection. Petitioner maintains that once its project is fully developed along with the adjoining lots, the abandonment will have benefits as a more community friendly and aesthetically pleasing location, however the community disagrees and believes that the private use of the right of way would have a significant negative impact by extending the car dealership directly into the residential neighborhood.

The County system of long term planning through Master Plans and subsequent Sector Plans has definite advantages of systematic development to accommodate needs and area requirements to benefit the community. This system of planning is inherently designed to protect the health, safety and welfare of the residents and looks to the long term build out of a community.

Based on the thorough review of the testimony and evidence of record, I find that if abandonment is granted Lot 11 in Block E will lose part of street frontage. Also, Outlot A will become totally landlocked unless it is re-subdivided into one of the adjacent lots and will have no access to a public road. No evidence was offered to suggest re-subdivision of Outlot A would be undertaken. Montgomery County Code Section 49-63(d) states, a right of way which is the sole means of access to any property must not be abandoned or closed. The Planning Board staff has recommended that the right of way should be retained as a future

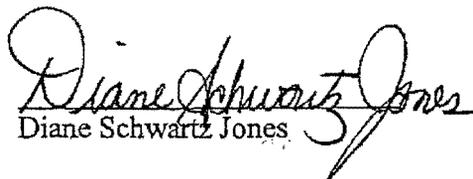
road connection as the Sector Plan originally envisioned. Kensington View Community has an apprehension that Petitioner's commercial expansion will further become an encroachment into the residential community and that East Avenue will be frequented by commercial traffic jeopardizing the health and safety of the community. The Community believes that the abandonment challenges the health, safety and welfare of the Kensington View community.

Given the expression of the Planning Board, its staff and the Department of Transportation of the future need for the right of way, along with the testimony of the community and the ongoing use of the right of way, I find that there is a present and anticipated future use of the right of way. Further, the land use plan for the right of way has it continuing as a public right of way. The Petitioner has not made a convincing case that the abandonment is necessary to protect the health, safety and welfare of the residents near the right of way, and there was abundant testimony to the contrary. Further, even if the Petitioner had demonstrated that the right of way was not needed, or that abandonment was necessary to protect the health, safety or welfare of the nearby residents, the fact that the Outlot A would be left landlocked and without access requires that the right of way not be abandoned.

For the foregoing reasons and based on a full consideration of the information presented, I recommend that the request for abandonment be denied.

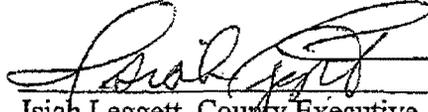
Respectfully submitted,

July 15, 2009

  
Diane Schwartz Jones

The Public Hearing Officer's Recommendation for AB716 has been reviewed and the recommendation for denial of the abandonment request is approved.

Date: July 28, 2009

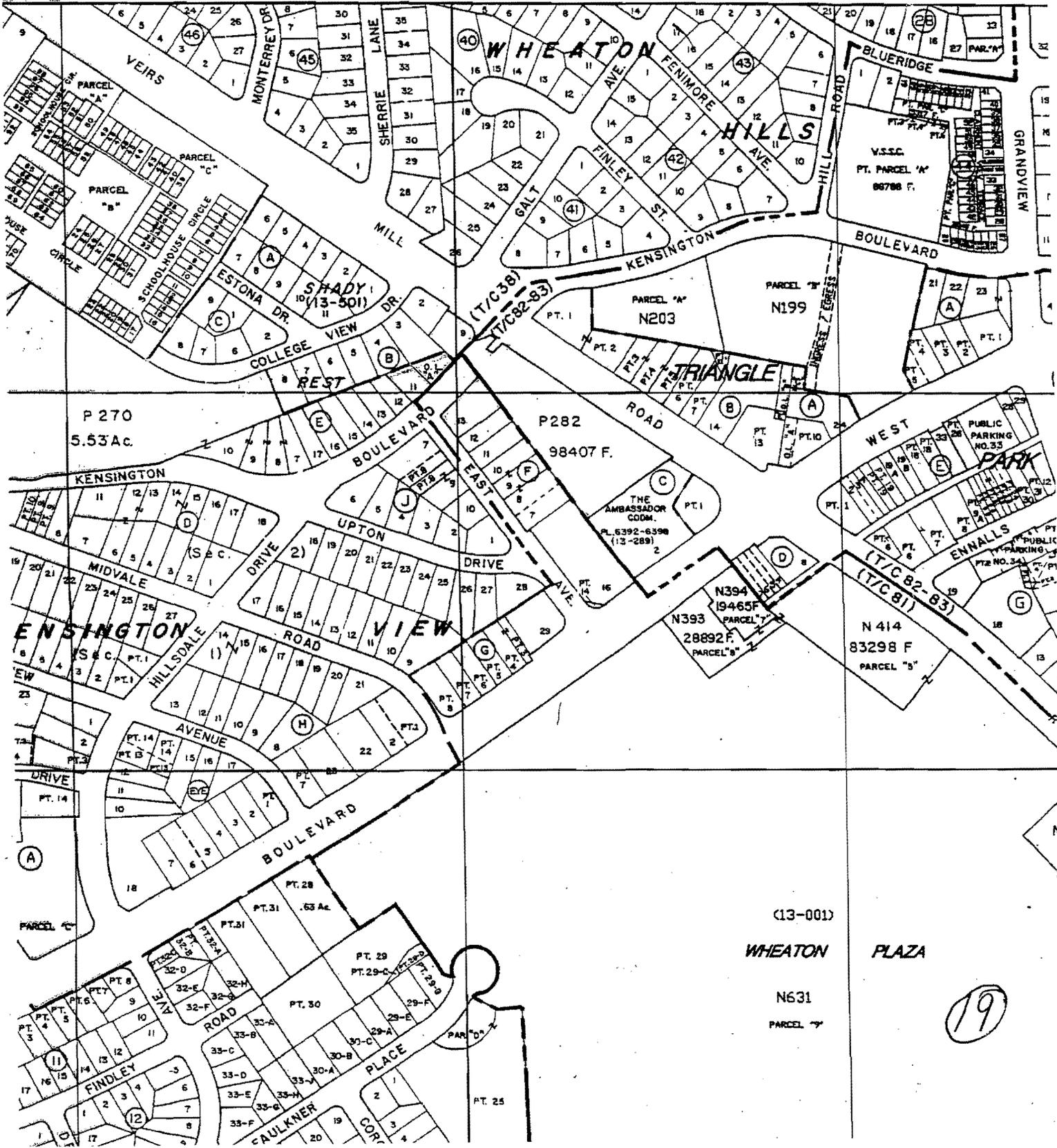
  
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Isiah Leggett, County Executive



Tax Map HQ 61

H 6

HQ 562



(13-001)  
WHEATON PLAZA  
N631  
PARCEL '7'

19

# SHULMAN ROGERS GANDAL PORDY & ECKER, P.A.

Lawrence A. Shulman  
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Daniel S. Krakower  
Kevin P. Kennedy  
Nancy P. Regelin  
Samuel M. Spiritos\*  
Martin Levine  
Worthington H. Talcott, Jr.\*  
Fred S. Sommer  
Morton A. Faller  
Alan S. Tilles  
James M. Hoffman  
Michael V. Nakamura  
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+ Virginia also    ° D.C. only  
\* Maryland only    ■ VA only  
† D.C. and VA only  
‡ MD and VA only

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April 25, 2008

The Honorable Isiah "Ike" Leggett  
Montgomery County Executive  
101 Monroe Street, 2<sup>nd</sup> Floor  
Rockville, Maryland 20850

RE: 11250 Veirs Mill Road, LLC; Request for Abandonment  
of a portion of Kensington Boulevard

Dear County Executive Leggett:

On behalf of 11250 Veirs Mill Road, LLC, we wish to request abandonment of an area of approximately 3,167 square feet of unimproved Kensington Boulevard right-of-way from the southwestern boundary of Block F, Lot 13 (11227 East Avenue, Kensington, Maryland) to the right-of-way's terminus at the southeastern boundary of Block C, Parcel P282 (11250 Veirs Mill Road/MD Rt. 586, Silver Spring, Maryland). The portion of Kensington Boulevard requested for abandonment presents a steep topography resulting in highly impracticable right-of-way.

The owners of the properties with a boundary adjacent to the proposed abandonment area are indicated on the enclosed tax map and are listed below:

- 11250 Veirs Mill Road, LLC who is the fee simple owner of Parcel P282 with a premises address of 11250 Veirs Mill Road/MD Rt. 586, Silver Spring, Maryland;
- 11250 Veirs Mill Road, LLC who is the fee simple owner of Lot 13, Block F with a premises address of 11227 East Avenue, Kensington, Maryland;
- Mr. Granville L. Berry, et al who is the fee simple owner of Block E, Lot 11 & Block E, Outlot A with a premises address of 2901 Kensington Boulevard, Kensington, Maryland; and
- Banc Realty, LLC who is the fee simple owner of Block B, Lot 9 with a premises address of 11300 Veirs Mill Road, Silver Spring, Maryland.

The area proposed for abandonment consists of about 3,167 square feet of unimproved right-of-way and is adjacent to property for which 11250 Veirs Mill Road, LLC has a Petition for Special Exception (S-2719) pending with the Montgomery County Board of Appeals. If the abandonment is

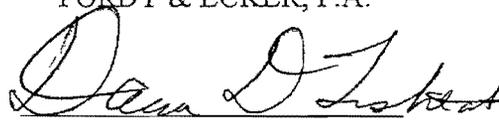
approved, 11250 Veirs Mill Road, LLC will likely seek to incorporate a portion of its abandoned area into the property for its proposed Special Exception for off-street parking of automobiles. Further, if the abandonment is approved, any utility lines or access contained within the right-of-way area proposed for abandonment will be preserved through appropriate land instruments.

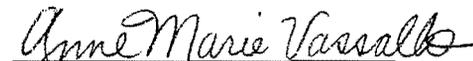
We have enclosed with this request a tax map highlighting the proposed abandonment area, a list of property owners whose property abuts the right-of-way proposed to be abandoned, and a check in the amount of \$2,500.00 as the filing fee for the proposed abandonment.

We look forward to a public hearing to review and discuss the requested abandonment. Should you or members of your Staff have any questions, please do not hesitate to contact us.

Sincerely yours,

SHULMAN, ROGERS, GANDAL,  
PORDY & ECKER, P.A.

  
David D. Freishtat

  
Anne Marie Vassallo

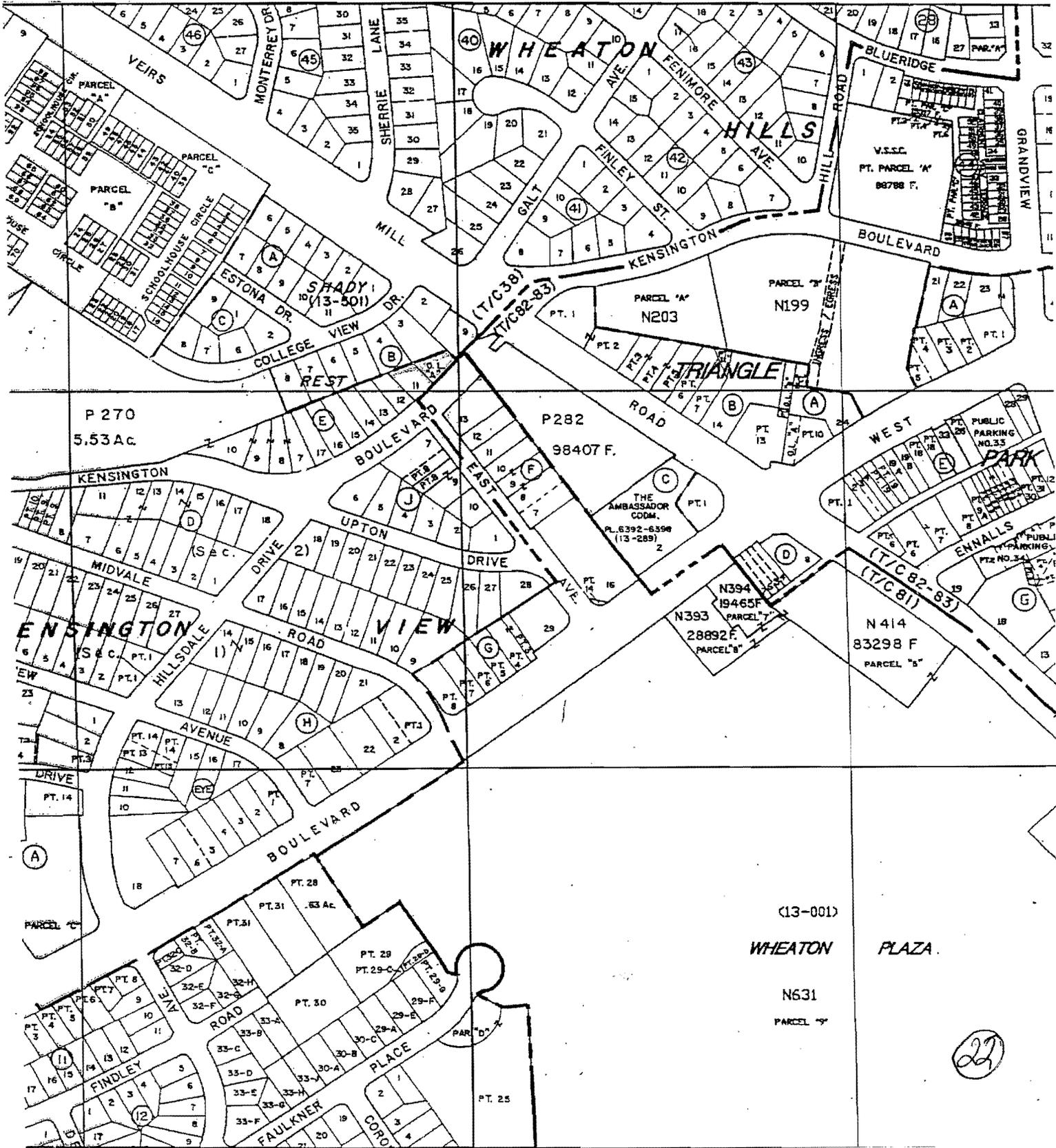
Enclosures

cc: Mr. Michael Cassedy (w/ filing fee per instruction) ✓  
Mr. Carlton Gilbert  
Mr. Rob Klein  
Ms. Virginia Sheard  
Mr. Chris Lindsay  
Mr. Brian Donnelly

Tax Map HQ 61

H 6

HQ 562



Abandonment AB - \_\_\_\_\_  
 Filed: \_\_\_\_\_  
 Hearing Date: \_\_\_\_\_

**List of property owners whose property abuts the right-of-way proposed to be abandoned**  
*List provided pursuant to Montgomery County Code Ch. 49-62 (d)*

NAME	MAILING ADDRESS	PREMISES	
		LOT/PARCEL	BLOCK
Banc Realty, LLC	11300 Veirs Mill Rd. Wheaton, MD 20902	Lot 9	B
11250 Viers Mill Road, LLC	c/o Chris Lindsay Lindsay Automotive Group 1525 Kenwood Avenue Alexandria, VA 22302	Lot 13 Parcel 282	F --
Mr. Granville L. Berry	2901 Kensington Boulevard Kensington, MD 20895	Lot 11 Outlot A	E --
David D. Freishtat, Esquire Attorney for 11250 Veirs Mill Road, LLC	Shulman, Rogers, Gandal, Pordy & Ecker, P.A. 11921 Rockville Pike, Suite 300 Rockville, MD 20852	n/a	n/a

Abandonment Request- Abutting Properties List - 11250 Veirs Mill Road LLC.doc

1 DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION  
2 MONTGOMERY COUNTY, MARYLAND  
3  
4

5 -----X  
6 :  
7 PUBLIC FORUM : AB716  
8 PORTION OF KENSINGTON BLVD :  
9 :  
10 -----X

11 A hearing in the above-entitled matter was held on  
12 Monday, September 15, 2008, commencing at 1:06 p.m., in the  
13 Executive Office Building, 101 Monroe Street, Lobby  
14 Auditorium, Rockville, Maryland 20850, before:

15  
16 DIANE R. SCHWARTZ JONES  
17 Hearing Examiner  
18  
19  
20  
21  
22



ORIGINAL

APPEARANCES

MICHAEL CASSEDY Department of Transportation	6
DAVID D. FREISHTAT, ESQ. Shulman, Rogers, Gandal, Porody & Ecker, P.A.	11
CHRISTOPHER LINDSAY Lindsay Automotive Group	11
STEPHEN E. CRUM Macris, Hendricks and Glascock	15
ANNE MARIE VASSALLO, ESQ. Shulman, Rogers, Gandal, Porody & Ecker, P.A.	
VIRGINIA SHEARD	25
JUDY HIGGINS	33
ELIZABETH BARRY	39
STEPHANIE SAVOLAINE	40
ELIZABETH DUCKETT	



1 may close or abandon a right-of-way if that right-of-way is  
2 no longer needed for present or future public use, or if the  
3 abandonment or closing is necessary to protect the health,  
4 safety and welfare of the residents in the neighborhood.

5           Following the conclusion of the hearing and the  
6 closure of the record, I will make recommendations to the  
7 County Executive who in turn will make his recommendation to  
8 the County Council as to whether or not the right-of-way  
9 should be abandoned. The ultimate decision on this matter is  
10 determined by Montgomery County Council.

11           The record will be maintained by Michael Cassedy,  
12 who is with the Department of Transportation until the  
13 closure of the record at which time the record will be  
14 transmitted to me for consideration and recommendation.

15           It is my intention to hold the hearing record open  
16 for two weeks until 5:00 p.m. on September 29th, 2008, so  
17 that those who could not be with us today, and those who  
18 would like to respond to anything they hear today, or who  
19 don't have the opportunity to fully provide their comments  
20 today, can submit their comments in writing on the record.

21           Those comments that are in writing will be  
22 considered fully, just as any testimony given here today will  
23 be fully considered.

24           Written comments should be sent to Michael Cassedy  
25 with the Montgomery County as I mentioned Department of

1 Transportation. Mr. Cassedy will maintain the official  
2 hearing record through the close of the comment period, and  
3 as I indicated, he will then transmit it to me.

4           Comments should be sent to Mr. Cassedy's attention  
5 at the following. If by mail to 101 Monroe Street, Tenth  
6 Floor, Rockville, Maryland 20850, to the attention of  
7 Mr. Cassedy, and the comments should reference that they  
8 pertain to the proposed abandonment under consideration in  
9 abandonment number 716.

10           If they are sent by email, they should go to  
11 Michael.Cassedy at MontgomeryCountyMD.gov, or they can be  
12 sent by facsimile to 240-777-7259, and again as indicated,  
13 they should reference abandonment number 716. If anybody  
14 needs, I will repeat these again at the end of the hearing.

15           I don't see a lot of people here to testify today,  
16 so I'm not going to, unless I feel it necessary, I will not  
17 impose time limits. Generally, for individuals there's a  
18 three-minute time limit. For homeowners associations and  
19 civic groups, organizational speakers it's a five-minute time  
20 limit. But I think we have handful of people here to speak,  
21 so hopefully we won't need the time limits.

22           With that, what we're going to do is, Mr. Cassedy  
23 will speak first. He will speak about what the Department  
24 has done in terms of getting to the point that we're at today  
25 for this hearing. Then the applicant will have an

1 opportunity to present the rationale for the applicant's  
2 position. And then I will be calling speakers from the list  
3 of speakers to provide their comments. Okay. Mr. Cassedy.

4 MR. CASSEY: Thank you. I'm Mike Cassedy of the  
5 Department of Transportation. My office is charged with  
6 administering the abandonment process. As mentioned, this  
7 public hearing is being held to consider the County's  
8 abandoning a portion of Kensington Boulevard in the  
9 Kensington View Subdivision in Kensington.

10 The applicant is 11250 Veirs Mill Road, LLC. The  
11 aerial photo to my left, which is Exhibit 5, shows the  
12 subject right-of-way and the vicinity including the  
13 applicant's car dealership.

14 In fulfillment of the conditions of section 49-62  
15 of the Montgomery County Code, my office requested comments  
16 from the public, appropriate governmental agencies, and  
17 public utility companies that might be affected by the  
18 proposed abandonment. I will now read into the record the  
19 evidence required by County Code.

20 Exhibit 1 is a letter dated April 25th, 2008, from  
21 Shulman, Rogers, Gandal, Pordy & Ecker on behalf of its  
22 client 11250 Veirs Mill Road, LLC, the applicant, requesting  
23 this abandonment.

24 Exhibit 2 is Executive Order 174-08 authorizing the  
25 public hearing.

1 Exhibit 3 is a list of the civic associations and  
2 citizens that were sent notices of the public hearing.

3 Exhibit 4 is proof of newspaper advertising in the  
4 Montgomery County Sentinel May 29 and June 5th that may be  
5 in, or revise the dates.

6 Exhibit 5 is the aerial photo to my left that I  
7 just referenced.

8 Exhibit number 6 is plat number 303 which is the  
9 plat showing the right-of-way dedication.

10 Exhibit 7 are photographs of the signs posted on  
11 August 12, and a work order indicating that they were so  
12 posted.

13 Exhibit 8 from WSSC, an email dated July 30, 2008,  
14 approval conditioned upon being granted easements for its  
15 facilities.

16 Exhibit 9 from Washington Gas, an email and letter  
17 dated July 25th expressing objection which can be lifted by  
18 the applicant granting an easement.

19 Exhibit number 10 is a letter dated September 12,  
20 2008, from Montgomery County Planning Board recommending  
21 denial.

22 Exhibit 11 is an email dated August 5th from  
23 Department of Fire and Rescue Services expressing no  
24 objection.

25 Exhibit 12 is a letter dated April 25th, 2001, from

1 Shulman Rogers with deeds for adjoining properties.

2 Exhibit 13 is a letter dated August 1, 2008, from  
3 Shulman Rogers with a grade establishment plan by MHG.

4 Exhibit 14 is a letter dated August 26, 2008, from  
5 Shulman Rogers with a tital abstract for parcel P282/N226.

6 Exhibit 15 is Department of Transportation  
7 memorandum dated today, September 15, 2008, for a denial  
8 recommended due to the right-of-way being referenced in the  
9 Kensington/Wheaton master plan. However, if the abandonment  
10 is recommended for approval by the hearing officer, it must  
11 be conditioned upon the applicant granting easements for  
12 County storm drains and public utilities, if any, and  
13 recording a new record plat incorporating the former right-  
14 of-way.

15 Exhibit 16A is an email dated July 8, 2008, from  
16 Elizabeth Quinn, president of the Kensington View Civic  
17 Association opposing the abandonment.

18 Exhibit (16B) is a letter with aerial photo of the  
19 right-of-way and vicinity dated May 5, 2008, from Virginia  
20 Sheard, board member of Kensington View Civic Association  
21 opposing the abandonment.

22 Number 17 are letters and emails, 17 as of today,  
23 from area residents opposing the abandonment.

24 Missing are comments from the Police Department,  
25 which I will endeavor to get prior to the close of the

1 record. If the hearing officer has any questions for me  
2 regarding the abandonment process, I'd be happy to answer  
3 them, and if she has any questions for the applicant,  
4 representatives are here and can answer those.

5 MS. SCHWARTZ JONES: I just have one question,  
6 Mr. Cassedy.

7 MR. CASSEDY: Yes.

8 MS. SCHWARTZ JONES: The dates of advertisement, is  
9 that what you need to clarify?

10 MR. CASSEDY: Yes, I don't think that's right. I  
11 think that that's, you know, I take this from a previous  
12 case, and the dates of our advertisement would be much closer  
13 to now.

14 MS. SCHWARTZ JONES: Do you have that in your  
15 record with you?

16 MR. CASSEDY: I may.

17 MS. SCHWARTZ JONES: Okay. Would you mind then if  
18 we come back to that.

19 MR. CASSEDY: Let me do that right now.

20 MS. SCHWARTZ JONES: Let's do this, if you don't  
21 mind.

22 MR. CASSEDY: Okay.

23 MS. SCHWARTZ JONES: What I'd like to do is, I'd  
24 like you to look through and find the current dates of  
25 advertisement so we can get it stated at this public hearing,

1 before the public hearing adjourns, and so we're going to  
2 receive here the dates of advertisement.

3           While you are looking for that, if you don't mind,  
4 I will go ahead and begin with the -- the first speaker I  
5 have signed up is Chris Lindsay with 11250. I guess it's the  
6 owner's representative. I don't know who that would be, do  
7 you? I'm sorry. I know Mr. Freishtat, who Mr. Freishtat is.  
8 So you're going to go ahead. Do you want Mr. Freishtat to  
9 speak for you?

10           MR. FREISHTAT: I'm going to ask him questions.

11           MS. SCHWARTZ JONES: You're going to do it through  
12 question and answer?

13           MR. FREISHTAT: If you don't mind.

14           MS. SCHWARTZ JONES: Okay. Let me just, if you  
15 don't mind, before we --

16           MR. FREISHTAT: Sure.

17           MS. SCHWARTZ JONES: -- just to be clear for those  
18 of you who perhaps don't attend these public hearings  
19 regularly, this is a public commentary, and it's not an  
20 adjudicatory hearing, a trial type hearing. I think that,  
21 you know, I certainly have no problems with Mr. Freishtat  
22 asking his client questions in order to bring the information  
23 out and make sure that it's all there in the record. But  
24 there would not be an opportunity provided for cross-  
25 examination. It's not that type of a hearing. That's number

1 one.

2           Number two, that with respect to questions, you all  
3 may find as you go along that you have questions about the  
4 proposed abandonment.

5           This is not a question and answer session, so what  
6 will happen is, when we close the public hearing portion of  
7 this afternoon's proceeding, you are free to ask the  
8 applicant, Mr. Cassidy, whatever questions you might want to  
9 ask him. They can, you know, work with you to provide you  
10 the information you need at that time. With that, why don't  
11 you go ahead, Mr. Freishtat.

12           MR. FREISHTAT: First of all, I'd like to submit  
13 for the record a hearing statement.

14           MS. SCHWARTZ JONES: Thank you.

15           BY MR. FREISHTAT:

16           Q     Mr. Lindsay, give your name, your address, and your  
17 occupation?

18           A     My name is Chris Lindsay. I am the, one of the  
19 owners of the Lindsay Ford dealership adjacent to this  
20 property on Veirs Mill Road.

21           Q     And I believe you have a statement to make for the  
22 hearing examiner. Please proceed.

23           A     I don't know how much I want to go into this, but I  
24 just wanted to kind of give a history of Lindsay, and I will  
25 be very quick. But my grandfather started Lindsay Cadillac

1 in 1949. We have nine different franchises at five different  
2 locations.

3 My grandfather started the Alexandria location in  
4 1949. It was then then called Edgar's Oldsmobile Cadillac,  
5 and he came from Capital Cadillac on 22nd and M Street where  
6 Blackie's House of Beef is.

7 My father joined the company in 1963, and at my  
8 grandfather's death in 1978 my father took over as chairman.  
9 And he is still chairman today. He works out of the Cadillac  
10 dealership.

11 We have, our Cadillac dealership, and I want to  
12 keep bringing that one up because it is in a residential  
13 neighborhood in Alexandria, Virginia. It's in the North View  
14 Citizens Association. And we get along great with our North  
15 View Citizens Association.

16 We pride ourselves particularly, at all of our  
17 dealerships, on our landscaping and our cleanliness of the  
18 dealerships. We are devoted and imbedded in our communities.  
19 We are very charitable, and it seems when any local citizens  
20 group has some kind of fund raiser, the car dealerships are  
21 the first groups of people they call. And we're happy to  
22 oblige to those requests.

23 As I said, we are right in the middle of North View  
24 Citizens Association. There are pictures of the Cadillac  
25 dealership on our website. It's eLindsay.com. I don't know

1 if I want to say that on public record. I'm not soliciting  
2 business, but we are, the pictures are available at  
3 eLindsay.com.

4 MS. SCHWARTZ JONES: I think this is contextual in  
5 terms of where you are located, so I think that's it.

6 MR. LINDSAY: Okay. A little over three years ago  
7 we purchased the Hill and Sanders dealership, which is the  
8 oldest car dealership in Washington, D.C. Since that time,  
9 we have spent over a quarter million dollars in improvements  
10 to that dealership, and it needs more. It was an old  
11 franchise, and it just, it was run down.

12 We've put fresh paint, fresh asphalt. We've put a  
13 new used car facility on there. Those are some of the major  
14 expenses. But again, the improvements never end. We want  
15 this dealership to be attractive. We want it to be a stand  
16 out in the community. We want to be the pride of the  
17 community. And we spend, again, we spend a lot of money in  
18 landscaping to do these things.

19 We bought three houses that are behind the  
20 dealership at the same time we purchased the Ford dealership.  
21 And I will tell you that the -- and they are at 11225, 223,  
22 and 227 East Avenue. They are in terrible condition. They  
23 were in terrible condition the day we bought them. And to be  
24 quite honestly, I think they were in terrible condition the  
25 day they were built.

1 MS. SCHWARTZ JONES: Are you showing lots 11, 12  
2 and 13.

3 MR. FREISHTAT: Right.

4 MR. LINDSAY: Yes. They are an eyesore to the  
5 community. I don't question that at all. We have applied  
6 for a storage facility for our new cars. Currently, we park  
7 200 new vehicles over at the shopping center across the  
8 street.

9 So we have applied to rezone those lots, and then  
10 we have applied for the abandonment of this road so that we  
11 can create this storage facility. And when I say storage  
12 facility, this -- people sometimes, you know, they just think  
13 of a storage lot, they think of this open parking lot.  
14 That's not the case with the Lindsay. We landscape these  
15 properties.

16 We've met with the community. We talked about  
17 extensive camouflaging, Leland cypresses, you know, a  
18 beautiful fence, benches where the community members could  
19 sit under the trees. And then a sidewalk that is not there  
20 now. And we have offered all of that.

21 We met with the neighbors a little over a year ago  
22 at the, is it Crossways Community Center. We showed them our  
23 plans. We showed them our intent. I was very open. I said,  
24 if you have any problems with our dealership, please call me.  
25 I have not heard back from them. They've never actually

1 contacted me. But we are open to dialogue, certainly. I  
2 think that's it for me.

3 MR. FREISHTAT: Okay. Thank you.

4 MS. SCHWARTZ JONES: Thank you, Mr. Lindsay.

5 MR. FREISHTAT: The next person will be Mr. Crum.  
6 Give your name, address, and occupation.

7 MR. CRUM: Good afternoon. My name is Steve Crum  
8 with offices at 9220 Wightman Road, in Montgomery Village,  
9 Maryland 20886.

10 BY MR. FREISHTAT:

11 Q Are you a professional civil engineer in the State  
12 of Maryland?

13 A Yes, I am.

14 Q Licensed?

15 A Yes.

16 Q Have you qualified as an expert in civil  
17 engineering before any jurisdiction in this County or State?

18 A I've qualified as an expert in civil engineering  
19 before the zoning hearing examiner of Montgomery County, the  
20 Board of Appeals in Montgomery County, the Board of Appeals  
21 for the City of Rockville, the Planning Commission of the  
22 City of Rockville, Board of Appeals of Prince George's  
23 County, the Hearing Examiner of Prince George's County, the  
24 District Council in Prince George's County.

25 Q Okay. You're prepared some exhibits for this

1 hearing. I think one or two of them are in the record  
2 already. Could you just, in a narrative, explain to the  
3 hearing examiner what you prepared and what your conclusions  
4 are, particularly with respect to the proposed street that  
5 would be built, and this area that's to be abandoned, that's  
6 requested to be abandoned.

7 A We looked at a standard civil engineering drawing.  
8 It's called a grade establishment plan, that shows the  
9 existing grades and the proposed grades for the vertical  
10 alignment, or the horizontal alignment of a street. And  
11 we've looked at that.

12 The first exhibit we prepared followed the existing  
13 Kensington Boulevard alignment, horizontally, and applying  
14 the County's criteria for how steep a roadway can be, we  
15 found that Kensington Boulevard cannot be constructed within  
16 the right-of-way following the existing right-of-way  
17 alignment.

18 We also note that the master plan and the sectional  
19 map, sectional -- the Wheaton sector plan, shows an alignment  
20 differently than the current alignment for Kensington  
21 Boulevard whereby it curves from the northern end, and then  
22 rejoins East Avenue, and doesn't follow the Kensington  
23 Boulevard horizontal line that we've also prepared.

24 MS. SCHWARTZ JONES: I'm sorry. Can I jump in and  
25 ask you a question?

1 MR. CRUM: Sure.

2 MS. SCHWARTZ JONES: When you say, the present  
3 line, are you talking about what is dedicated as the right-  
4 of-way, that the master plan and the dedicated right-of-way  
5 don't correspond?

6 MR. CRUM: That's correct.

7 MR. FREISHTAT: Steve, I think, I believe you have  
8 some exhibits.

9 MR. CRUM: Yes.

10 MR. FREISHTAT: I think that would make it easier.  
11 I'm a visual guy also. I need to see it.

12 MS. SCHWARTZ JONES: I just wanted to make sure I  
13 understood what we were talking about, that I was going to  
14 ask you to provide the sector plan that you're talking about,  
15 but just to understand.

16 MR. CRUM: This is the first --

17 MS. SCHWARTZ JONES: Let's hold it up so everybody  
18 can see it. Yes, now everybody can look at it.

19 MR. CRUM: This is the grade establishment plan  
20 where we follow the existing horizontal alignment of  
21 Kensington Boulevard where it's currently platted. And these  
22 are the grades. And in order to connect the southern end of  
23 Kensington Boulevard with the northern end, it would require  
24 grades in excess of 19 percent.

25 And faintly sketched in here are the acceptable

1 roadway grades, the primary, which the master plan calls for  
2 any boulevard to be a primary residential street, we end up  
3 14 feet below Veirs Mill Road. So we've determined that  
4 following the existing alignment, the street, a primary  
5 residential street could not be constructed in this right-of-  
6 way, with this horizontal alignment. And then in the  
7 Kensington --

8 MS. SCHWARTZ JONES: Even with cutting it, it can't  
9 be?

10 MR. CRUM: The maximum acceptable grade in the  
11 prime area is 8 percent, and even we run up at 8 percent, we  
12 won't, we don't get to 14 feet either. We don't rise fast  
13 enough. We'd have to rise over 19 percent to get to Veirs  
14 Mill where the elevation difference is over 25 feet, between  
15 Veirs Mill and where we would tie back in at East Avenue.

16 The Kensington sector plan and the Wheaton sector  
17 plan envisions that we would depart from the right-of-way,  
18 and we would apply a horizontal alignment that brings  
19 Kensington Boulevard and joins it to East Avenue.

20 MS. SCHWARTZ JONES: I'm trying to figure out where  
21 you are over there.

22 MR. CRUM: Okay. This is Georgia. This is Veirs  
23 Mill, and we're kind of off right here. The Planning  
24 Commission's sector plan says that we're going to take Veirs  
25 Mill, we're going to follow Kensington, we're going to dead

1 end Kensington, and we're going to curve the street and then  
2 align it with East Avenue.

3 MS. SCHWARTZ JONES: So the portion, and that is  
4 the portion --

5 MR. CRUM: This is the portion that is the  
6 subject --

7 MS. SCHWARTZ JONES: Is the subject --

8 MR. CRUM: -- for abandonment.

9 MS. SCHWARTZ JONES: -- that, for what you're  
10 seeking abandonment?

11 MR. CRUM: That's correct. So that's the alignment  
12 that planning staff has put in their sector plan saying,  
13 okay, we're going to dead end in Kensington here. We're  
14 going to curve this street which doesn't follow the right-of-  
15 way. It actually would require acquisition of the right-of-  
16 way in order to make that work.

17 So then we took that --

18 MR. CASSEDY: Steve --

19 MR. CRUM: Yes.

20 MR. FREISHTAT: It might be helpful if we mark  
21 those as exhibits --

22 MR. CASSEDY: That's what I want to do right now.

23 MR. FREISHTAT: -- so you could have them in the  
24 record.

25 MS. SCHWARTZ JONES: Okay, are we -- it might be

1 helpful to have them inside, instead of running with the  
2 written record. Do we have those in eight and a half by 11?

3 MR. CASSEDY: I know we have --

4 MR. FREISHTAT: You have that one. We can give you  
5 copies of the others.

6 MS. SCHWARTZ JONES: Why don't we do that. Okay.  
7 So what we have now is what number exhibit are we up to, just  
8 for the record.

9 MR. CASSEDY: This one, if I was going to label it,  
10 but we have it over here, would be 21.

11 MS. SCHWARTZ JONES: Okay. So that is Exhibit 21.  
12 And then the sector plan extract --

13 MR. CASSEDY: Would be 22.

14 MS. SCHWARTZ JONES: -- would be 22.

15 MR. FREISHTAT: Proceed. And this would be 23, I  
16 believe, right.

17 MS. SCHWARTZ JONES: So what you're showing us is  
18 the --

19 MR. FREISHTAT: Proposed 23.

20 MR. CRUM: This is --

21 MS. SCHWARTZ JONES: Is this the grade plan?

22 MR. CRUM: This is a grade establishment also.

23 MS. SCHWARTZ JONES: Prepared by whom?

24 MR. CRUM: Prepared by MHG, and we have applied the  
25 sector plan alignment, horizontal alignment to Kensington

1 Boulevard. And we are coming from Veirs Mill Road. And we  
2 apply the County's criteria for a primary residential street  
3 and we find that the street does not rejoin the existing  
4 vertical alignment of East Avenue. It's really almost to the  
5 McDonalds.

6 MS. SCHWARTZ JONES: I have a question for you,  
7 that might involve, if the entire road, then, up here were  
8 reconstructed with it to meet up better, would that address  
9 the problem?

10 MR. CRUM: We've applied the County's vertical  
11 alignment criteria as the tangents which are straight  
12 sections, and how steep they can be. And there's also  
13 vertical curves that have to meet criteria. And when we  
14 apply the vertical curves, you get curves that are long  
15 enough that the tangent section ends up not being very long.  
16 And it does, it's only 6 percent here, which is acceptable. 8  
17 percent is the maximum.

18 But by applying these vertical curves which are the  
19 site distance, the stopping distance is, and that's here,  
20 again, we end up with this street not rejoining the existing  
21 road. I mean, these dashed lines are the existing grades  
22 along the south line. So you can see there's a substantial  
23 amount of fill in this section of the roadway. In fact, we  
24 would, we've applied this vertical alignment and this  
25 horizontal alignment. We would effectively block access to

1 these first three houses, and there would be either a  
2 retaining wall holding the street up or it would be a fill  
3 slope that would, you wouldn't be able to access this new  
4 roadway from these houses, because they're too low.

5 MS. SCHWARTZ JONES: Where are they accessing now?

6 MR. CRUM: They access on East Avenue. And this is  
7 the grade of East Avenue currently, in order to make this  
8 connection between Veirs Mill East, as it's referred in the  
9 sector plan, you have to bring in a substantial amount of  
10 fill, and that fill translates into either a retaining wall,  
11 a right-of-way wall, or a fill slope. And this, because of  
12 the strengths of the right-of-way, you're probably not going  
13 to maintain well, but you wouldn't be able to get into this  
14 house's driveway, or this house's driveway, or this house's  
15 driveway without raising their driveways which means,  
16 technically, that we're blocking access to those two things.

17 MR. FREISHTAT: Anything else to add to that?

18 MR. CRUM: Let me see. I guess the only other  
19 thing is if there are utilities in this right-of-way, they  
20 can be accommodated through in the East Avenue location. And  
21 so if there were a requirement for pedestrian access to be  
22 within this right-of-way, it could be accommodating in an  
23 easement as well. Pedestrians can traverse much steeper  
24 grades than vehicles.

25 MS. SCHWARTZ JONES: And is that something that is

1 happening now? I mean, is this sort of used as a pedestrian  
2 walkway?

3 MR. CRUM: Currently, there's a driveway that  
4 serves 11300 Veirs Mill Road, which is an office building.  
5 It also has access to Veirs Mill Road, so it's kind of a back  
6 entrance to that office building.

7 MR. FREISHTAT: This office building here, this is  
8 an old aerial photo, apparently, this area to the southeast  
9 is the parking lot for this office building, and there is a  
10 little driveway that comes down that was put in by the owner  
11 of this dental/medical building here.

12 MS. SCHWARTZ JONES: And it comes down to where?  
13 I'm sorry.

14 MR. FREISHTAT: You can pull in off of Veirs Mill  
15 Road into the parking lot, and then go down the little  
16 driveway, which is very steep, the driveway down here to East  
17 Avenue.

18 MS. SCHWARTZ JONES: So there's vehicular access  
19 that right now is going on that right-of-way?

20 MR. FREISHTAT: Yes. Yes.

21 MS. SCHWARTZ JONES: It's being used, but it's only  
22 built to the standards of a driveway versus to the standards  
23 of --

24 MR. CRUM: It's not a public --

25 MR. FREISHTAT: Very steep slope right here at

1 Veirs Mill Road, going down maybe 20 feet. You can see it on  
2 the topo. This is where the big, big drop is. And this  
3 parking area here is much lower than the dealership or Veirs  
4 Mill Road.

5 MR. CRUM: This is an attachment to the Planning  
6 Commission staff report and it's a more current aerial  
7 photograph.

8 MS. SCHWARTZ JONES: Okay. Now, the Planning Board  
9 staff report is, we have that in the record?

10 MR. CASSEDY: We do.

11 MR. FREISHTAT: Yes.

12 MS. SCHWARTZ JONES: Okay. Thank you. Is that it?

13 MR. FREISHTAT: Just one thing more I want add.  
14 There is in the sector plan a provision that not only showed  
15 a straightening where Kensington Boulevard is, but also a  
16 hiker path. We would proffer to the Executive's office that  
17 if this road were abandoned, as part of our development of  
18 our property, we would put in that hiker path as part of our  
19 obligation. I know Mr. Leggett's eager to increase  
20 pedestrian movements, and we would pay for that. And that's  
21 our case.

22 MS. SCHWARTZ JONES: Okay. Thank you. Let's see,  
23 Anne Marie -- Anne Marie is with you, right?

24 MR. FREISHTAT: Yes.

25 MS. SCHWARTZ JONES: Okay. You have nothing to

1 say, right?

2 MS. VASSALLO: I do not.

3 MR. FREISHTAT: This time. Next time she will.

4 MS. SCHWARTZ JONES: Next time. Okay. Virginia  
5 Sheard. Go ahead.

6 MS. SHEARD: I have a statement, but may I respond  
7 to a couple points made by the applicant, before I make my  
8 statement?

9 MS. SCHWARTZ JONES: You can. This is your time to  
10 speak.

11 MS. SHEARD: Okay. My name is Virginia Sheard and  
12 I live in the Kensington View community, and I'm a member of  
13 the association.

14 MS. SCHWARTZ JONES: Are you speaking on behalf of  
15 the Association?

16 MS. SHEARD: On behalf of the association, yes.

17 MS. SCHWARTZ JONES: Okay. Thank you.

18 MS. SHEARD: They have just referred to the office  
19 building on Veirs Mill Road. This is the office building on  
20 Veirs Mill Road. This is the area of the abandonment they  
21 were talking about. It doesn't go up to Veirs Mill Road. It  
22 goes from the end of this lot, which is an R-60 lot, from  
23 here down to East Avenue.

24 MS. SCHWARTZ JONES: I understood that to be the  
25 case.

1 MS. SHEARD: The traffic, cars do not enter from  
2 this side of the building. They come from this side of the  
3 building into a parking lot here, and most of the vehicular  
4 traffic associated on East Avenue in our neighborhood comes  
5 from this side, and then down here into the neighborhood.  
6 I'm not sure if there is an actual curb cut or, I think the  
7 grade at this point is too steep to come in on this side.

8 MR. FREISHTAT: Correct.

9 MS. SCHWARTZ JONES: That's what he said. That is  
10 what he said.

11 MS. SHEARD: The other thing to note on this  
12 drawing is, this is outlot A, which is what we discussed.  
13 This is the Barry's lot here. The right-of-way that is being  
14 requested would cut off, would deny them street access for  
15 this lot, and also take half of the existing occupied  
16 residential lot. And this is her driveway.

17 MS. SCHWARTZ JONES: Well, half of the frontage.

18 MS. SHEARD: Street frontage, yes. Half of the  
19 street frontage.

20 MS. SCHWARTZ JONES: Okay.

21 MS. SHEARD: I think it's 65 plus feet, and it  
22 would take about 35 feet of her street frontage. And this is  
23 her driveway. So they've denied her access to her driveway.  
24 And that is an occupied residence.

25 MS. SCHWARTZ JONES: Okay. Thank you.

1 MS. SHEARD: That's just for reference.

2 MS. SCHWARTZ JONES: And just so that I'm clear  
3 when I go back and read this, what we're talking about here  
4 is that the driveway on lot 11, block B, it fronts on the  
5 area being requested.

6 MS. SHEARD: Right. It's near the lot line.

7 MS. SCHWARTZ JONES: Okay. Thank you. And that  
8 would be on Exhibit 5. That's for my purposes.

9 MS. SHEARD: My name is Virginia Sheard and I live  
10 at 3303 Geiger Avenue in Kensington View. The community of  
11 Kensington View strongly opposes the proposed abandonment of  
12 a portion of Kensington Boulevard located on the north end of  
13 our neighborhood.

14 A focus group of residents have met with the  
15 applicant and represented this several times, researched the  
16 technical issues, and discussed the impact of this request on  
17 our neighborhood. We have sought legal advice from our  
18 attorney, David Brown of Knopf and Brown, to understand the  
19 applicable parts of the County Code and the technical issues,  
20 particularly regarding outlot A, which is a very contentious  
21 part of this.

22 Permitting the abandonment would adversely affect  
23 the character, integrity, and residential desirability of  
24 Kensington View for the benefit of one commercial activity.  
25 And our opposition is based on the following points.

1           The subject roadway is designated a master plan  
2 connection for future use as a secondary road. It may be  
3 necessary to exercise this option at some future time to  
4 relieve the congestion at the intersection of Veirs Mill Road  
5 and University Boulevard, which is currently rated as a  
6 failing intersection.

7           A road that allows some residential traffic to  
8 bypass that intersection could relieve the pressure on the  
9 intersection. We do not want to purposely direct traffic  
10 into our streets, but if the County determines the need, we  
11 will actively participate in discussions to ensure that  
12 adequate buffering and landscaping is installed to minimize  
13 the adverse impact on the neighborhood.

14           When the County wants to proceed with this option,  
15 abandonment now would require that the County buy back the  
16 right-of-way at great public cost, as happened with the  
17 Maiden Lane in Bethesda.

18           The Council PHED Committee discussed an issue  
19 similar to this during the Twinbrook sector plan using a  
20 street. The future use of an unbuilt right-of-way is  
21 similar, of this unbuilt right-of-way is similar to our  
22 construction. The analysis and the statement through the  
23 PHED Committee by Glen Moreland is attached, and that's in  
24 our notebook.

25           MS. SCHWARTZ JONES: This is a notebook that you

1 have delivered for our consideration?

2 MR. CASSEDY: Yes.

3 MS. SHEARD: Yes.

4 MS. SCHWARTZ JONES: Okay. Very good.

5 MS. SHEARD: We didn't give the whole statement  
6 from Glen, just the highlighted part --

7 MS. SCHWARTZ JONES: Okay.

8 MS. SHEARD: -- where it discussed how the County  
9 would go about putting a road in an existing neighborhood in  
10 the future, and the time frame that it was talking about.

11 As stakeholders and participants in the revisioning  
12 process for the Wheaton sector plan, which is just beginning,  
13 we believe that all publically owned properties, including  
14 buildings, open spaces, and roadways, should be discussed in  
15 that forum.

16 One requirement for approval of an abandonment  
17 request is the determination that there is no public use for  
18 the subject area. AB217 should be denied without a full  
19 public discussion of current and potential uses, and linkages  
20 can be evaluated and future options for this right-of-way  
21 determined in the larger context of Wheaton's vision for the  
22 future. It cannot be reasonably made at this time.

23 Part of the emphasis in Wheaton, because we have so  
24 many pedestrians from other countries, pedestrian safety is a  
25 big issue. And we are concentrating a lot on the linkages of

1 how people are going to get across our state roads and  
2 between the new amenities and services that will be in the  
3 redeveloped part of Wheaton. It won't happen in five years,  
4 but 10-15 years down the road, as the sector plan revisions  
5 the redevelopment into mixed use, mid-rise, there will be a  
6 need for better pedestrian access.

7           The request for abandonment proceeding is directly  
8 related to a request for another special exception for  
9 parking by the dealership that will be deeply imbedded in the  
10 residential area.

11           A commercial parking lot will have an advertise  
12 impact on the character of the immediate residential area,  
13 and the abandonment is allowed when it results in a vinyl  
14 fence, commercially lighted parking lot, immediately adjacent  
15 to and across East Avenue from an occupied home.

16           This would adversely affect the quality of life for  
17 our neighbors and erode the integrity of our residential  
18 community. Kensington View has already stated strong  
19 opposition to the petition for the special exception.

20           Lot 13 on Kensington Boulevard is an owner occupied  
21 home, and the Barrys also own the adjacent outlot that has  
22 been the focus of discussion. The applicant contends that  
23 this is not a buildable lot, and therefore it has no value or  
24 need for street frontage. Our research shows that, in fact,  
25 it is a buildable lot, and that the right-of-way must be

1 maintained as a public roadway to provide the owner with the  
2 option of developing it with the appropriate street frontage  
3 and access. Judy Higgins will discuss this in greater  
4 detail.

5           The outlot, as an alternative the outlot can also  
6 be combined with lot 11 as a redevelopment option. If the  
7 right-of-way is abandoned, the outlot become land locked,  
8 thereby denying the owner the right to develop their lot.  
9 Lot 11 would also lose half its street frontage, and access  
10 to its existing right-of-way, the driveway, if the right-of-  
11 way is abandoned. And County policy requires street frontage  
12 for buildable lots and does not allow such lots to be land  
13 locked.

14           I would also like to make a couple of comments on  
15 the applicant's statement. Part of his statement discusses  
16 the word embedded, that embedded and surrounded. But he uses  
17 it in terms of the total dealership property. We're only  
18 talking about the right-of-way and the immediate area. The  
19 residential lots where the proposed parking lot would be are  
20 embedded in the residential area part of Kensington  
21 Boulevard.

22           We realize that Veirs Mill Road is not part of our  
23 residential neighborhood, and obviously is not imbedded in  
24 our residential neighborhood. Only the subject right-of-way  
25 and the associated petition for special exception are part of

1 the issues here.

2 We also disagree with Mr. Crum's statements about  
3 the grade establishment, because the Department of  
4 Transportation and the transportation planners at Park and  
5 Planning have reviewed the statement and reviewed the grade  
6 drawings and have come to the conclusion that it is, in fact,  
7 a feasible way -- there is, in fact, a feasible way to build,  
8 to construct a road should the County need it in the future.

9 So we are not experts in civil engineering or  
10 anything else, so we tend to rely on the Department of  
11 Transportation's review of these matters, as they design the  
12 roads.

13 And on page 11, the applicant states that it's  
14 inefficient policy to allow a dedicated right-of-way language  
15 in a state of uncertainty, and that the long dormant state of  
16 this particular parcel is evidence that there is no current  
17 or near future public use.

18 We're not talking about near future public use of  
19 this space. A right-of-way needs to be maintained for any  
20 kind of use, whether near or far. A sector plan covers a 20-  
21 year time frame. It's a long, term planning document, and we  
22 believe that the right-of-way must be maintained in public  
23 use for the option to be exercised, if necessary, at some  
24 future time, regardless of the time frame. I believe that's  
25 all of my comments at the moment. Thank you.

1 MS. SCHWARTZ JONES: Thank you. We'll go to the  
2 next speaker. Mike, did DOT go out and, have they gone out  
3 and looked at who is driving on that portion?

4 MR. CASSEDY: I don't know.

5 MS. HIGGINS: I can answer that.

6 MS. SCHWARTZ JONES: Are you Judy Higgins?

7 MS. HIGGINS: Yes.

8 MS. SCHWARTZ JONES: Well then you get the  
9 opportunity to do that now.

10 MS. HIGGINS: Actually, Renew Montgomery is  
11 currently working over there, so there's been a whole lot of  
12 people looking at that.

13 MS. SCHWARTZ JONES: Who has been?

14 MS. HIGGINS: Renew Montgomery, which is -- and  
15 they actually have done a lot of surveying for curbs and  
16 gutters, et cetera. So there's been a whole lot of --

17 MS. SCHWARTZ JONES: Has a traffic study been done  
18 over there to look at who is actually using that?

19 MS. HIGGINS: I don't think so, that we know of  
20 yet.

21 MS. SCHWARTZ JONES: Okay.

22 MS. HIGGINS: But that, I believe, is in the cards.  
23 I'm sorry.

24 MS. SCHWARTZ JONES: Okay, so why don't you go  
25 ahead and present your public statement now. Thank you.

1 MS. HIGGINS: Okay. My name is Judy Higgins, and  
2 I'm just going to read it, if you don't mind?

3 MS. SCHWARTZ JONES: That's fine.

4 MS. HIGGINS: I, too, live in Kensington View, and  
5 oppose the proposed abandonment. I will primarily be  
6 addressing item 2, page 3 of our statement which has to do  
7 with outlot A, the land locked parcel.

8 Over the year, and this is my emotional statement.  
9 Over the years, the County has allowed a proliferation of  
10 special exceptions, spot zoning, and other ad hoc land use  
11 decisions in Kensington View. The proposed right-of-way  
12 abandonment would further contribute to this growing erosion  
13 of the oldest residential community in the Wheaton area, a  
14 neighborhood under siege.

15 Our community asked Knopf and Brown, our  
16 longstanding counsel on land use matters, to evaluate  
17 Mr. Freishtat's claims regarding outlot A, which is  
18 Mrs. Barry's lot, next to lot 11. I will read from an email  
19 sent to us from David Brown of Knopf and Brown.

20 Outlot A is a part of a seven lot resubdivision of  
21 part of block E, section 2, of the 1925 subdivision of  
22 Kensington View. The resubdivision took place in 1946, and  
23 can be found in subdivision plat 1740 of the land records of  
24 Montgomery County, which we have supplied you in our binder.

25 Outlot A was given an outlot designation at that

1 time, rather than the usual numerical number for a buildable  
2 lot, because it failed to meet the requirement in the 1941  
3 zoning code applicable at the time of subdivision for lots  
4 such as this one in the A residence zone that, no dwelling  
5 shall be built on a lot which does not abut upon and front  
6 directly on a public street or adequately rural right-of-way,  
7 section 3-C.6, 1941 ordinance.

8           The other development standard included a lot area  
9 requirement of 5,000 square feet, a front yard of 25 feet, a  
10 width of 50 feet at the front building line, side yards of  
11 seven feet, and a rear yard of 20 feet.

12           When these requirements are taken into account, in  
13 my opinion, there is a buildable area on outlot A adequate  
14 for a house, particularly for a house of the size and scale  
15 found in Montgomery County in 1946 when this lot was platted.

16           I conclude that but for the absence of a public  
17 street, outlot A would have been afforded the same status as  
18 the other lots in the resubdivision of part of block E.

19           Based on the foregoing, if outlot A were provided street  
20 frontage, it would become a buildable lot under the terms of  
21 59-B-5.1 of the current zoning ordinance which provides as  
22 pertinent there that, any lot that was recorded by a  
23 subdivision plat prior to June 1st, 1958, and that was a  
24 buildable lot under the law in effect immediately prior to  
25 June 1st, 1958, is a buildable lot for building a one family

1 dwelling, even though the lot may have less than the minimum  
2 area for any residential zone.

3           Outlot A was buildable under the pre-1958  
4 ordinance, i.e., the 1954 ordinance, which accompanied a  
5 rezoning of the property to R-60. This is because the 1954  
6 development standards did not materially affect the  
7 buildability of outlot A as compared to the 1941 standards.

8           Comparing the A and R-60 zone development  
9 standards, there was only a minor change in the side yard  
10 requirement, and platted lots wee between 5,000 and 6,000  
11 square feet of lot area, and between 50 and 60 feet of lot  
12 width were grandfathered.

13           Outlot A has over 100 feet of frontage on the  
14 unbuilt Kensington Boulevard, and either 6,015 square feet  
15 according to subdivision plat 1740, 5,293 square feet  
16 according to State tax records. This is also Mr. Brown's  
17 statement.

18           Hence, there is no justification of Mr. Freishtat's  
19 undocumented and superficial conclusion that the outlot lacks  
20 value in its own right, and that abandonment will merely  
21 deprive and unbuildable lot of access to a public road. The  
22 available evidence justifies as a conclusion that abandonment  
23 will simply ensure the demise of a lot that would otherwise  
24 have significant value as a buildable lot, contingent upon  
25 building a road on the right-of-way on which it fronts.

1 MS. SCHWARTZ JONES: Okay.

2 MS. HIGGINS: This is, all of this is located in  
3 our binder.

4 MS. SCHWARTZ JONES: Okay. Thank you.

5 MS. HIGGINS: And it is all very well documented.  
6 I just want to say that, am I able to speak to something that  
7 happened earlier? Is that okay?

8 MS. SCHWARTZ JONES: That you heard today?

9 MS. HIGGINS: Yes.

10 MS. SCHWARTZ JONES: Absolutely.

11 MS. HIGGINS: Okay. Well, Mr. Lindsay was saying  
12 how they do this wonderful job in Alexandria. But you will  
13 note when you go into our binder, and I understand what he's  
14 saying about it being an old dealership, but it's been over a  
15 year since we have met with him, and we have asked him to  
16 clean up the property.

17 They currently have two other special exceptions,  
18 one in our, directly across from these, a couple houses up,  
19 and they have show cause hearings, which you will hear all  
20 about. But my point is that, you know, they don't appear to  
21 be good stewards of the land. And we have, in fact, met with  
22 Mr. Lindsay a number of times, and it's not been done.

23 MS. SCHWARTZ JONES: Okay, but understanding, for  
24 everybody to understand here that what we're looking at is  
25 whether or not there is a present or future public use, or

1 the closure of the --

2 MS. HIGGINS: Right.

3 MS. SCHWARTZ JONES: -- or the abandonment is  
4 necessary --

5 MS. HIGGINS: Right.

6 MS. SCHWARTZ JONES: -- to protect the health,  
7 safety or welfare. That those are the standards that I'll be  
8 looking at.

9 MS. HIGGINS: Right. That's good.

10 MS. SCHWARTZ JONES: But I would encourage,  
11 obviously, that the neighborhood and the business --

12 MS. HIGGINS: I just needed to say that.

13 MS. SCHWARTZ JONES: -- just as the government  
14 needs to work with its community. The next speaker --

15 MS. HIGGINS: Betsy Barry --

16 MS. SCHWARTZ JONES: I'm sorry?

17 MS. HIGGINS: Betsy Barry is the heir of Mrs. Marie  
18 Barry, who owns outlot A and lot 11.

19 MS. SCHWARTZ JONES: Okay.

20 MS. HIGGINS: Mrs. Barry has sent a statement.  
21 She's 84. She wasn't able to make it.

22 MS. SCHWARTZ JONES: She sent a -- okay, did you  
23 give it to --

24 MS. HIGGINS: Yes, she'd ask that she read it.

25 MS. BARRY: She's asked that I read it.

1 MS. SCHWARTZ JONES: She's asked that you read it.

2 Are you --

3 MS. BARRY: I'm Elizabeth Barry.

4 MS. SCHWARTZ JONES: Well, let me go in order. Let  
5 me control this and I'll call the people to speak. Okay.

6 MS. HIGGINS: That's fine.

7 MS. SCHWARTZ JONES: Thank you. The next person  
8 signed up to speak is Stephanie Savolaine.

9 MS. SAVOLAINE: And I'm ready to speak, but Betsy  
10 could go first if that's okay with you.

11 MS. BARRY: Okay. That's fine. That's if you are  
12 willing to do that, that's fine. Okay. Go ahead, Ms. Barry.

13 MS. BARRY: Okay. I just have a little letter that  
14 she's drafted. To whom it may concern, my name is Marie  
15 Barry, and I'm 84 years old. I live in the house located at  
16 2901 Kensington Boulevard, and the adjacent lot A. I have  
17 lived there since 1947, a little over 61 years.

18 This was a beautiful neighborhood in which to raise  
19 my family, and I have been very happy here. I am strongly  
20 opposed to the abandonment of Kensington Boulevard. I am  
21 worried about the affect the abandonment will have on my  
22 buildable outlot A, and what this will mean to my heirs.

23 This abandonment will take away access to my  
24 buildable outlot, and will essentially land lock my property  
25 from having a house built on it. This will greatly affect me

1 and my heirs. It saddens me to look out my front door at the  
2 houses of my friends and neighbors on East Avenue who raised  
3 their children with mine, now in horrible disrepair. It is  
4 clear to me that Lindsay has no regard for those of us who  
5 call this neighborhood our home.

6 I know I am but a small voice in this community,  
7 but I feel that my heirs and I have the most to lose from  
8 this abandonment of Kensington Boulevard. So again, I want  
9 you to know that I strongly oppose the abandonment of  
10 Kensington Boulevard.

11 MS. SCHWARTZ JONES: Okay. If you can bring the  
12 original letter to us.

13 MS. BARRY: We have. And may I also say that my  
14 husband and I and our family also live on Kensington  
15 Boulevard four houses down, and have for 21 years.

16 MS. SCHWARTZ JONES: Okay. And you obviously are  
17 opposed to this as well?

18 MS. BARRY: Yes.

19 MS. SCHWARTZ JONES: Okay. Thank you. Okay.  
20 Ms. Savolaine.

21 MS. SAVOLAINE: Hi. My name is Stephanie  
22 Savolaine. I live at 11222 East Avenue, so I live across the  
23 street from the R-60 lot that Mr. Lindsay owns, at the end of  
24 East Avenue and caddy corner from this right-of-way that's  
25 under discussion today. Would you like me to point it out to

1 you on the map?

2 MS. SCHWARTZ JONES: I think I'm guessing it. This  
3 one or this one?

4 MS. SAVOLAINE: I'm further down at the other  
5 corner.

6 MR. FREISHTAT: To your left. To your left.

7 MS. SAVOLAINE: To your left.

8 MR. CASSEDY: There you go. Stop. Come back. On  
9 the staff note.

10 MR. FREISHTAT: There you go. That's it.

11 MS. SAVOLAINE: That's it.

12 MS. SCHWARTZ JONES: Okay. You're lot number 7?

13 MS. SAVOLAINE: Yes.

14 MS. SCHWARTZ JONES: Okay.

15 MS. SAVOLAINE: Okay. So I am also strongly  
16 opposed to the right-of-way abandonment, and today I'd like  
17 to speak on behalf of the Kensington View Civic Association  
18 about impacts on the residential character of the community  
19 related to this abandonment. And this is primarily item  
20 number three in the paper that we've given to you. And there  
21 is supporting documentation in there as well for everything  
22 that I am going to outline for you here.

23 MS. SCHWARTZ JONES: Okay. Fine.

24 MS. SAVOLAINE: The right-of-way abandonment, if  
25 granted, would lead to the destruction of three single family

1 residences to make way for a fenced and lighted commercial  
2 parking lot directly across the street from my home. And the  
3 applicant's past conduct indicates that this will  
4 conclusively undermine the fragile residential character and  
5 desirability of Kensington View, depress the value of nearby  
6 homes, and discourage our currently abundant civic pride.

7           Despite Mr. Lindsay's statements to the contrary,  
8 the applicant has shown a consistent and rampant disregard  
9 for the needs and concerns of community residents.

10           Specific examples include multiple citations for  
11 violating the terms of two existing special exception for  
12 parking, one on East Avenue and one on Kensington Boulevard,  
13 leading to an upcoming show cause hearing; multiple citations  
14 from the Department of Housing Code Enforcement for  
15 deplorable maintenance of three R-60 properties on East  
16 Avenue directly across the street from my home; unauthorized  
17 removal of an 80 to 100 year old stand of specimen trees, and  
18 related sediment control violations leading to stop work  
19 orders, citations and fines at those same properties in July  
20 of this year.

21           And by the way, the stop work orders were later  
22 violated. And widespread employee parking and commercial off  
23 loading of vehicles on East Avenue, which blocks ingress and  
24 egress for residents, and creates a frequent public safety  
25 hazard for those of us who live there.

1           We're growing tired of fighting so hard to maintain  
2 the residential integrity of our community. And we don't  
3 want to have to look at trash, commercial parking, and  
4 derelict houses across from our house on residential lots.

5           Mr. Lindsay's history of negligence leads us to  
6 believe that this road abandonment will just lead to more of  
7 the same, an enforcement nightmare for the County and a drain  
8 on the neighborhood for us.

9           Montgomery County has recognized the fragility of  
10 Kensington View due to commercial encroachment and  
11 speculation. A number of neighborhood streets are named in  
12 the current Wheaton CBD and vicinity sector plan as needing  
13 protection. And detailed references about that can be found  
14 in the binder.

15           Unfortunately, many homes and residential lots  
16 along the edges of our neighborhood are now being used for  
17 nonresidential purposes. The proposed right-of-way  
18 abandonment would further contribute to this growing erosion  
19 of the oldest residential community in the Wheaton area.

20           Finally, the commercial parking lot that would  
21 result from the proposed right-of-way abandonment will  
22 subvert the County's longer term policies on transit friendly  
23 living and smart growth. Why would we, as a County, agree to  
24 abandon a road and then put a storage lot for one car  
25 dealership in a thriving residential community just two

1 blocks from Metro, when people are now trying to hard to live  
2 closer to public transit.

3           My husband and I moved to Kensington View because  
4 we wanted to live within walking distance of Metro, and all  
5 the wonderful businesses and restaurants in Wheaton. Now  
6 that we have a child, we're even happier to be living within  
7 the heart of a vibrant urban village where we can walk to  
8 concerts and the library and a train hobby store and a cake  
9 decorating store that my little four year old likes to go to  
10 so much. Wheaton exposes our son to the world, and it's just  
11 a few steps from our front door.

12           The reason that families like my own chose to live  
13 in a place like Kensington View is that it also offers a  
14 residential community where our children can grown and thrive  
15 safely. Abandoning this road will lead to a commercial  
16 parking lot deeply imbedded within our neighborhood, and will  
17 discourage other families like my own from moving to  
18 Kensington View.

19           This will derail the hard earned revitalization  
20 that has been happening in recent years, devalue homes, and  
21 discourage those of us who've tried so hard to make our urban  
22 village a great place to live.

23           I also wanted to note something else that we've  
24 submitted to you in the binder about East Avenue and the  
25 zoning of the lots that are there. Lots 7 through 10 on East

1 Avenue, this is on the Lindsay side of East Avenue, were  
2 rezoned as C-2 by a map amendment in 1964 with the premise  
3 that the unbuilt portion of Kensington Boulevard would be  
4 developed for increase use and connectivity for those  
5 commercial lots there.

6           The applicant now seeks to convert the remaining  
7 section of East Avenue to commercial use by abandoning the  
8 same road for a parking lot. The logic of the opposing  
9 arguments used to justify commercial use of East Avenue seems  
10 contradictory at best, and is consistently at odds with the  
11 long term interest of the neighborhood residents.

12           MS. SCHWARTZ JONES: Thanks.

13           MS. SAVOLAINE: Thanks for considering my comments.

14           MS. SCHWARTZ JONES: Thank you. Sylvia Didone, do  
15 you wish to speak?

16           MS. DIDONE: No.

17           MS. SCHWARTZ JONES: Okay. And Elizabeth, I'm  
18 sorry, Duckett?

19           MS. DUCKETT: I'm not speaking.

20           MS. SCHWARTZ JONES: Okay. I just wanted to give  
21 you the opportunity since your name was on here, if you  
22 wished to.

23           MS. DUCKETT: Okay.

24           MS. SCHWARTZ JONES: With that, and you, as I  
25 indicated before, we're going to hold the record open for the

1 submission of written comments until 5:00 p.m. on September  
2 29th. Before I close the hearing, though, I know that I had  
3 asked Mr. Cassedy to get the dates of the advertisement so  
4 that the record and everybody could hear the dates of the  
5 advertisement, and the record would be clear on this point.

6 MR. CASSEDY: That's right. Exhibit 4, the proof  
7 of newspaper advertising in the Sentinel, the dates that they  
8 ran were September 4 and September 11.

9 MS. SCHWARTZ JONES: The other thing that I wanted  
10 to say is that, again, you can submit written comments.

11 MR. FREISHTAT: Before you close the record, I  
12 wanted to ask that we keep it open for 21 days. They won't  
13 have the record available until 10 days from now.

14 MS. SCHWARTZ JONES: You want to be able to review  
15 the --

16 MS. SHEARD: We would like the record to remain  
17 open for at least a week after the transcript is available,  
18 if possible.

19 MS. SCHWARTZ JONES: Okay. When do we normally get  
20 them in?

21 MS. SHEARD: We're hearing that the transcript  
22 won't be available for two weeks.

23 MS. SCHWARTZ JONES: Well, let's clarify this  
24 point.

25 (Discussion off the record.)

1 MS. SCHWARTZ JONES: We don't need an artificial  
2 time limit here. I have no problem with keeping the record  
3 open for three weeks.

4 MS. SHEARD: We understood that if it was expedited  
5 there was additional cost to the County, and there's no  
6 reason for that.

7 MS. SCHWARTZ JONES: That's what I understand as  
8 well.

9 MS. SHEARD: Just so we can have it available,  
10 whenever it gets available.

11 MR. FREISHTAT: It doesn't matter. I mean, 21 days  
12 is more than enough.

13 MS. SHEARD: That's fine.

14 MS. SCHWARTZ JONES: That's fine.

15 MR. FREISHTAT: Normal turn around time I think is  
16 10 days.

17 MS. SCHWARTZ JONES: To be clear then, if we can go  
18 back to the earlier point, too, where the record will be held  
19 open for three weeks, and now you've put me at a  
20 disadvantage, because I'm sure I'm into October, and I don't  
21 know what date in October that becomes. Does anybody have a  
22 calendar so I can see what date that becomes.

23 MR. FREISHTAT: I have one in my pocket.

24 (Discussion off the record.)

25 MR. FREISHTAT: Three weeks from today is --

1 MS. SCHWARTZ JONES: It's October 6th.

2 MR. FREISHTAT: -- one, two -- October 6th.

3 MS. SCHWARTZ JONES: So the record will now be held  
4 open until, for a period of three weeks until 5:00 p.m. on  
5 October 6th, 2008. And so, for the record, when it is put  
6 together, we can make that very clear from the beginning as  
7 well.

8 Once again, to submit written comments, they can be  
9 submitted one of three ways. They can be sent by mail to  
10 Mr. Michael Cassedy, Department of Transportation, 101 Monroe  
11 Street, Tenth Floor, Rockville, Maryland 20850. They should  
12 again refer to the fact that they pertain to the abandonment  
13 of a portion of Kensington Boulevard, abandonment petition  
14 number 716.

15 Comments can be sent by electronic mail to  
16 Michael.Cassedy, C-A-S-S-E-D-Y, at MontgomeryCountyMD.gov, or  
17 you may send them via facsimile also again to Michael  
18 Cassedy's attention 240-777-7259. And again, whatever mode  
19 you seek to send them by, you should indicate that it's for a  
20 portion of Kensington Boulevard, AB petition number 716.

21 The time is now five after 2:00 and the public  
22 hearing element of composing this record is now closed.

23 Thank you.

24 (Whereupon, at 2:07 p.m., the hearing was  
25 concluded.)

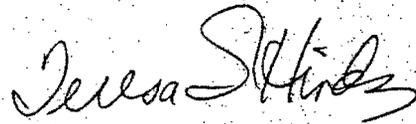
✓ Digitally signed by Teresa S. Hinds

ELECTRONIC CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Department of Public Works and Transportation in the matter of:

Abandonment: Kensington Boulevard, AB-716

By:



\_\_\_\_\_  
Teresa S. Hinds, Transcriber