

AGENDA ITEM #2C
July 28, 2009
Action

MEMORANDUM

July 24, 2009

TO: County Council

FROM: Glenn Orlin, ^{Go}Deputy Council Staff Director

SUBJECT: **Action**—resolution to approve the modification of a previously approved abandonment of Marden Lane on the Brooke Grove Campus in Sandy Spring

T&E Committee (and Council staff) recommendation (3-0): Approve this abandonment with the conditions suggested by the Executive and Hearing Examiner.

On June 10, 1997 the Council approved Resolution 13-914, which approved the abandonment of Marden Lane in Sandy Spring with certain conditions. The Brooke Grove Foundation, Inc., has requested the Council amend this resolution to delete Condition #5 that would require an electronic gate be located on Marden Lane at the entrance of the Foundation property, and that the two residences on Marden Lane and the Department of Fire & Rescue Services (DFRS) each be issued access cards. Since 1997, however, alternative access has been provided, the residents of the two properties on Marden Lane have passed away, and their properties have been acquired by the Foundation. Neither DFRS nor any other Executive department opposes deleting this condition, so the Executive is recommending amending the resolution to delete Condition #5.

Attachments

Executive's transmittal letter	©1
Draft adoption resolution	©2-3
Maps noting location of proposed abandonment	©5-6
Application letter	©7-10
Public hearing notice	©11
Hearing Examiner's report	©12-19

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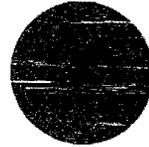
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

050069

Isiah Leggett
County Executive

MEMORANDUM

July 7, 2009



TO: Phil Andrews, President
Montgomery County Council

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

SUBJECT: DPWT Docket No. AB689, Marden Lane
Brooke Grove Campus, Sandy Spring, 8th Election District

ENCL IN
FILE

For your consideration, attached herewith is a proposed Resolution whereby the County Council may approve the modification of a previously approved abandonment Resolution pertaining to Marden Lane on the Brooke Grove Campus in Sandy Spring. Supporting data are submitted as follows:

1. Council Resolution
2. Letter requesting the abandonment from Miller, Miller & Canby on behalf its client, Brooke Grove Foundation, the Applicant
3. A Public Hearing was held on January 7, 2008, as announced by Executive Order No. 331-07.
4. The Hearing Examiner's Report and Recommendation
5. A location map and tax map for reference

IL/rg

Attachments

(1)

2009 JUL -7 PM 2:31
MONTGOMERY COUNTY

Resolution No: _____

Introduced: _____

Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DPWT Docket No. AB689
Abandonment Modification – Marden Lane
Brooke Grove Campus
Sandy Spring, Maryland

Background

1. By letter dated October 3, 2006, from Miller, Miller & Canby on behalf of its client, Brooke Grove Foundation, the Applicant, a request to the County was made to modify a previous Council Resolution No. 13-914, adopted June 10, 1997, by eliminating Condition No. 5 pertaining to Marden Lane on the Brooke Grove Campus in Sandy Spring due to changes in circumstances since that approved abandonment.
2. A Public Hearing to consider the abandonment proposal was held on January 7, 2008, by the designee of the County Executive.
3. PEPCO had no objection.
4. Washington Gas had no objection.
5. VERIZON had no objection.
6. The Department of Public Works and Transportation (now Department of Transportation) recommended approval.
7. The Department of Fire and Rescue Services had no objection.
8. The Montgomery County Planning Board recommended approval and noted that the residents of the two properties that had benefited from Condition No. 5 were deceased and that the Applicant now owns the parcels making the condition irrelevant.
9. The Police Department did not respond within 60 days and therefore, concurrence is presumed.

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

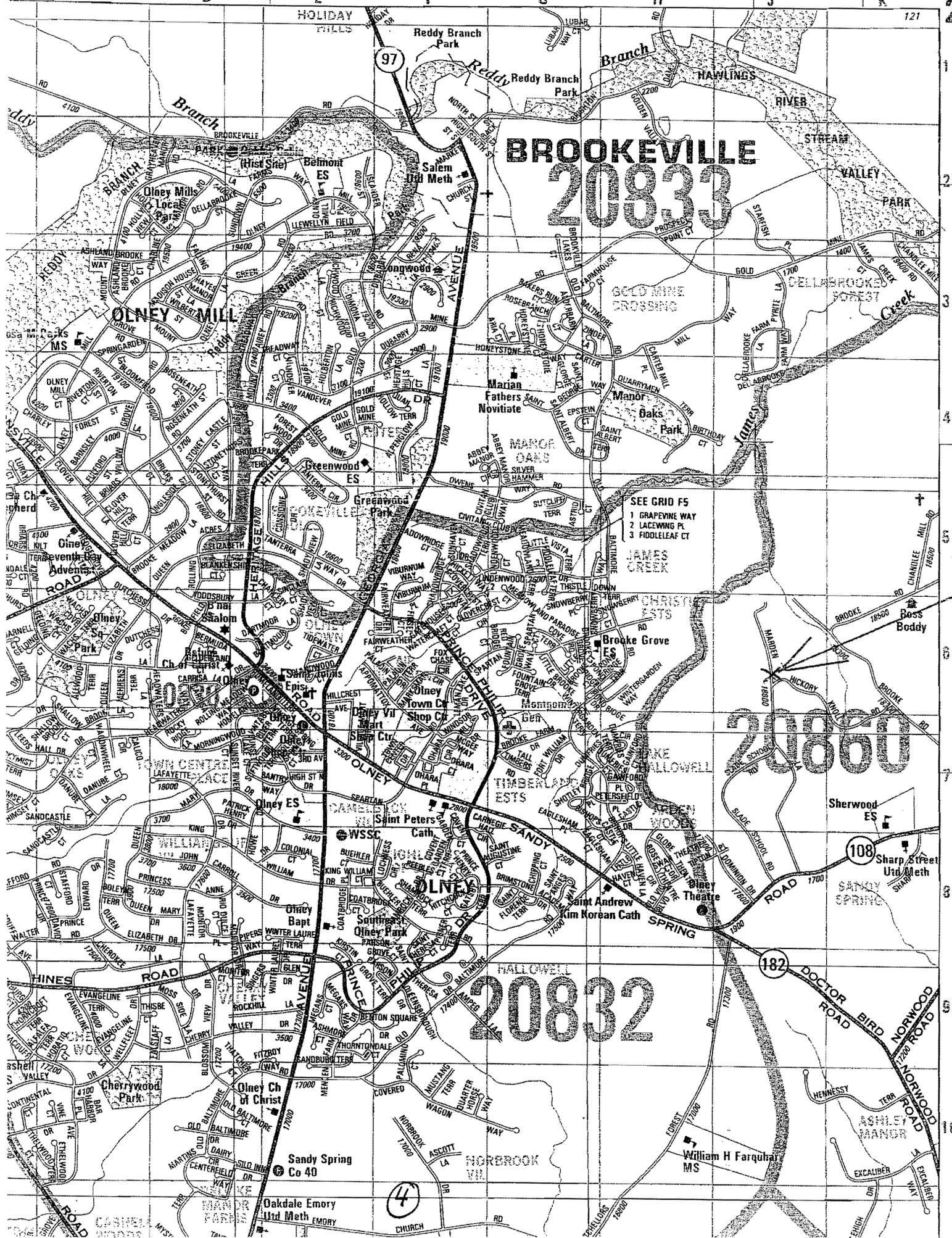
Action

The County Council for Montgomery County, Maryland, finds that there is no continuing need or relevancy of Condition No. 5 in Council Resolution No. 13-914, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment modification, subject to the following conditions:

1. The Applicants must bear all costs for the preparation and recordation of all necessary legal documents and plats if any.
2. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment modification.
3. Any person aggrieved by the action of the Council for abandonment modification 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



BROOKEVILLE
20833

20860

20832

- SEE GRID F5
- 1 GRAPEVINE WAY
 - 2 LACEWING PL
 - 3 FIDDLELEAF CT

108 Sharp Street Utd Meth

182 DOCTOR BIRD NORWOOD ROAD

4

AB689

Exhibit 1

LAW OFFICES

MILLER, MILLER & CANBY

CHARTERED

200-B MONROE STREET
ROCKVILLE, MARYLAND 20850

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FAX (301) 762-6044

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JOSEPH F. SUNTUM
SUSAN W. CARTER
ROBERT E. GOUGH
GLENN M. ANDERSON*
DONNA E. McBRIDE
MICHAEL G. CAMPBELL
SOO LEE-CHO

**Licensed in Maryland and Florida*

October 3, 2006

Mr. Douglas Duncan
County Executive
Office of the County Executive
101 Monroe Street, 10th Floor
Rockville, MD 20850

RE: Request to Modify Abandonment Resolution No. 13-914

Dear Mr. Duncan:

I am writing to you on behalf of my client, Brook Grove Foundation, Inc., to request a modification to Resolution No. 13-914, adopted June 10, 1997, relating to the abandonment of a portion of Slade School Road and Marden Lane. Attached is a filing fee in the amount of \$2,500.00, a list of all property owners whose property abuts Marden Lane, a copy of the tax map and a copy of written Resolution No. 13-914 approving the abandonment of this roadway. We are requesting this modification in order to eliminate Condition No. 5 of the written Resolution, which provides as follows:

- “5. The existing residents of Marden Lane and the Department of Fire and Rescue Personnel be provided with access cards for an electronic gate to be located on Marden Lane at the entrance to the Foundation’s property.”

By way of background, the Brooke Grove Foundation, Inc. is a non-profit institution which owns and operates a continuing care retirement community located north of MD Route 108 at 18100 Slade School Road, in Sandy Spring, MD. The main campus currently consists of approximately 200 acres. Historically, the Brooke Grove Foundation used Marden Lane as its means of ingress and egress to the campus. In approximately 1985, Slade School Road, a private roadway, was constructed by the Brooke Grove Foundation to serve as the primary access from Route 108 into the campus. Slade School Road intersected Marden Lane at a point north of the location where Marden Lane crossed onto the Brooke Grove campus. The result was an inverted “Y” intersection.

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When Brooke Grove obtained special exception approval to convert its facilities into a continuing care retirement community, the residents who lived along Marden Lane south of the Brooke Grove campus requested that the entire length of Marden Lane that was located within the Brooke Grove property limits be renamed "Slade School Road" insofar as they were concerned that visitors to the Brooke Grove Foundation would use the less preferred access of Marden Lane, rather than Slade School Road in accessing the property.

Subsequently, Brooke Grove subdivided the majority of its campus and it became no longer necessary to retain a portion of Slade School Road/Marden Lane as a public right-of-way because the newly created lots now had roadway frontage on either Maryland Route 108 or Brooke Road, both public rights-of-way. In 1996, the Brooke Grove Foundation requested the abandonment and closure of a portion of Slade School Road/Marden Lane so that it could erect an electronic gate at the point where Marden Lane crossed onto the Brooke Grove campus to prevent visitors and delivery trucks entering the Brooke Grove campus from using Marden Lane as a means of access. The residents along Marden Lane welcomed this closure and gating at the end of Marden Lane because they felt it would prevent traffic from Brooke Grove from using Marden Lane and would require traffic to use Slade School Road, instead. The Brooke Grove Foundation also believed that a gate at this location would provide additional security for the elderly residents of Brooke Grove.

The reason that an electronic gate rather than another type of barricade was proposed at the end of Marden Lane was because there were two families who, at that time, resided north of the Brooke Grove campus and used Marden Lane/Slade School Road for ingress and egress. These families – Loveless (P512) and McDaniel (P380) – were to be provided with a device which would permit them to have continued access from Route 108 along Marden Lane to their homes. At least one resident living on Marden land south of the campus asked for an access card so that he could continue to visit the McDaniel and Loveless homes without traveling out to Route 108 and back up Slade School Road. At the time of the abandonment hearing, this issue was discussed and Condition No. 5 was imposed in response to this request.

Since the adoption of this written Resolution on June 10, 1997, both Loveless and McDaniel have passed away and the Brooke Grove Foundation has acquired both properties. Indeed, Parcel 512 was subsequently incorporated into the subdivision plat for the Brooke Grove campus. We do not believe the Department of Fire and Rescue Personnel requires access from Marden Lane since there are alternative points of access onto the campus.

Our request is to modify written Resolution 13-914 to eliminate Condition No. 5. At present, a paved section of roadway exists from the point where Marden Lane terminates at the edge of the Brooke Grove campus to the point where it intersects with Slade School Road. However, since there are no longer any residents who need to use Marden Lane as a means of access across the Brooke Grove campus, Brooke Grove would like to remove this impervious surface area and restore the area to grass or other plantings. It is particularly important to Brooke Grove to minimize its overall impervious area as it develops its campus in accordance with environmental guidelines for properties located within the Patuxent Management Area.

In conclusion, we believe that the circumstances that prompted Condition No. 5 to be incorporated into the written Resolution have changed and the Condition is no longer necessary or

appropriate. Accordingly, we request that the necessary action be taken to modify Abandonment Resolution No. 13-914 to eliminate Condition No. 5.

Thank you for your attention to this matter.

Very truly yours,

MILLER, MILLER & CANBY

Susan W. Carter
Susan W. Carter

SWC/dlt

Enclosures

cc: Mike Cassedy
Dennis Hunter

AB 689

RESOLUTION	<u>13-914</u>
INTRODUCED	<u>June 10, 1997</u>
ADOPTED	<u>June 10, 1997</u>

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By County Council

SUBJECT: DPW&T DOCKET NO. 616
ABANDONMENT OF A PORTION OF SLADE ROAD AND MARDEN LANE

BACKGROUND

1. The County was petitioned by Susan Carter, on behalf of her client, the Brooke Grove Foundation, Inc., seeking the abandonment of a portion of Slade School Road and Marden Lane located at the intersection of Marden Lane and Slade School Road in Sandy Spring, Maryland.
2. A public hearing to consider the abandonment proposal was conducted on February 11, 1997, by the Designee of the County Executive.
3. The Washington Suburban Sanitary Commission, and the Maryland National Park and Planning Commission have no objections to the proposed abandonment.
4. The Washington Gas Company, the Potomac Electric Power Company, and the Department of Fire and Rescue Services grant conditional approval to the proposed abandonment.
5. The Department of Public Works and Transportation and the Department of Police, have no objections to the proposed abandonment.
6. The County Executive recommends conditional approval to the proposed abandonment.

ACTION

The County Council for Montgomery County, Maryland finds that the proposed portion of Slade School Road and Marden Lane is no longer necessary pursuant to Section 49-63 of the Montgomery County Code and approves the abandonment thereof subject to the following conditions:

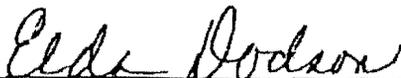
(9)

Resolution No. 13-914

Resolution/Abandonment
AB616 - Slade School Road & Marden Lane
Page Two

1. The Potomac Electric Power Company and the Washington Gas Company be provided necessary easements for access to their existing facilities for purposes of repair and maintenance
3. The residents of Parcels 512 and 380 located north of the Foundation property on Marden Lane be provided necessary easements for access to their properties.
4. The petitioner bear all costs associated with the preparation and recordation of all easements.
5. The existing residents of Marden Lane and the Department of Fire and Rescue personnel be provided with access cards for an electronic gate to be located on Marden Lane at the entrance to the Foundation's property.
6. The petitioner provide fire hydrants as specified by the Sandy Spring Volunteer Fire Department.
7. The petitioner maintain Slade School Road in a manner that will ensure emergency vehicle access at all times to the nursing home, group homes and residential homes.
8. The County Attorney shall cause authenticated copy of this Resolution to be filed in the County land records in conformity with Montgomery County Code.
9. Any person may appeal to the Circuit Court within 30 days of the Council action.
10. The Petitioner must prepare a subdivision plat to assemble the land occurring from the abandonment with the appropriate abutting properties at no expense to the County. The abandonment will not take effect until the Plat of Subdivision is prepared, approved for recording by the Planning Board, and recorded.

This is a correct copy of Council Action.



Elda Dodson
Elda Dodson
Acting Secretary of the Council



MONTGOMERY COUNTY COPY EXECUTIVE ORDER

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

Subject: Abandonment of Portion of Marden Lane (Modification of Council Resolution No. 13-914) Brooke Grove, Sandy Spring	Executive Order No. 331-07	Subject Suffix AB
Originating Department: Public Works and Transportation	Department Number AB 08-07	Effective Date 11/1/07

AB689

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

at 1:30 p.m. on Monday January 7, 2008
101 Monroe Street, EOB Lobby Conference Room
Rockville, Maryland 20850

to consider an application received from Miller, Miller & Canby, on behalf of its client, Brooke Grove Foundation, Inc., the applicant, seeking the modification of Condition No. 5 of a previously approved abandonment of Marden Lane, Council Resolution No. 13-914. The Condition required the applicant to install an electronic gate at the end of Marden lane for the benefit of two property owners. The gate is now within the Brooke Grove campus in Sandy Spring, and all surrounding property is owned by the applicant.

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

APPROVED

By: Eileen T. Basaman
Eileen T. Basaman 10/31/2007
Associate County Attorney

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

Distribution:
Department of Public Works and Transportation
Department of Finance

OFFICE OF THE COUNTY EXECUTIVE
EXECUTIVE OFFICE BUILDING
ROCKVILLE, MARYLAND 20850

IN THE MATTER OF:

PETITION OF BROOKE GROVE FOUNDATION, INC.	*	
Applicant	*	DEPARTMENT OF
MODIFICATION OF ABANDONMENT CONDITION	*	TRANSPORTATION
SLADE SCHOOL ROAD/MARDEN LANE	*	PETITION NO. AB 689

BEFORE: Diane Schwartz Jones, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

This matter involves a request to modify a condition of abandonment of Slade School Road/Marden Lane which was approved by Montgomery County Council Resolution No. 13-914 on June 10, 1997 (a copy of which is Attachment 1 to this Report and Recommendation). The request was made by Susan Carter, Esquire on behalf of Brook Grove Foundation, Inc. by letter dated January 3 2006. Exhibit 1. The Brook Grove Foundation, Inc. ("Applicant") is a non-profit institution which owns and operates a continuing care retirement community north of Maryland Route 108 at 18100 Slade School Road.

Applicant seeks this modification to condition number 5 of Council Resolution 13-914 because the two residents that had been served by the condition to be modified are deceased and the Applicant now owns their parcels. Applicant indicates that the

condition is no longer relevant and interferes with its ability to remove the asphalt of the old road and eliminate impervious area.

Condition No. 5 of Resolution 13-914, which is sought to be eliminated provides, “[t]he existing residents of Marden Lane and the Department of Fire and Rescue personnel be provided with access cards for an electronic gate to be located on Marden Lane at the entrance to the Foundation’s property.”

Executive Order No. 331-07 effective November 1, 2007 authorized a public hearing to be held on January 7, 2008. Exhibit 2. Notice was provided to the property owners and civic associations listed on Exhibit 3. Newspaper advertisements of the hearing were published in *The Montgomery County Sentinel* on December 27, 2007 and January 3, 2008, and a sign was posted within the right-of-way. Respectively, Hearing Exhibits 4 and 9.

A hearing was convened as scheduled on January 7, 2008, and testimony and evidence were received. At the conclusion of the hearing the record was left open until 5:00 pm on January 22, 2008.

Three people testified at the hearing. One was Michael Cassedy on behalf of the then Department of Public Works and Transportation (now the Department of Transportation or “DOT”); the second was counsel for the Applicant; and the third was Dennis Hunter on behalf of the Applicant. Only one written comment was submitted in response to the petition for abandonment and that comment was in opposition to the proposed modification.

II. Summary of Testimony and Evidence of Record

Mr. Cassidy of DOT described the request made by the Applicant and that his office requested comments from the public, appropriate governmental agencies, and public utility companies that might be affected by the proposed modification of condition of abandonment. Mr. Cassidy listed Exhibits 1 – 10 that were entered as part of the hearing record. The full listing of exhibits comprising the hearing record, including those entered at the hearing and after the hearing during the comment period, is attached hereto as Attachment 2.

Mr. Cassidy noted that, at the time of hearing, comments were missing from the Police Department, the Department of Fire and Rescue Services, Verizon, Washington Suburban Sanitary Commission and the Montgomery County Planning Board. An email was received from Verizon prior to the hearing and following the hearing comments were received from the Department of Fire and Rescue Services and from the Montgomery County Planning Board.

As indicated by Mr. Cassidy in his testimony, comments were sought from government agencies and utilities listed in Montgomery County Code Section 49-62(h). With respect to comments received from the utilities and public bodies, PEPCo did not object to the proposed modification. Exhibit 6. Washington Gas similarly stated that it had no objection to the proposed modification. Verizon indicated that it has no facilities in the abandonment area and did not object to the proposed modification of condition of abandonment. Exhibit 13.

DOT recommended approval of the request to eliminate condition number 5 from the conditions of abandonment. Exhibit 10. The Montgomery County Department of Fire and Rescue Services by email dated January 8, 2008 indicated that it has no objection to the proposed modification. Exhibit 12.

By letter dated January 3, 2008, the Montgomery County Planning Board indicated that it supported its staff recommendation that abandonment modification request be granted. The Planning Board Staff indicated in its report that the residents of the two properties that had benefited from condition 5 were deceased and that the Applicant now owns the parcels making the condition irrelevant. Exhibit 14.

The evidence of record indicates that the relevant public agencies and utilities have reviewed the petition or foregone the opportunity to review the petition. Those responding had no objection to the proposed abandonment modification.

One comment was received from Mr. John Hines in opposition to the proposed modification. The requester expressed concern about the safety of the available means of egress and urged that if a fence is constructed as envisioned by the 1996 abandonment resolution that residents be provided with access cards.

III. Conclusions and Recommendations

The subject of this request is for elimination of condition number 5 to Council Resolution 13-914. This condition provides, "The existing residents of Marden Lane and the Department of Fire and Rescue Personnel be provided with access cards for an electronic gate to be located on Marden Lane at the entrance to the Foundation's property."

In June 1996 a number of residents along Marden Road asked the Applicant if an electronic fence could be installed on the portion of Marden Lane approaching where it becomes Slade School Road approachable only by residents along Marden Lane and thus keeping traffic related to Applicant's campus off of Marden Lane. Nearly a year later, on June 10, 1997, the County Council adopted Resolution 13-914. At the time that the abandonment was approved by the County Council, there were residents at the north end of the Applicant's property residing on Parcels 380 and 512. While it is clear that the County Council contemplated continuing access by the then residents and their successors of Parcels 380 and 512, condition number 3 to Council Resolution 13-914 addressed the access requirement. The resolution also included the above described condition number 5 relative to access cards for existing residents of Marden Lane. It is clear that neither the Applicant nor the residents in the area wished to have traffic from the adjoining roads use the subject right-of-way and that there are adequate public roads.

The abandonment of road rights-of-way is governed by the provisions of sections 49-62 and 49-63, Montgomery County Code. 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. In determining 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.

Given the fact that the abandonment has already occurred, the only determination to be made is whether or not the condition of requiring the fence has continuing relevancy, and if not, whether it should be deleted. The record reflects that the two residents that were served by the continuing card access are deceased and the Applicant now owns their two parcels of land. Therefore, there is no continuing need for access on the abandoned right-of-way. The easement that is provided in condition number 3 of Resolution benefits no residents other than the owners of Parcels 380 and 512 and their successors. The Applicant has now acquired their parcels and there is no evidence of any other person having any right of access onto the Applicant's property. Both the Montgomery County Planning Board and the Department of Fire and Rescue Services have indicated, without condition, that they have no objection to the elimination of condition number 5 providing for the access cards to an electronic gate. Furthermore, the Applicant has expressed an intent to eliminate the asphalt roadway that previously provided access, thereby reducing the amount of impervious area, which would be beneficial to the environment.

For the foregoing reasons, there is no continuing need or relevancy of condition number 5 in the Abandonment Resolution 13-914 and it should be removed.

Respectfully submitted,

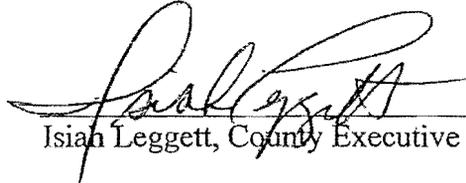
September 22, 2008


Diane Schwarz Jones
Public Hearing Officer

The Public Hearing Officer's Recommendation for AB689 has been reviewed and is approved.

Date:

Sept 22, 2008


Isiah Leggett, County Executive