

AGENDA ITEM #2D
July 28, 2009
Action

MEMORANDUM

July 24, 2009

TO: County Council
FROM: Glenn Orlin, Deputy Council Staff Director
SUBJECT: **Action**—abandonment of a portion of Pine Street

A portion of Pine Street in Silver Spring has been proposed for abandonment. During its review of Bill 31-96 (Abandonments--Procedures) more than a decade ago, the Transportation, Infrastructure, Energy and Environment Committee indicated that a proposed abandonment or road closure should proceed directly to the Council unless there is some disagreement expressed over the abandonment. There is no disagreement about this abandonment.

Council staff recommendation: Approve this abandonment with the conditions suggested by the Executive and Hearing Examiner.

Attachments

Executive's transmittal letter	©1
Draft adoption resolution	©2-4
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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Isiah Leggett
County Executive

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

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. AB703 Portion of Pine Street
Hollywood Park Subdivision
Silver Spring 5th Election District

ENCL IN
FILE

For your consideration, attached herewith is a proposed Resolution whereby the County Council may approve the abandonment of a portion of unimproved Pine Street in the Hollywood Park Subdivision in Silver Spring. Supporting data are submitted as follows:

1. Council Resolution
2. Letter requesting the abandonment from Miles & Stockbridge on behalf its client, AM Builders, LLC, the Applicant
3. A Public Hearing was held on January 28, 2008, as announced by Executive Order No. 355-07.
4. The Hearing Examiner's Report and Recommendation
5. A location map and tax map for reference

IL/rg

Attachments

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2009 JUL -7 PM 2:31

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DPWT Docket No. AB703
Abandonment – Portion of Pine Street
Hollywood Park Subdivision
Silver Spring, Maryland

Background

1. By letter dated May 11, 2007, from Miles & Stockbridge on behalf of its client, AM Builders, LLC, the Applicant, a request was made to the County to abandon a portion of Pine Street in the Hollywood Park Subdivision in Silver Spring.
2. A Public Hearing to consider the abandonment proposal was held on January 28, 2008, by the designee of the County Executive.
3. Washington Gas had no objection.
4. Washington Suburban Sanitary Commission did not object but was unclear where its facilities begin and end.
5. VERIZON did not respond within 60 days and therefore, concurrence is presumed.
6. The Montgomery County Planning Board recommended approval conditioned upon a perpetual public use easement be “developed” for pedestrian access over the Abandonment Area, which easement must be acceptable to all parties of concern, including the abutting property owners, and to be effective with the recordation of a new plat for the abandonment of a portion of Pine Street.
7. The Department of Public Works and Transportation (now Department of Transportation) recommended approval with the following conditions:
 - a. Applicant must grant an easement for any County storm drain facilities and public utilities within the proposed Abandonment Area or relocating such facilities into an approved easement area at Applicant’s expense.
 - b. If required by the Montgomery County Planning Board, sufficient right-of-way for a path must be reserved.

8. The Department of Fire and Rescue Services had no objections.
9. The Police Department did not respond within 60 days and therefore, concurrence is presumed.
10. PEPCO did not respond within 60 days and therefore, concurrence is presumed.
11. The County Executive recommends approval of the proposed abandonment.

Action

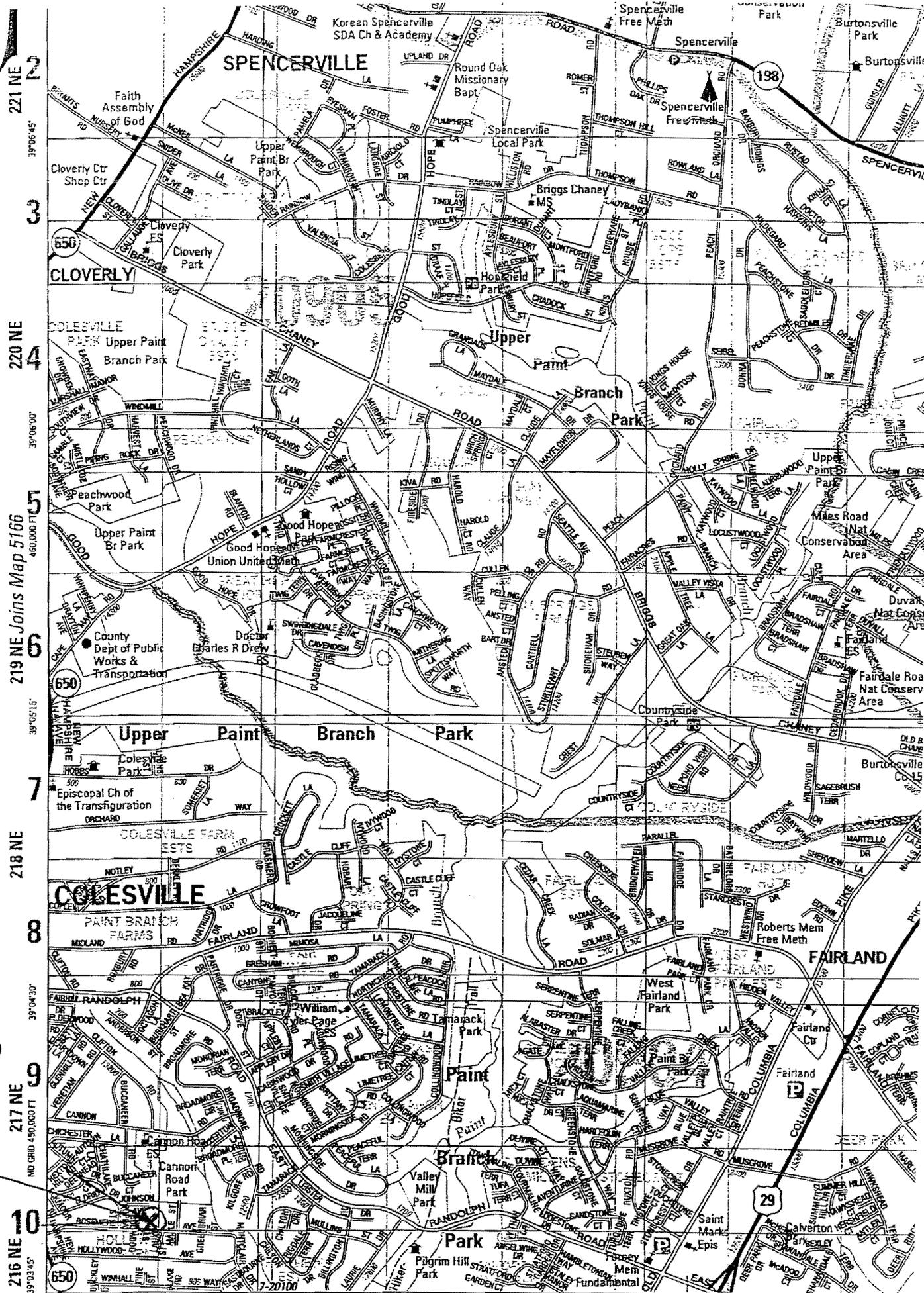
The County Council for Montgomery County, Maryland, finds that a portion of Pine Street, 30 feet wide and 200 feet long abutting Lot 11, Block B, in the Hollywood Park Subdivision, is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment, subject to the following conditions:

1. Applicant must grant an easement in form and substance agreeable to the Department of Transportation and the property owners adjacent to the proposed Abandonment Area providing for a pedestrian and bike path within the easement area.
2. The Abandonment Area must be subject to permanent and perpetual public improvements sufficient in form and substance to allow for the current and future placement, maintenance and repair of utilities and drainage.
3. The form and substance of the easements referred to in 1) and 2) above must be approved by the Office of the County Attorney for Montgomery County, Maryland.
4. Applicant must prepare the public improvement easements and cause the duly executed easements to be recorded in the Land Records for Montgomery County, Maryland prior to the proposed abandonment taking effect.
5. Applicant must prepare and record a new record plat in accordance with the requirements of the Montgomery County Code Section 49-65(d), which plat must incorporate the Abandonment Area into the adjacent lots 6 and 11, subject to the public improvements easements, with signature on the record plat of all necessary owners, mortgagees and lienholders of record.
6. The Applicants must bear all costs for the preparation and recordation of all necessary legal documents and plats.

7. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area.
8. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.

Linda M. Lauer, Clerk of the Council



221 NE
39°06'45"
3
220 NE
39°06'00"
4
219 NE Joins Map 5166
460,000 FT
5
39°05'15"
6
218 NE
39°04'30"
7
217 NE
450,000 FT
8
39°04'30"
9
216 NE
39°03'45"
10

46 ALEXANDRIA DRAFTING CO. 76°59'15" 76°58'30" Joins Map 5287 76°57'45" MD GRID 810,000 FT
A 1 NE B C (5) D 2 NE E F G 3 NE H

IDC
map
5167

unimproved
Pink Street

MILES & STOCKBRIDGE P.C.

Rebecca D. Willens
301-517-4830
rwillens@milesstockbirdge.com

May 11, 2007

The Honorable Isiah Leggett
Executive Office Building
101 Monroe Street
Rockville, Maryland 20850

Re: Abandonment Request for a portion of Pine Street, Silver Spring, Maryland.

Dear County Executive Leggett:

This letter serves as our request on behalf of our client, AM Builders, LLC ("AM Builders"), pursuant to Section 49-62 of the Montgomery County Code 1995, as amended, to abandon a portion of the right of way, of a paper street known as "Pine Street" in the subdivision of Hollywood Park, Silver Spring, which is under the jurisdiction of Montgomery County.

AM Builders is the owner of Lot 11, Block B, Hollywood Park Subdivision (the "Subject Property"), per plat 274, recorded in 1924. The Subject Property is also depicted on tax map JQ63. The Subject Property abuts the area now sought to be abandoned pursuant to this request. Enclosed herewith is a tax map with the portion of Pine Street that the Applicant proposes to abandon outlined in yellow. The Subject Property is outlined in green. Also enclosed please find a sketch exhibit prepared by Fowler and Associates depicting the proposed to be abandoned.

The portion of Pine Street proposed for abandonment is not required for access to any property and serves no current public purpose or any foreseeable future public use. See Section 49-63(e)(1) of the Montgomery County Code 2004, as amended. Abandonment of the right of way will enable AM Builders to construct a home on Lot 11 without requiring a front yard setback be imposed from the Pine Street frontage. Once the right of way is abandoned, the Pine Street frontage will only require a side yard setback in accordance with the Montgomery County zoning ordinance.

The Approved and Adopted 1994 White Oak Master Plan, under the general provisions within the land use and zoning section (pp. 38 of the master plan) recommends a delineation of "whether paper streets (designated rights-of-way that have never been constructed) are needed to provide safe and efficient movement of local traffic." The Master Plan continues by recommending the consideration of abandonment of unnecessary paper streets or use of the rights-of-way as potential pedestrian and bicycle connections between neighborhoods. (See Transportation Chapter, page 54)."

Client Documents:4847-8811-3153v1|19028-000000|4/24/2007

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11 N. Washington Street, Suite 700, Rockville, MD 20850 • 301.762.1600 • Fax: 301.762.0363 • www.milesstockbridge.com

Baltimore, MD • Cambridge, MD • Columbia, MD • Easton, MD • Frederick, MD • McLean, VA • Towson, MD

MILES & STOCKBRIDGE P.C.

Page 2

Hollywood Park was platted in 1924, per Plat 274 (see enclosed copy). Pine Street, having been platted and dedicated to public use in the Hollywood Park subdivision, has never been constructed, and is not necessary to provide a safe and efficient movement of local traffic.

The Transportation section of the Approved and Adopted White Oak Master Plan, page 54, recommends certain portions of Pine Street, from Rosemere Avenue to Winhall Way be constructed as sidewalks, as opposed to roads, within the right of way. Winhall Way is south of the Subject Property. The Master Plan is silent on the portion of Pine Street north of Rosemere Avenue. There is no recommendation for improvement of this portion of Pine Street with either construction of a road or a sidewalk.

Enclosed please find a copy of the fee submittal. Per Michael Cassedy, the original check has been enclosed with his copy of this letter. We would be pleased to provide you with any additional information that you require in order to proceed with this abandonment request.

Should you require further assistance, please do not hesitate to contact Steve Orens or myself.

Sincerely,



Rebecca D. Willens

Enclosure

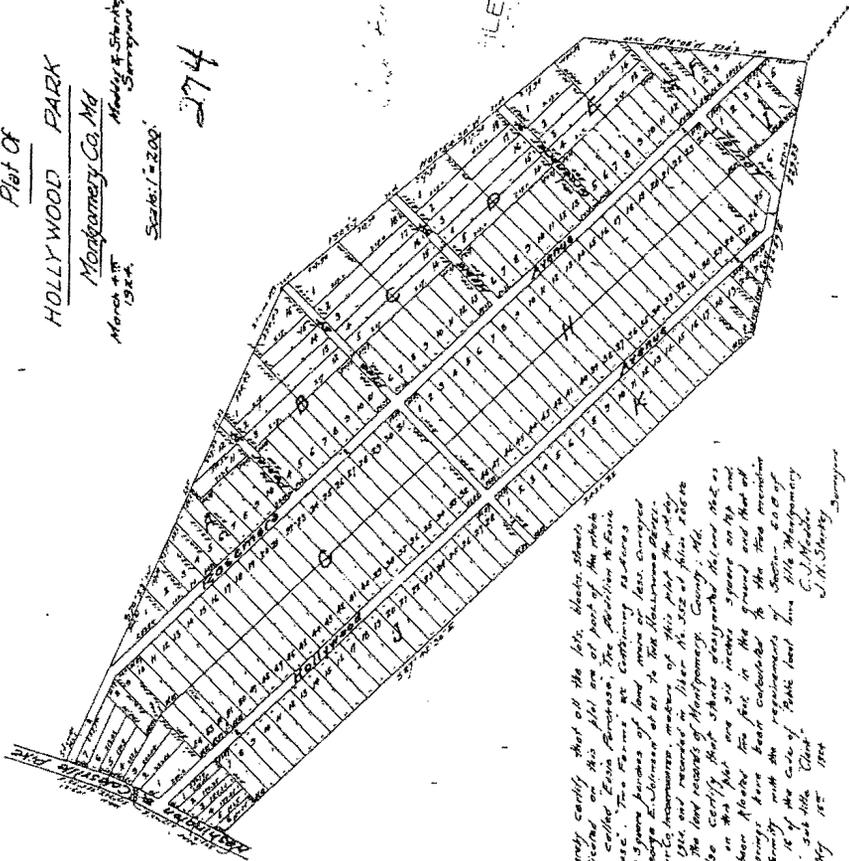
cc: AM Builders
Fowler & Associates, Inc.
Stephen J. Orens, Esquire
Michael Cassedy, DPWT

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Plot of
HOLLYWOOD PARK
 Montgomery Co, Md
 March 27th 1924
 Made by E. Shubly
 Surveyor
 Scale: 1" = 200'

274

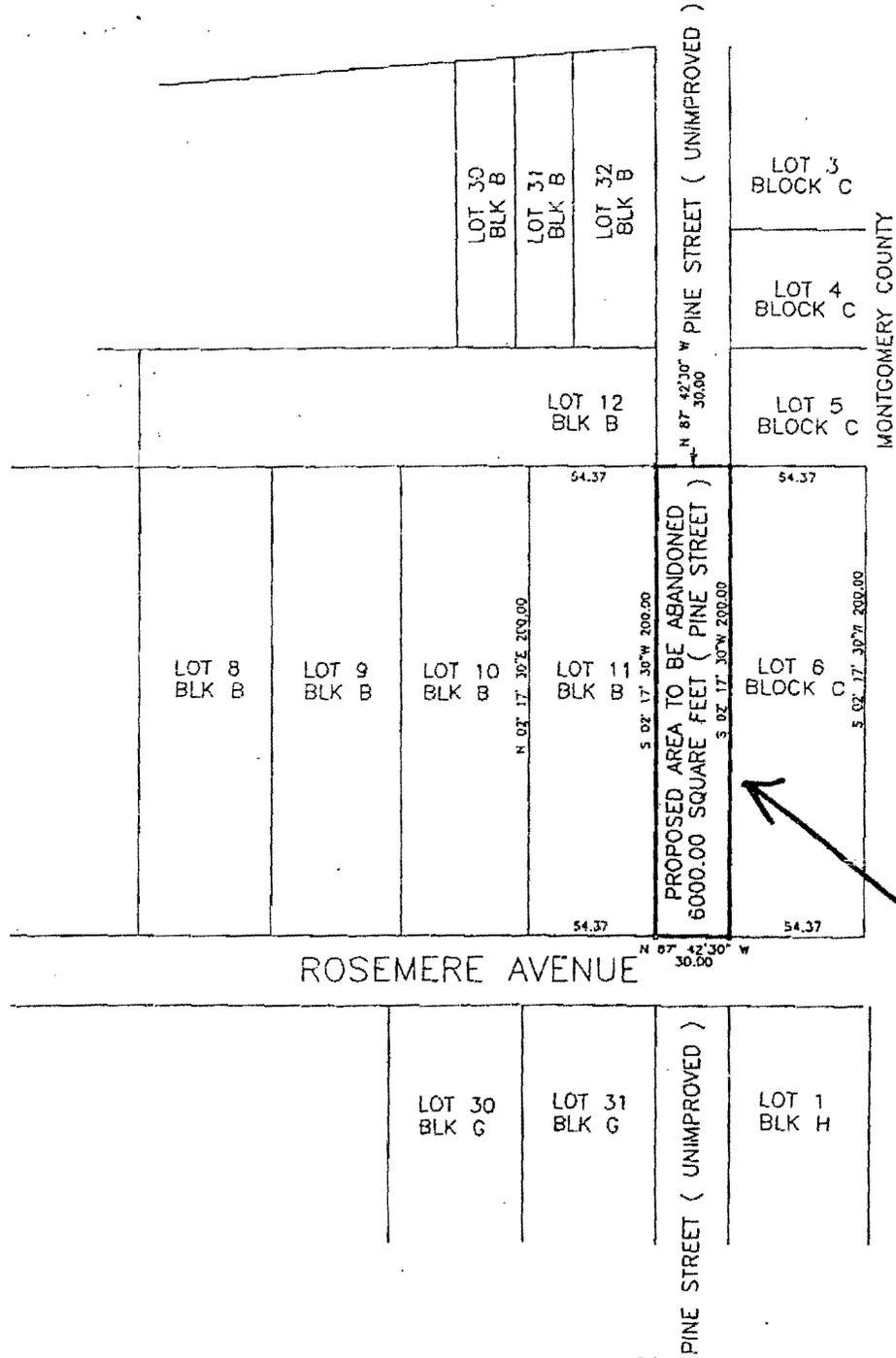
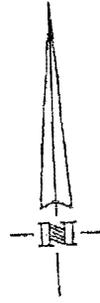
FILED



We hereby certify that all the lots, block streets, and streets shown on this plat are of part of the other lands called "Fawn Pasture". The location of the "Fawn Pasture" is shown on the plat of "Fawn Pasture" and 11 square blocks of land more or less conveyed by George E. Williams et al to The Maryland State Survey Co. Incorporated, makers of this plat the plat of May 1914, and returned to May 16, 1914 at which date the plat records of Montgomery County, Md. We also certify that shown designations of lots and blocks on this plat are 316 inches square on 1/4 and the bearings have been calculated to the true meridian in conformity with the requirements of Section 50.0 of Article 26 of the Code of Public Laws, Md. Montgomery County Sub-10th Clerk. C. J. McWhorter
 May 15th 1924
 J. H. Shubly
 Surveyor

We the undersigned mayor of this plat enter the same for record and hereby advise to public use the Annual Land Streets as shown thereon.
 George E. Johnson, President
 Hollywood Recreation Co. Inc.

RECORDED IN THE OFFICE OF THE CLERK OF MONTGOMERY COUNTY, MARYLAND, THIS 15TH DAY OF MAY, 1924, AT 10:30 A.M.
 MONTGOMERY COUNTY, MARYLAND
 RECORDED IN THE OFFICE OF THE CLERK OF MONTGOMERY COUNTY, MARYLAND, THIS 15TH DAY OF MAY, 1924, AT 10:30 A.M.



FOWLER ASSOCIATES, INC. Civil Engineers • Land Surveyors • Planners 856 North Washington Street Suite 300, Rockville, Md. 20850 Phone: (301) 782-2377 <small>T:\CP-DWG\HLS\1463040.DWG</small>		SKETCH SHOWING THE PROPOSED ABANDONMENT OF A PORTION OF PINE STREET BETWEEN LOT 11 BLK B & LOT 6 BLK C HOLLYWOOD PARK <small>AS RECORDED IN PLAT BOOK 3 AS PLAT NUMBER 274 COLESVILLE ELECTION DISTRICT No. 5 MONTGOMERY COUNTY, MARYLAND</small>		SHEET: 1 OF 1
DATE: 04/2006	SCALE: 1" = 60'	DRAWN BY: BM	JOB NO.: 03-040-2	

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MONTGOMERY COUNTY EXECUTIVE ORDER

COPY

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

Subject: Abandonment of Pine Street Hollywood Park Subdivision Silver Spring	Executive Order No. 355-07	Subject Suffix AB
Originating Department: Public Works and Transportation	Department Number AB 18-07	Effective Date 11/26/07

AB703

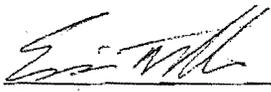
1. Pursuant to Section 49-62 of the Montgomery County Code (2004) as amended, the County Executive or his Designee shall conduct a Public Hearing

at 2:00 p.m. on Monday January 28, 2008
101 Monroe Street, EOB Lobby Conference Room
Rockville, Maryland 20850

to consider an application received from Miles & Stockbridge on behalf of its client, AM Builders, LLC, the applicant, seeking abandonment of a portion of Pine Street, Hollywood Park subdivision, in Silver Spring.

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: 
Eric Willis
Assistant County Attorney

APPROVED


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 AM BUILDERS, LLC, Applicant	*
	*
ABANDONMENT OF A PORTION OF	* DEPARTMENT OF
PINE STREET,	* TRANSPORTATION
An unimproved right-of-way	* PETITION NO. AB 703
	*

BEFORE: Diane Schwartz Jones, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

The hearing and public comment in the captioned matter pertains to a request dated May 11, 2007, from AM Builders, LLC ("Applicant"), to abandon a portion of a 30-foot wide right-of-way known as Pine Street in the Hollywood Park Subdivision in Silver Spring, Maryland. Applicant is the owner of Lot 11, Block B, in the Hollywood Park Subdivision. Lot 11 abuts the portion of the Pine Street right-of-way proposed for abandonment. In addition to abutting Lot 11, Block B, the area proposed for abandonment abuts Lot 6, Block C. The area sought for abandonment is 200 feet long or the length of the abutting lots. The right-of-way proposed for abandonment was created by Plat 274 dated March 4, 1924. *Hearing Exhibit 1.*

The right-of-way proposed to be abandoned is shown on the attachment designated as Exhibit A to this Report and Recommendation (the area is referred to as the "Abandonment Area").

Applicant seeks this abandonment to reduce the amount of building set back requirements for Lot 11. Because Lot 11 is a corner lot, at least on paper, it has greater set back requirements than if it had frontage only on one street.

Executive Order No. 355-07 effective November 26, 2007 authorized a public hearing to be held on January 28, 2008. *Hearing Exhibit 2*. Public notice was provided by way of notices to the property owners and civic associations listed on *Hearing Exhibit 3*. Newspaper advertisements of the hearing were published in *The Montgomery County Sentinel* on January 17, 2008 and January 24, 2008, and a sign was posted within the right-of-way. Respectively, *Hearing Exhibits 4 and 7*.

A hearing was convened as scheduled on January 28, 2008, and testimony and evidence were received. At the conclusion of the hearing the record was left open until 5:00 pm on February 12, 2008.

There were no written comments submitted from the community in response to the petition for abandonment.

II. Summary of Testimony and Evidence of Record

At the public hearing four people presented testimony. Mike Cassedy of the then Department of Public Works and Transportation (now by reorganization referred to as the Department of Transportation or "DOT") identified the proposed Abandonment Area. Mr. Cassedy described that his office requested comments from the public, appropriate governmental agencies, and public utility companies that might be affected by the

proposed abandonments. Mr. Cassidy listed Exhibits 1 – 8 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 Exhibit B.

Mr. Cassidy noted that, at the time of hearing, comments were missing from the Police Department, the Department of Fire and Rescue Services, Verizon and PEPCo. Mr. Cassidy indicated that he would again contact these agencies for comments.

At the hearing Rebecca Walker, counsel for the Applicant, Michael Schwartz, a principal of Applicant, and Bruce Morris, a surveyor for the Applicant, presented testimony on behalf of the Applicant, describing generally the desire for the abandonment to address multiple setback lines; the fact that the proposed Abandonment Area is not improved; the general topography of the area with slopes of 15 to 35 feet and the related proceedings when the Montgomery County Planning Board considered the proposed abandonment.

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, Verizon did not comment on the proposed abandonment and is deemed to have no objection. The Washington Suburban Sanitary Commission by email dated January 23, 2008 indicated that it needed more detailed maps to be able to identify where WSSC lines begin and end. *Hearing Exhibit 5*. However, consistent with the testimony of Mr. Cassidy, the 2nd page of *Hearing Exhibit 5* identifies with an asterisk does not have any improvements within the proposed Abandonment Area. Washington Gas by letter dated January 2, 2008

indicated that it had no objection to the abandonment. *Hearing Exhibit 13*. The Montgomery County Department of Fire and Rescue Services by email dated February 1, 2008 indicated that it has no objection to the proposed abandonment. *Hearing Exhibit 15*. DOT conditioned its approval of the proposed abandonment upon the Applicant granting an easement for any County storm drain facilities and public utilities within the proposed Abandonment Area or relocating such facilities into an approved easement area at Applicant's expense. DOT further conditioned its approval upon reservation of right-of-way sufficient for a path if required by the Montgomery County Planning Board. *Hearing Exhibit 8*.

The Montgomery County Planning Board unanimously found that the proposed abandonment should be approved on the condition that a perpetual public use easement be "developed" for pedestrian access over the Abandonment Area, which easement must be acceptable to all parties of concern, including the abutting property owners, and to be effective with the recordation of a new plat for the abandonment of a portion of Pine Street. *Exhibit 14*. Presumably this recommendation was based upon the Planning Board Staff Report that was attached to the letter submitted by the Montgomery County Planning Board.

In its report Planning Board staff pointed out that the White Oak Master Plan recommends "protecting and strengthening existing neighborhood character and pattern of land use by using 'rights-of-way as potential pedestrian and bicycle connections between neighborhoods.'" The Staff Report further pointed out that the Transportation Section of the White Oak Master Plan recommends "pedestrian walkways where appropriate with community approval on paper streets to enhance the network of

pedestrian ways.” Staff noted that although not specific to the subject area of Pine Street, other areas of Pine Street were specifically recommended for sidewalks. Planning Board Staff identified a concern that there are three lots with frontage on the paper Pine Street to the north that are not developed and if developed in the future, Staff thought that the proposed abandonment could complicate future development due to emergency vehicle access needs. For these reasons Planning Board Staff recommended against abandonment. The Planning Board did not adopt the Staff recommendation. It is also noteworthy that the Montgomery County Department of Fire and Rescue Services commented on the proposed abandonment and identified no objection to the abandonment.

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 either had no objection to the abandonments, or if they did object, they proposed conditions which if satisfied will eliminate the objection to the abandonments.

III. Conclusions and Recommendations

For rights-of-way that have been put to public use, 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.

Rights-of-way that have not been put to public use may be abandoned pursuant to a different process by application to the Montgomery County Planning Board. It appears that there was uncertainty as to which process this particular application should have followed. The Planning Board voted to approve the abandonment and noted that if the County Council finds that the right-of-way has been put to public use the Planning Board recommends that the County Council conditionally approve the proposed abandonment. *See, Exhibit 14.* Given the comments of the utilities, it does not appear that utilities are in fact located within the proposed Abandonment Area. However, given the recommendation of DOT and the testimony of Mr. Cassidy regarding the County's ownership of nearby Lots 3, 4 and 5, it is not clear if the proposed Abandonment Area has ever been used for storm drainage. Therefore, in order to protect and preserve the public's interest in rights-of-way, the processes of Montgomery County Code sections 49-62 and 49-63 have been duly followed.

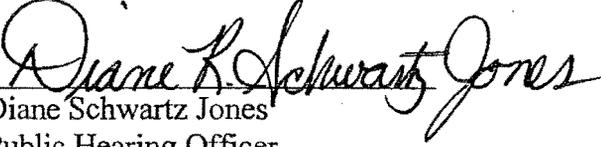
Based on a thorough review of the testimony and the evidence of record, I recommend that the petition to abandon a 200' length of the 30-foot wide unimproved right-of-way for Pine Street as shown on Exhibit A be conditionally granted.

The proposed abandonment is recommended subject to satisfaction of the following requirements:

- 1) an easement in form and substance agreeable to DOT and the property owners adjacent to the proposed abandonment area be granted providing for a pedestrian and bike path within the easement area;
- 2) the Abandonment Area must be subject to a permanent and perpetual public improvements easements sufficient in form and substance to allow for the current and future placement, maintenance and repair of utilities and drainage;
- 3) the form and substance of the easements referred to in 1) and 2) above must be approved by the Office of the County Attorney for Montgomery County, Maryland;
- 4) Applicant must prepare the public improvement easements and cause the duly executed easements to be recorded in the Land Records for Montgomery County, Maryland prior to the proposed abandonment taking effect; and
- 5) Applicant must prepare and record a new record plat in accordance with the requirements of Montgomery County Code Section 49-65(d), which plat must incorporate the Abandonment Area into the adjacent lots 6 and 11, subject to the public improvements easements, with signature on the record plat of all necessary owners, mortgagees and lienholders of record.

Respectfully submitted,

October 10, 2008


Diane Schwartz Jones
Public Hearing Officer

The Public Hearing Officer's Recommendation for AB703 has been reviewed and is approved.

Date: 10/13/2008

 (Acting)
Isiah Leggett, County Executive