

AGENDA ITEM #2E
July 28, 2009
Action

MEMORANDUM

July 24, 2009

TO: County Council
FROM: Glenn Orlin, ^{Go}Deputy Council Staff Director
SUBJECT: **Action**—abandonment of an unnamed right-of-way in Marywood Subdivision

An unimproved and unnamed right-of-way off Marywood Road in Bethesda's Marywood Subdivision 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	©2-3
Map noting location of proposed abandonment	©4
Hearing Examiner's report	©5-10



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

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. AB698, Unnamed Right-of-Way
Marywood Subdivision, Bethesda
7th Election District

For your consideration, attached herewith is a proposed Resolution whereby the County Council may approve the abandonment of an unimproved and unnamed right-of-way off of Marywood Road in the Marywood Subdivision in Bethesda. Supporting data are submitted as follows:

1. Council Resolution
2. Letter requesting the abandonment Ms. Mimi Kress, the Applicant
3. A Public Hearing was held on January 28, 2008, as announced by Executive Order No. 354-07.
4. The Hearing Examiner's Report and Recommendation
5. A location map and tax map for reference

IL/rg

Attachments

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DPWT Docket No. AB698
Abandonment – Unnamed Right-of-Way
Marywood Subdivision
Bethesda, Maryland

Background

1. By letter dated January 18, 2007, from Ms. Mimi Kress, the Applicant, a request was made to the County to abandon an unimproved and unnamed right-of-way adjoining property owned by the Applicant in the Marywood Subdivision in Bethesda.
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 was unclear if it had facilities in the area.
5. VERIZON had no objection.
6. The Montgomery County Planning Board had no objection.
7. The Department of Public Works and Transportation (now Department of Transportation) recommended approval conditioned upon the Applicant granting easements for County storm drains and public utilities, or at Applicant's' expense relocating any such these facilities. Additionally, if any part of an existing paved path is within the area proposed for abandonment, the abandonment should exclude sufficient right-of-way for such path.
8. The Office of the Fire Marshal indicated that Marywood Road does not have a sufficient turnaround, and therefore requested that if abandoned, a condition be the installation of a Fire Department compliant turnaround in some form, but that the turnaround would not necessarily have to be on the right-of-way.

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

Action

The County Council for Montgomery County, Maryland, finds that the 30-foot wide right-of-way extending approximately 172.31 feet and adjacent to Lot 5 in a Resubdivision of Lots 2 and 4, Block 3 in the Marywood Subdivision proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment, subject to the following conditions:

1. The area proposed for abandonment must be subject to an easement for a Fire Department compliant turnaround, the form of which must be approved by the Office of the Fire Marshal.
2. To the extent that any part of an existing paved path is within the area proposed for abandonment, the Applicant must prepare, grant and record an easement to the County for such path.
3. Applicant must grant, prepare and record any necessary easements for County storm drains and public utility facilities to the satisfaction of the County or the utility, as applicable, allowing facilities to remain at their current or relocated locations and providing the perpetual right of ingress to and egress from the easement area at any time.
4. The Applicant must bear all costs for the preparation and recordation of all necessary legal documents and plats that must incorporate the abandoned area into Lot 5.
5. 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.
6. 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.

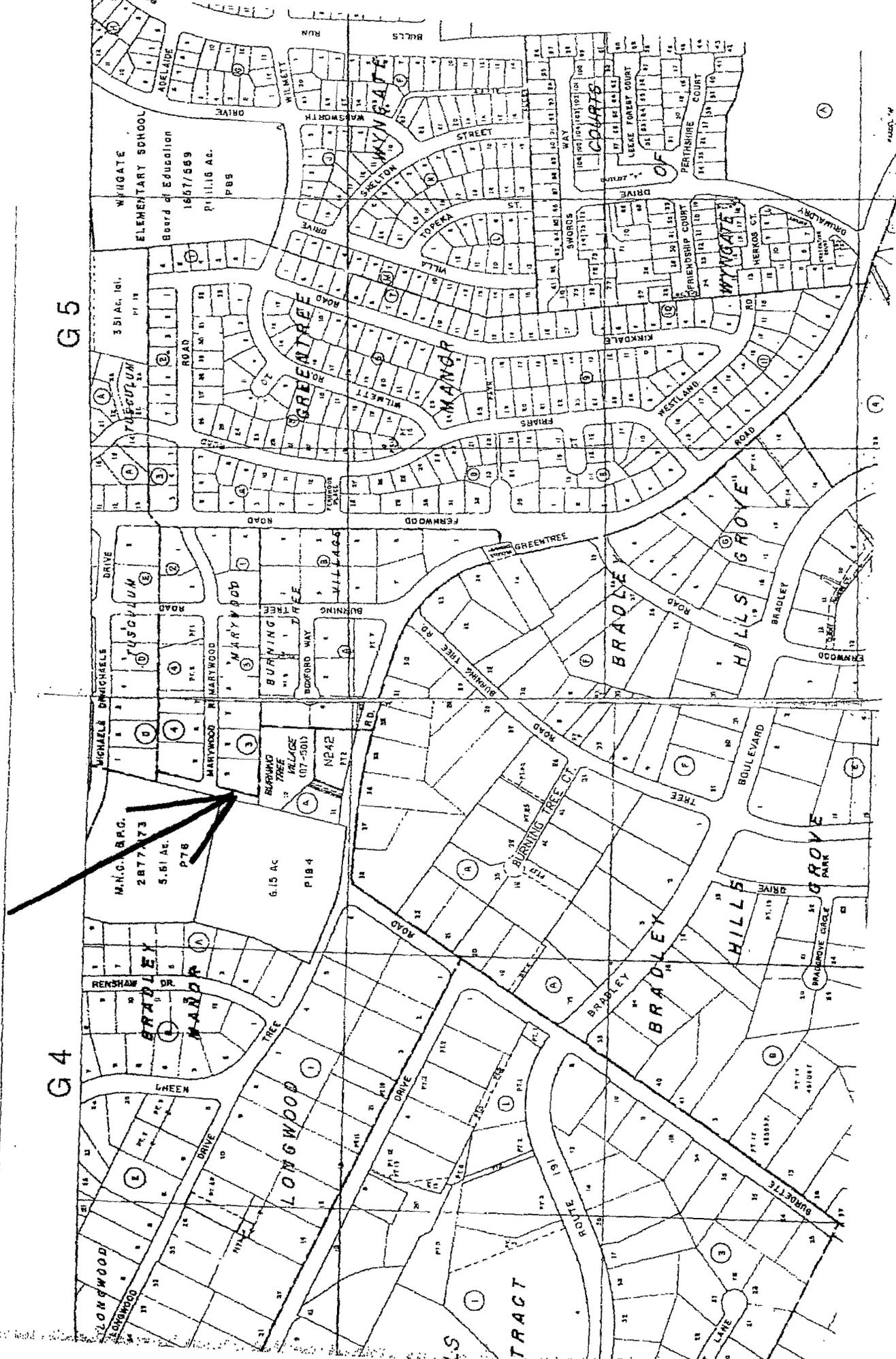
This is a correct copy of Council Action.

Linda M. Lauer, Clerk of the Council

Tax Map G.P. 41

G4

G5



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

IN THE MATTER OF Abandonment Petition AB 698

Unnamed Right-Of-Way off of Marywood Road

BEFORE: Diane Schwartz Jones Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

Ms. Mimi Kress proposes that the county abandon a portion of an unnamed, unimproved paper right-of-way off of Marywood Road in Bethesda, Maryland. *See, Exhibit 1.* The right-of-way proposed for abandonment is 30 feet wide (of an overall 60 feet wide right-of-way) and is approximately 172 .31 feet long. The area proposed for abandonment abuts Lot 5 in a resubdivision of lots 2 to 4, Block 3 in the Marywood subdivision. *See, Exhibit 8.*

Executive Order 354-07 authorizing the hearing was issued on November 26, 2007. *See, Exhibit 2.* Notices for the hearing appeared in the *Montgomery County Sentinel* newspaper (January 17, 2008; January 24, 2008). *See, Exhibit 4.* Additionally, notices of the hearing were sent to adjoining properties and the civic association. *See, Exhibit 3 and Hearing Transcript, pps. 6-7.* The property was posted with notice of the hearing (*see, Exhibit 11*), and a public hearing was held on January 28, 2008, at approximately 1:00 pm in the Lobby Level Auditorium of the Executive Office Building, 101 Monroe Street in Rockville, Maryland. At the hearing, testimony was received and exhibits

entered into the record. The record was held open until the 5:00 p.m. on February 12, 2008.

II. Summary of Testimony and Evidence

Ms. Mimi Kress proposes that the County abandon the unnamed, unimproved right-of-way adjoining her property and as reflected on Exhibit 8. The right-of-way proposed for abandonment was created by Record Plat No. 2721 dated November 24, 1950. *See, Exhibit 8.* According to the Planning Board Staff Report, “[c]hanges in the orientation of roads in the area due to the 2000 Burning Tree Village development have made the connection of Marywood Road to Greentree Road unnecessary.” *See, Exhibit 16.*

At the hearing on the proposed abandonment, Mr. Michael Cassidy testified on behalf of the then Department of Public Works and Transportation (“DPWT”).¹ The Exhibits that are listed on Attachment 1 to this Report and Recommendation were introduced into the record through Mr. Cassidy. Mr. Cassidy testified that his office requested comments from the public, government agencies and public utility companies in fulfillment of the requirements of Montgomery County Code section 49-62. At the time of hearing the agencies not heard from were the Police Department, the Planning Board and Washington Gas. A statement from the Planning Board indicating that it has no objection to the proposed abandonment was received on January 28, 2008. *See Exhibit 16.*

PEPCo by letter dated January 22, 2008 indicated that it has no poles or equipment that feeds electrical service in the area proposed for abandonment and

¹ Effective July 1, 2008 the Department of Public Works and Transportation was reorganized and responsibilities for transportation and rights-of-way are now under the Department of Transportation.

therefore indicated that it has no objection to the abandonment. *See, Exhibit 5.*

Washington Suburban Sanitary Commission (“WSSC”) by email dated December 12, 2007 initially indicated “no facilities” for AB 689 (*see, Exhibit 12*); however by email dated January 23, 2007 WSSC indicated that it did not have adequate maps to clearly identify where it lines it has. The email also referred to a pdf sheet with streets marked showing areas of known underground facilities; however the pdf was not submitted by DPWT as part of the hearing record. *See, Exhibit 6.* Washington Gas indicated that it does not have facilities within the right-of-way proposed for abandonment and stated that it offers no objection to the proposed abandonment. Notices for the hearing appeared in the *Montgomery County Sentinel* newspaper (January 17, 2008; January 24, 2008). *See, Exhibit 17.*

The Office of the Fire Marshal commented on the proposed abandonment and indicated that Marywood Road does not have a sufficient turn around, and therefore requested that if abandoned, a condition of the abandonment be the installation of a Fire Department compliant turnaround in some form, but that the turnaround would not necessarily have to be on the right-of-way. *See, Exhibit 13.*

DPWT offered its conditional approval of the proposed abandonment by memorandum dated January 28, 2008. The conditions of DPWT’s approval were that the applicant grant easements for any County storm drains and public utilities, or at the applicant’s expense, relocate any such facilities. Additionally, if any part of an existing paved path is within the area proposed for abandonment, the abandonment should exclude sufficient right-of-way for such path. *See, Exhibit 15.*

III. Conclusions and Recommendations

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. In this case, abandonment turns on whether or not the right-of-way is needed for public use.

The right-of-way proposed for abandonment is not paved (*see, Exhibit 10*) and, per the report of the Planning Board Staff, changes in the orientation of roads due to the Burning Tree Village development in 2000 made the connection intended for the subject right-of-way no longer necessary. However, one comment was received questioning whether a paved pedestrian path was within the area proposed for abandonment, and if so, registered an objection to the abandonment because the right-of-way would, under

that circumstance, be needed for public use. *See, Exhibit 14.* This concern is addressed by the condition recommended by DPWT that if the right-of-way encompasses any portion of a paved path, that the area of the path be excluded from abandonment.

Based on a thorough review of all the testimony and evidence of record, I conclude that subject to the below stated conditions of abandonment, the 30-foot wide right-of-way extending approximately 172 .31 feet and adjacent to Lot 5 in a resubdivision of lots 2 to 4, Block 3 in the Marywood subdivision as shown on Exhibit 8 is not needed for public transportation use. I therefore recommend that the County Executive authorize the abandonment with the following conditions:

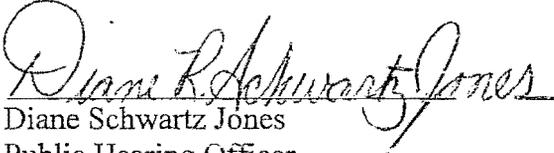
1. The area proposed for abandonment be subject to an easement for Fire Department compliant turnaround, the form of which must be approved by the Office of the Fire Marshal;
2. To the extent that any part of an existing paved path is within the area proposed for abandonment, the applicant must prepare, grant and record an easement to the County for such path.
3. Applicant must grant, prepare and record any necessary easements for County storm drains and public utility facilities to the satisfaction of the County or the utility, as applicable, allowing facilities to remain at their current or relocated locations and providing the perpetual right of ingress to and egress from the easement area at any time; and
4. Applicant must prepare a new record plat incorporating the abandoned area into Lot 5.

Signature Page Follows

(9) 5

Respectfully submitted,

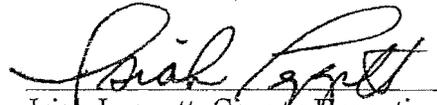
August 25, 2008


Diane Schwartz Jones
Public Hearing Officer

The Public Hearing Officer's Recommendations have been reviewed and are approved.

Date:

Sept 1, 2008


Isiah Leggett, County Executive