

T&E COMMITTEE #4
July 23, 2009

MEMORANDUM

July 21, 2009

TO: Transportation, Infrastructure, Energy and Environment Committee
FROM: ^{GO} Glenn Orlin, Deputy Council Staff Director
SUBJECT: Abandonment of Reed Street

Reed Street in the Bethesda Central Business District has been proposed for abandonment. Reed Street is a right-of-way which has been used in part as the western end of the Georgetown Branch Interim Trail, linking it from the Apex Building portal to the intersection of Woodmont and Bethesda Avenues. The applicants—Street Retail, Inc., JBG Companies, Frederick S. Burke and Carter S. Kaufmann—are seeking the abandonment in order to construct the Woodmont East II development at the northeast corner of Woodmont and Bethesda Avenues.

The Executive is recommending approval of this abandonment subject to many conditions. The key conditions are those in Action clauses #1 and #2 (see ©3) that require access and continuity to the Capital Crescent Trail, as well as safe access to the trail if the tunnel under the Apex Building has to be closed for a period, and a series of 14 detailed conditions contained in a February 20, 2008 memorandum from the Transportation Planning Division (see ©35-38). The builder and the Maryland Transit Administration have agreed to a further set of design changes (©48-50).

The Woodmont East II development received much public comment, as did the abandonment application that would be a necessary precursor. Many citizens expressed concern about the safety and connectivity of the trail, and others advocated turning the Reed Street right-of-way into a park. The Hearing Examiner was persuaded that the Planning Board's conditions would ensure trail connectivity and safety, and noted that park use was not a legal option.

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

Attachments

Executive's transmittal letter	©1
Draft adoption resolution	©2-4
Maps noting location of proposed abandonment	©5-7
Application letter	©8-9
Public hearing notice	©10
Hearing Examiner's report	©11-34
Transportation Planning Division's 2-20-08 memorandum	©35-47
JBG/MTA letter of agreement	©48-50

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

TO: Phil Andrews, President
Montgomery County Council

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

SUBJECT: DPWT Docket No. AB702, Reed Street
Miller's Second Addition to Bethesda Subdivision, Bethesda
7th Election District

(Acting for)

ENCLS IN FILE

For your consideration, attached herewith is a proposed Resolution whereby the County Council may approve the abandonment of Reed Street in the Miller's Second Addition to Bethesda Subdivision in Bethesda. Supporting data are submitted as follows:

1. Council Resolution
2. Letter requesting the abandonment from Holland & Knight on behalf of its clients, Street Retail, Inc., JBG Companies, Frederick S. Burke and Carter S. Kaufmann, the Applicants
3. A Public Hearing was held on January 28, 2008, as announced by Executive Order No. 356-07.
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. AB702
Abandonment – Reed Street
Miller’s Second Addition to Bethesda Subdivision
Bethesda, Maryland

Background

1. By letter dated April 27, 2007, from Holland & Knight on behalf of its clients, Street Retail, Inc., JBG Companies, Frederick S. Burke and Carter S. Kaufmann, the Applicants, a request was made to the County to abandon Reed Street in the Miller’s Second Addition to Bethesda 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 objected unless granted an easement for its facilities.
4. Washington Suburban Sanitary Commission did not object if granted an easement for its facilities.
5. VERIZON did not respond within 60 days and therefore, concurrence is presumed.
6. The Montgomery County Planning Board recommended approval conditioned upon two conditions:
 - a. The recommended reservations and public use easements for the necessary rights-of-way to accommodate the Purple Line and Georgetown Branch Trail must be as outlined in the Transportation Planning memorandum for Woodmont East, Phase II, Project Review Plan No. 920070070 and Preliminary Plan No. 120070200 dated February 20, 2008.

- b. The proposed abandonment must be shown on the subsequent site plan and take effect at recordation of a plat pursuant to Chapter 50 of the County Code to incorporate the rights-of-way into the proposed redeveloped property associated with the Project Review Plan No. 920070070 and Preliminary Plan No. 120070200.
7. The Department of Public Works and Transportation (now Department of Transportation) recommended approval subject to the Applicants receiving Site Plan approval from the Montgomery County Planning Board for the Woodmont East Phase II development. Such approval must address the continuity of the Capital Crescent Trail, the approval of safe alternatives if the trail has to be closed for a limited time, and the commitment to minimize the duration of the closure.
8. The Montgomery County Fire and Rescue Service had no objections.
9. The Police Department did not respond within 60 days and therefore, concurrence is presumed.
10. PEPCO objected unless granted an easement for its facilities.
11. The County Executive recommends approval of the proposed abandonment.

Action

The County Council for Montgomery County, Maryland, finds that Reed Street, consisting of approximately 8,308 square feet and 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. Applicants must have received Site Plan approval for the Woodmont East II development project described in Project Review Plan No. 920070070 and Preliminary Plan No. 120070200 which addresses the access to and the continuity of the Capital Crescent Trail, the approval of safe alternatives and access to the trail if the tunnel has to be closed for a limited amount of time, provided that any such closure should be minimized.
2. The recommended reservations and public use easements for the necessary rights-of-way to accommodate the Purple Line and the Georgetown Branch Trail must be as outlined in the Transportation Planning memorandum for Woodmont East, Phase II, Project Review Plan No. 920070070 and Preliminary Plan No. 120070200, dated February 20, 2008 and must provide convenient access for pedestrians and bicyclists crossing Woodmont Avenue and Bethesda Avenue, which access must also be approved by the Department of Transportation.

3. The proposed abandonment must be shown on the subsequent site plan and take effect upon the later to occur of 1) recordation of a plat pursuant to Chapter 50 of the Montgomery County Code to incorporate the rights-of-way into the proposed redeveloped property associated with the Project Review Plan No. 920070070 and Preliminary Plan No. 120070200 and 2) Applicants providing reservations and public use easements as described in paragraph 2 above that are not subject to any prior liens or encumbrances.
4. Applicants must grant, prepare, and record any necessary easements for County storm drains and public utility facilities, including but not limited to gas lines, electric facilities and water and sewer to the satisfaction of the County or the public utility, as applicable, allowing facilities to remain at their current or relocated locations and providing perpetual right of ingress and egress from the easement area at any time (which rights must not be subordinate to other interests).
5. The Applicants must bear all costs for the preparation and recordation of all necessary legal documents and plats incorporating the Abandonment Area into lots.
6. 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.
7. 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

A 6 NW

77°06'45"

5 NW

77°06'00"

Joins Map 5285

77°05'15"

4 NW

77°04'30"

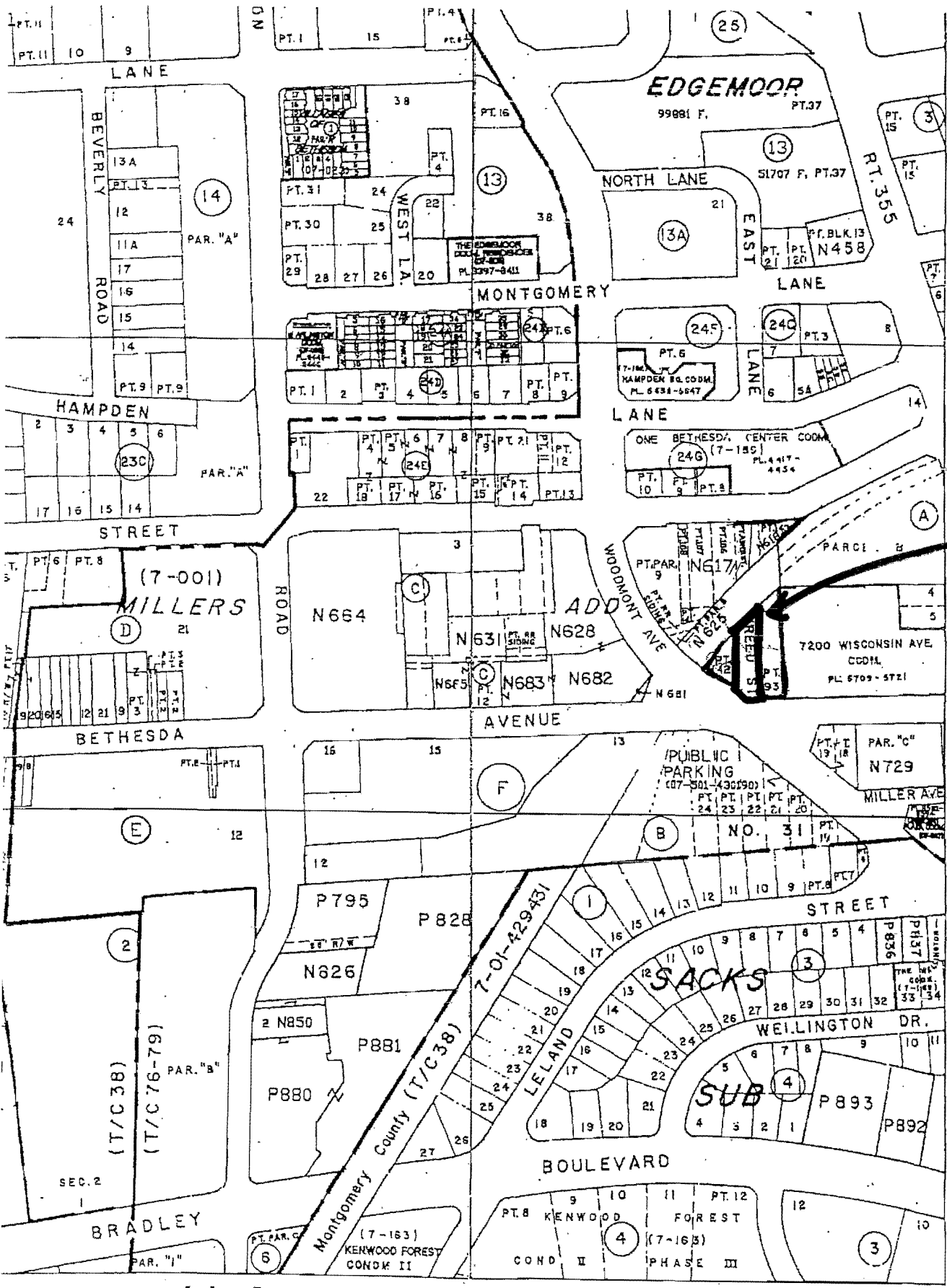
3 A



A DC 100 FT 3401

2,400,000 FT

B 10000



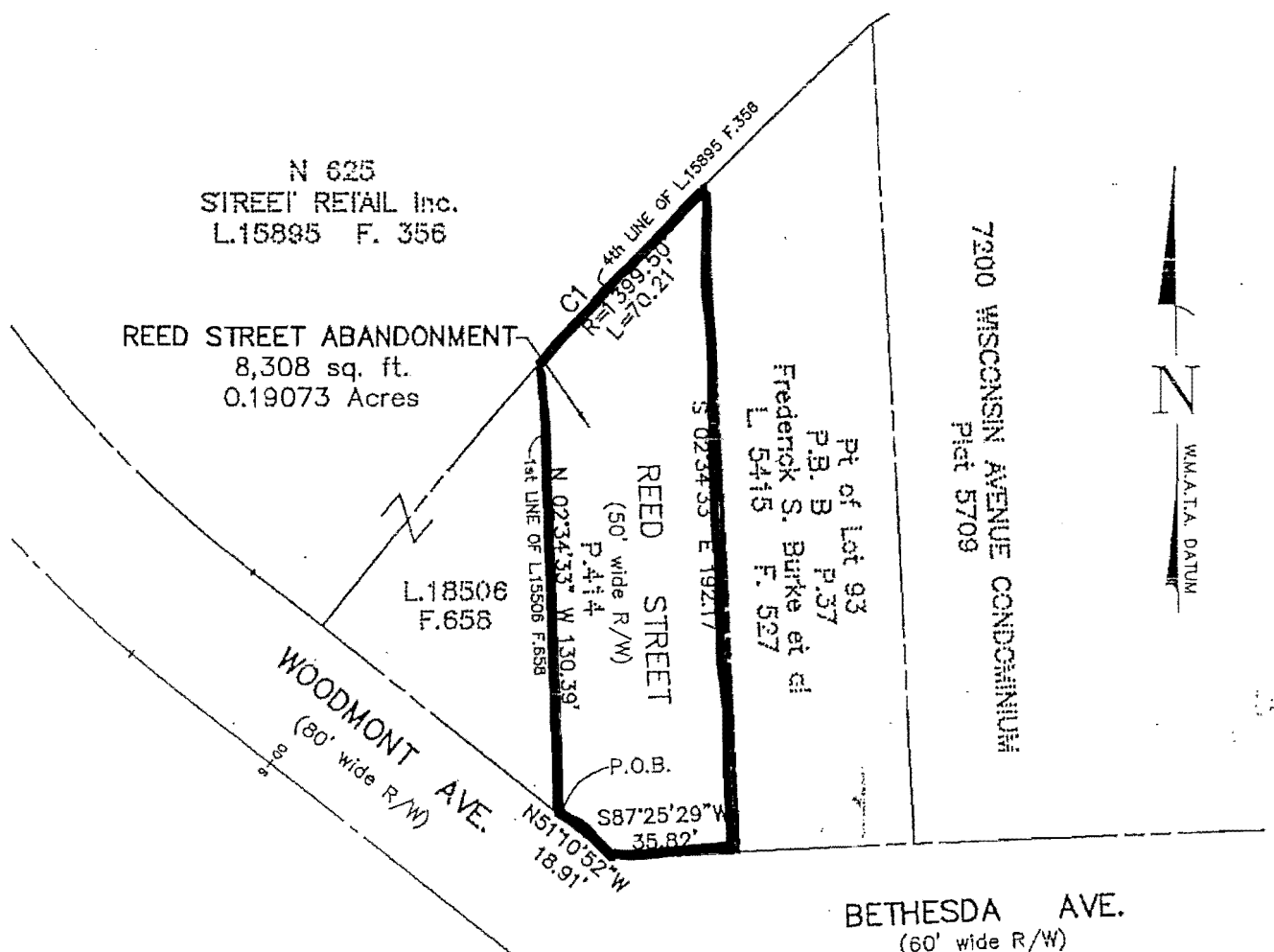
HN 342

N 2

H 2


MONTGOMERY CO.,
MARYLAND (6)

MAP HN 122
W.S.S.C. 209 NW 05
Location: BETHESDA



CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD BEARING	CHORD
C1	1399.50'	70.21'	2°52'27"	35.11'	N 42°50'38" E	70.20'

EXHIBIT 'B'
 Proposed Abandonment
 Reed Street
 Bethesda, Maryland
 Scale: 1"=50' August, 2006
 MONTGOMERY COUNTY, MARYLAND


Macris, Hendricks & Glascock, P.A.
 Engineers • Planners
 Landscape Architects • Surveyors
 9220 Wighman Road, Suite 120
 Montgomery Village, Maryland
 20886-1279
 Phone 301.670.0840
 Fax 301.848.0693
 www.mhgp.com
 (EP_45_01)
 1993.399.45

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Patricia A. Harris
301 215 6613
pharris@hklaw.com

April 23, 2007

VIA UPS

2007 APR 26 PM 3:4

The Honorable Isiah Leggett
County Executive, Montgomery County
Office of the County Executive
Executive Office Building
Rockville, Maryland 20850

Re: Petition for Street Abandonment -- Reed Street

Dear County Executive Leggett:

On behalf of Street Retail, Inc. (an affiliate of Federal Realty Investment Trust), JBG Companies, Frederick S. Burke and Carter S. Kaufmann (collectively, the "Petitioners"), we hereby request the abandonment of Reed Street pursuant to Sections 49-62 et. seq. of the Montgomery County Code. The abandoned Street will revert to the abutting lots and parcels.¹

Reed Street was established by Plat No. 414, attached hereto as Exhibit "A". Although this plat depicts Reed Street as a 402-foot right-of-way that connects Elm Street to Bethesda Avenue, the construction of Woodmont Avenue eliminated the need for such a connection. Accordingly, the northern segment of the right-of-way was abandoned to accommodate development along Elm Street, as the Tax Map attached as Exhibit "B" indicates. The portion of Reed Street that exists today -- described on the attached survey (Exhibit "C") -- is effectively a stub street with an area of approximately 8,308 square feet that does not provide access to any parcels not already accessible from either Bethesda Avenue or Woodmont Avenue.

Reed Street neither intersects with Bethesda Avenue at a shared grade, nor provides a curb-cut to Bethesda Avenue. In considering the abandonment request, we bring your attention to the County's easement interest across Lot Pt. 142 pursuant to the Declaration of Easement recorded in the Land Records of Montgomery County at Liber 7443, Folio 663 (Exhibit "D"). This Declaration of Easement provided the County with an easement in order that the County

¹ Street Retail, Inc., a wholly-owned subsidiary of Federal Realty Investment Trust, currently owns the properties known as Lots N625 and Part of Lot 142. JBG/Woodmont LLC (an affiliate of the JBG Companies) is the current ground-lessee of Lot P93. In connection with the development of Woodmont East, JBG/Woodmont LLC is negotiating the potential acquisition of P93 from the current owners and ground-lessors, Frederick S. Burke and Carter S. Kaufmann.

could provide an access road to Reed Street. As provided in paragraph six of this Declaration, the County covenants that it will not oppose the abandonment of Reed Street in the event that all adjoining property owners petition for its abandonment, provided that no current or anticipated public uses exist for the Reed Street right-of-way. Reed Street is not currently being used for public use and nor are there any Master Planned or otherwise anticipated public uses for Reed Street. Instead, other significant areas within the proposed Woodmont East development, including the proposed plaza area, are to be devoted to public use space, including the Capital Crescent Trail and an accommodation for the future Purple Line.

The subject abandonment is proposed in connection with the development of Woodmont East (Lots Pt. 93, P142, N617, N618, and N625). Woodmont East is a smart-growth infill mixed-use project that proposes between 230-250 residential units, including 12.5 percent MPDUs; a 225-room hotel; 4,350 square feet of new street-level retail space; and approximately 250 private parking spaces in a three-level underground garage. Woodmont East is designed to accommodate both the potential future Purple Line and the Crescent Trail and also contributes to Bethesda's network of pathways and open spaces in furtherance of the public interest.

We look forward to discussing the abandonment request in greater detail at the public hearing. We have enclosed the \$2,500 filing fee for the abandonment as well as a list of the property owners abutting the Street. If you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,

HOLLAND & KNIGHT LLP



Patricia A. Harris

Enclosures

cc (w/encls.): Mr. Michael Cassedy (w/filing fee check)
Ms. Chorman Romano
Mr. John Tschiderer

3831626_v2



MONTGOMERY COUNTY EXECUTIVE ORDER

COPY

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

Subject: Abandonment of Reed Street Miller's Second Add. to Bethesda Subdivision Bethesda	Executive Order No. 356-07	Subject Suffix AB
Originating Department: Public Works and Transportation	Department Number AB 17-07	Effective Date 11/26/07

AB702


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 1:15 p.m. on Monday January 28, 2008
101 Monroe Street, EOB Lobby Conference Room
Rockville, Maryland 20850

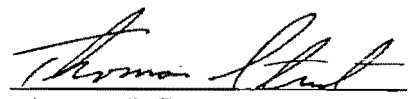
to consider an application received from Holland & Knight on behalf of its clients, Street Retail, Inc. JBG Companies, Frederick S. Burke and Carter S. Kaufmann, the applicants, seeking abandonment of Reed Street, Miller's Second Addition to Bethesda subdivision, in Bethesda.

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

IN THE MATTER OF: * DEPARTMENT OF
* TRANSPORTATION
PETITION OF STREET RETAIL, INC. *
(AN AFFILIATE OF FEDERAL REALTY * PETITION NO. AB 702
INVESTMENT TRUST), JBG *
COMPANIES, FREDERICK S. BURKE, * BEFORE:
AND CARTER S. KAUFMANN * DIANE SCHWARTZ JONES
* PUBLIC HEARING OFFICER
FOR ABANDONMENT OF REED *
STREET IN MILLER'S SECOND *
ADDITION TO BETHESDA *
* * * * *

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

On April 23, 2007, Holland & Knight, LLP, on behalf of Street Retail, Inc. (a wholly-owned subsidiary of Federal Realty Investment Trust), JBG Companies, Frederick S. Burke, and Carter S. Kaufmann (collectively the "Petitioners") requested to abandon Reed Street in Miller's Second Addition to Bethesda Subdivision in Bethesda, Maryland (Ex. 1).¹ Reed Street was established in 1930 by Plat No. 414 (Ex. 1, Attachment A), which depicts Reed Street as a 50 foot wide by 402 square foot right-of-way that connects Elm Street with Bethesda Avenue. The express intent of the fee simple owners, as found in the Owner's Dedication clause on the Plat, was to dedicate the Reed Street property for "highway purposes"(Ex. 1, Attachment A). The Petitioners indicated that, after the construction of Woodmont Avenue in Bethesda, the northern segment of

¹ Street Retail, Inc., a wholly-owned subsidiary of Federal Realty Investment Trust, currently owns the properties known as Lots N625 and part of Lot 142. JBG/Woodmont LLC (an affiliate of the JBG Companies) is the current ground-lessee of Lot P93, which is owned by Frederick S. Burke and Carter S. Kaufmann (Ex. 1, Attachment C).

the Reed Street right-of-way was abandoned to accommodate development on Elm Street (See Tax Map, Ex. 1, Attachment B).

Petitioners now seek the abandonment of the portion of Reed Street that exists today, as a stub street with an area of approximately 8,308 square feet of public right-of-way located near the intersection of Woodmont Avenue and Bethesda Avenue in Bethesda, Maryland. Reed Street does not intersect with Bethesda Avenue at a shared grade, nor is there provided a curb cut to Bethesda Avenue. The public right-of-way requested to be abandoned is located in Miller's Second Addition to Bethesda Subdivision and is described and shown in Ex. 1, Attachment C (the "Abandonment Area").

The Petitioners indicated that Montgomery County, Maryland has an easement interest across Lot Pt. 142 pursuant to a Declaration of Easement recorded in the land records of Montgomery County, Maryland at Liber 7443, Folio 663 (Ex. 1, Attachment D), which provides Montgomery County with an easement for ingress and egress to provide an access road to Reed Street. Petitioners' counsel pointed out the easement in her letter requesting abandonment asserting that "the County covenants that it will not oppose the abandonment of Reed Street in the event that all adjoining property owners petition for its abandonment, provided that no current or anticipated public uses exist for the Reed Street right-of-way." The undersigned public hearing officer is however not putting any weight on this document as what was submitted by the applicant does not bear a signature by the County. Thus, even if the County *could* make the covenant attributed to it, which is highly questionable because such a covenant would impermissibly bind both a future County Executive and a future County Council, there is

no evidence that the County ever actually made the asserted covenant.

The Petitioners have requested the proposed abandonment of Reed Street in connection with their plan to redevelop the area as part of the development of the proposed Woodmont East II project (Lots Pt. 93, P142, N617, N618, and N625). Woodmont East II is a smart-growth infill mixed-use project that proposes between 230-250 residential units, including 12.5% MPDUs; a 225 room hotel; 11,500 square feet of new street-level retail space; and approximately 250 parking spaces in a three level underground garage. (See Exhibit 29 with Planning Board Staff Report attachments). The Woodmont East II project is designed to accommodate both the future Purple Line and the Georgetown Branch Trail.² The Petitioners wish to incorporate the Abandonment Area into the Woodmont East II project area (Ex. 16).

Executive Order No. 356-07, dated November 26, 2007, authorized the holding of a public hearing on the petition for abandonment of Reed Street (AB 702) on Monday, January 28, 2008, beginning at 1:15 p.m., in the lobby conference room of the Executive Office Building, 101 Monroe Street, Rockville, Maryland (Ex. 2). As required by Section 49-62 of the Montgomery County Code, public notice of the public hearing was provided by way of newspaper publication (Ex. 4), a sign posted in the right-of-way (Ex. 9), and by mail to neighboring property owners (Ex. 3). The public hearing was convened as scheduled on January 28, 2008, and testimony and evidence were received. At the conclusion of the public hearing, the record was held open until 5:00 p.m. on March 28, 2008 to provide an opportunity for public agencies and interested persons to submit

² The Purple Line and permanent Georgetown Branch Trail are proposed to be constructed along a portion of the former Georgetown Branch right-of-way which is owned by Montgomery County, Maryland pursuant to a deed from the CSX Transportation with the right-of-way retained intact pursuant to a Certificate of Interim Trail Use issued by the then Interstate Commerce Commission. The Georgetown

comments for the record. In addition to the testimony given at the public hearing described below, and the written comments from various public agencies and public utility companies, including the Montgomery County Planning Board, the record includes 97 emails from residents and various groups opposed to the abandonment of Reed Street (Ex. 28). Finally, the record includes as Ex. 10 a memorandum from Councilmember Floreen to the Planning Board Chairman urging that the developer and Planning Board staff to work out an arrangement that will “ensure continuous and safe use of the trail during the long construction period for Woodmont East.”

II. Summary of Testimony and Evidence of Record

At the public hearing, Mike Cassedy, Montgomery County Department of Transportation, indicated that the requested abandonment of Reed Street included the right-of-way shown on the GIS aerial photograph (Ex. 8), which runs north from Bethesda Avenue and is adjoining the property owned by or under contract to the Petitioners. In accordance with Section 49-62 of the Montgomery County Code, Mr. Cassedy’s office requested comments from the public, appropriate governmental agencies, and public utility companies that might be affected by the proposed abandonment. Mr. Cassedy listed the Exhibits that were contained in the hearing record (Exs. 1-12). The complete list of Exhibits, including exhibits entered into the record after the public hearing, is attached hereto as Attachment I. Mr. Cassedy noted that, at the time of the public hearing, comments had not been received from the Police Department, Verizon, Washington Gas, the Montgomery County Planning Board, and the County Department of Transportation. He indicated that the Montgomery County Planning Board

Branch Trail will connect with the Capital Crescent Trail.

and the Petitioners had requested that the record be left open for their comments.

Patricia Harris, an attorney with Holland & Knight, who represents the Petitioners, presented an overview of the proposed development project, and the requested abandonment of Reed Street. The Woodmont East II development project includes Reed Street and other adjacent parcels. Ms. Harris described the project plan essentially as noted above.³ Ms. Harris submitted a landscape plan (the “Landscape Plan”) for the record which reflects the described project plan, and accommodates the Georgetown Branch Trail and the Purple Line (Ex. 13).⁴

The Reed Street right-of-way was created by Dedication Plat filed June 12, 1930, a copy of which is attached as Exhibit A to the Petitioners’ Memorandum in Support of Petitioner’s (sic) Request for Abandonment. (See, Ex. 16.) The owner’s dedication on this plat provides, “This DECLARATION OF DEDICATION, made on the dates hereafter written. WITNESSETH, that WE, the undersigned for the property set opposite our respective names and shown on this plat do hereby dedicates such lands *for highway purposes* as indicated hereon.”

Ms. Harris indicated that the County Code provides that a right-of-way may be abandoned under Section 49-63(e)(1) if the right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future. She argued that the

³ Pursuant to the February 25, 2008 Development Review Division Project Plan Review memorandum to the Montgomery County Planning Board and included in the Planning Board’s submission to the County in as part of its review of the abandonment petition, the project is described as an optional method mixed-use project for development of a maximum of 250 multi-family dwelling units with 12.5% MPDUs, a hotel with a maximum of 225 rooms, 12,214 square feet of additional retail use with an existing 78,300 square feet office building and existing 28,136 square feet of retail. See, Ex. 29. While these numbers differ slightly from other numbers presented, the difference is not material.

⁴ The trail is described as the Capital Crescent Trail/interim Georgetown Branch Trail in the Planning Board Staff memorandum dated February 20, 2008 and attached to Ex. 29. The interim Georgetown Branch Trail offers connection to Stewart Avenue into the Lyttonsville area and future plans continue the Georgetown Branch Trail into downtown Silver Spring where it will connect with the Metropolitan Branch.

Abandonment Area does not currently serve any present public use as a street because it does not intersect Bethesda Avenue at a shared grade, nor does a curb-cut exist which provides direct vehicular access from Bethesda Avenue to Reed Street. In addition, in connection with the construction of Woodmont Avenue, the County erected a curb across the former entrance, precluding any functional use as a street, which Ms. Harris argues is evidence that the County anticipated no future public use would be required. Ms. Harris explained that the County was also granted the above described easement across lot Pt. 142 to provide limited vehicular access across Reed Street to facilitate trash service and other services to the building adjacent to Reed Street. Ms. Harris offered on behalf of the petitioners that because the building served by the Easement will be torn down as part of the development project, there will be no future need for such uses to occur across Reed Street. Ms. Harris argued that Maryland courts have held that where property has been dedicated for public use as a roadway, use of it for ingress and egress, parking, recreation or similar activities does not constitute public use. *Welker v. Strosnider*, 22 Md. App. 401, 410, 323 A.2d 626, 631 (1974).⁵ She indicated that there are no master planned or other anticipated public uses connected with the Abandonment Area such that the evidence demonstrates that the Abandonment Area is no longer necessary for any present or anticipated public uses and the requested abandonment should be approved.

Ms. Harris next offered that, in the alternative, Section 49-63(e)(2) provides that an abandonment may be approved if the abandonment is necessary to serve the health, safety and welfare of residents based on certain criteria, including a change in the facts and circumstances since the original dedication. Ms. Harris argued that the Plat was

The Georgetown Branch Trail will then connect with the Capital Crescent Trail.

dedicated in 1930 for “highway purposes”, but that, since this time, Woodmont Avenue was constructed by the County in the vicinity of Reed Street which eliminated the need for any direct connection between Elm Street and Bethesda Avenue at this location. In addition, because the northern segment of Reed Street had previously been abandoned, the Abandonment Area has for many years been a dead-end street that does not provide access to any parcels that are not already accessible from either Bethesda Avenue or Elm Street. As a result, Ms. Harris argued that it is evident that circumstances have changed since the time of the original dedication which renders Reed Street an irrelevant public street. Ms. Harris contends that in its current use, Reed Street goes nowhere and does nothing to serve the County’s transportation objectives. She states that conversely, the abandonment of Reed Street would allow the land to be put to a higher purpose or more efficient use thereby serving the public interest. As such, Ms. Harris argued that the evidence in the record shows that the abandonment of Reed Street would promote the public’s health, safety and welfare.

Ms. Harris also argued that the restrictive dedication found in the Plat which created Reed Street only allows it to be used as a street. She indicated that Maryland law provides that the dedication of property for a specific purpose is binding on the beneficiary, and such property may not be diverted from the use to which it is dedicated, and that dedications of land do not pass fee simple interests, but only easements consistent with the purpose of the dedication.⁶ Petitioners position is that even if Reed Street were not to be abandoned, the County cannot use it for any purpose other than as a public street because the Owner’s Dedication clause on the Plat provided that Reed Street

⁵ The prohibition in *Welker v. Strosnider* actually applies to uses by adjoining landowners.

was dedicated only for “highway purposes.” Thus, according to Petitioners’ counsel, any use of Reed Street by the County for purposes other than a public street, such as use as a park, would be contrary to settled law and might constitute a compensable taking of property. In conclusion, Ms. Harris argued that since the Abandonment Area can only be used a public street and the County has repeatedly demonstrated no intent to use it as such should be sufficient evidence to recommend abandonment of Reed Street.

At the hearing Ms. Pam Browning testified against the County abandoning Reed Street. She indicated that the Coalition of the Capital Crescent Trail has documented that there are approximately 10,000 users of the tunnel per week (which may be accessed from Reed Street) which connects the eastern and western sides of the Capital Crescent Trail. She said that there is a great deal of hiker and biker activity which she understood was a transportation use of Reed Street. Ms. Browning submitted several photographs for the record which showed the use of Reed Street by hikers and bikers (Exs. 17-20). She testified that she had two concerns related to the abandonment of Reed Street. First, it was her understanding that the access from Reed Street to the tunnel would be closed for several years during construction of the development project and that the proposed access to the tunnel during construction would not be safe. Second, she indicated that once the hotel had been built as part of the development project, she was concerned that whatever right-of-way was provided for access to the tunnel would not be safe or adequate (Hearing Transcript, pages 18-25). Despite this concern, no evidence was produced from which a conclusion could be drawn that the proposed access would not be safe or adequate. By letter dated March 23, 2008, Ms. Browning submitted additional

⁶ See Exhibit 16, pages 7-8 for the legal argument on this issue.

photographs which show the wide range of ages and level of cycling skills of trail users traveling on Reed Street, and the heavy amount of traffic on Woodmont Avenue which trail users would most likely be routed to if Reed Street is abandoned (Ex. 30). Ms. Browning argued that the abandonment of Reed Street for the private benefit of developers was not in the public interest.

Ms. Celesta Jurkovich, secretary of the Chevy Chase West Neighborhood Association⁷ testified that Reed Street provides the most direct access to the Capital Crescent Trail east of Bethesda for many of their residents who use the trail on a regular basis and is considered an essential link between the various portions of the trail in Bethesda. She indicated that children from their neighborhood use Reed Street to get to the trail and then to travel to Bethesda-Chevy Chase High School and Westland Middle School. Ms. Jurkovich said that her community has looked at the alternatives that have been offered by the developers to access the Trail instead of Reed Street and that they are not acceptable because the hikers, bikers, and walkers will be moved onto major streets that are loaded with automobile traffic and are not safe. Ms. Jurkovich testified that the community does not think that there is any safe entry or egress from the west end of the tunnel without the Reed Street connection and that her community would like to maintain the public access to the Georgetown Branch Trail from Reed Street. She hopes that the County will fully consider the current and future transportation needs and the rights of pedestrians and bicyclists to use Reed Street, including that the demand to use and access the Georgetown Branch Trail will grow as more housing is built in and around Bethesda

⁷ Ms. Jurkovich indicated that the Association is a community of approximately 500 homes located in the area bounded by Wisconsin Avenue East, Norwood Park, and Bradley Boulevard on the north, Little Falls Parkway on the west, and Drummond Avenue on the south.

(Hearing Transcript, pages 25-27).

Ms. Maureen Jais-Mick testified on behalf of the Edgemoor Citizens Association⁸ that Reed Street is used daily by residents for walking, biking, and commuting to work and school. She said that the Association is of the opinion that it is premature to abandon Reed Street until all the issues related to pedestrian traffic and bicycling on the development site during and after construction have been addressed. Ms. Jais-Mick indicated that pedestrians and bikers use Reed Street to enter and exit the tunnel that leads to the Capital Crescent Trail. She testified that the Association is concerned that, with the abandonment of Reed Street, there will not be a guaranteed safe route for access to the Georgetown Branch/Capital Crescent Trail during the two to three years of construction of the Woodmont East II development which will drastically limit the use of the tunnel and the trail. Ms. Jais-Mick said that it is also not clear if there will be adequate space for a safe exit and entrance to the tunnel after construction of the development is finished due to retail and commercial uses. She requested that the abandonment of Reed Street be postponed until the citizens and the developers had time to work out these issues and because Reed Street is still needed for transportation purposes (Hearing Transcript, pages 28-30).

Ms. Penina Maya testified as a representative of the East Bethesda Citizens Association⁹ which was described as a family-oriented neighborhood with residents of all ages and many families with young children. She indicated that the Capital Crescent Trail

⁸ Ms. Jais-Mick indicated that the Association is a community of approximately 500 families who live to the west of Arlington Road between Old Georgetown Road and Bradley Boulevard in Bethesda.

⁹ Ms. Maya indicated that the Association is a community of approximately 1200 families that borders the

is a major gateway to downtown Bethesda for the residents of the community, and the residents use the interim Georgetown Branch Trail and tunnel for their daily transportation and recreational needs. Ms. Maya said that her community had met with the Woodmont East II developers to express their concern about the development. She testified that the community was concerned that Reed Street might be abandoned for private use which was not in the best interest of the public because the citizens rely on using Reed Street for safe passage through Bethesda. She said that the community believes that Reed Street has been dedicated for public transportation use and the walkers and bikers who use the Trail would be put at risk if they were rerouted to crowded streets if Reed Street is closed (Hearing Transcript, pages 30-35).

Other evidence in the record includes an email from Pat and Patty Garvey, dated January 23, 2008, which indicates that they are opposed to the proposed abandonment because Reed Street provides crucial access to the tunnel and the Capital Crescent Trail, and valuable open space in Bethesda (Ex. 11). The Board of the Coalition for the Capital Crescent Trail, by Wayne Phyllaier in an email dated January 29, 2008, presented its concerns regarding the Reed Street abandonment. The Coalition indicated that it was involved at the Planning Board with the Petitioners' Project Plan approval process. The Coalition requested that the Reed Street abandonment be conditioned upon a binding development plan being in place that provides for: 1) uninterrupted trail use of the Bethesda tunnel throughout the construction period; 2) placement of the permanent trail along the existing B&O Railroad Georgetown Branch public easement between the tunnel and Woodmont Avenue; and 3) there being adequate trail width and adjacent open

Bethesda business district, just east of Wisconsin Avenue and north of East-West Highway.

space in the project to provide for a good trail environment (Ex. 26).

The record also contains 97 emails from various citizens who are opposed to the Reed Street abandonment. The emails generally expressed the following concerns: 1) that it is not in the public interest to give Reed Street to developers to construct a boutique hotel; 2) the Abandonment Area should be saved as open space and developed as a public park; 3) routing trail users onto streets will endanger the users during the 2-3 year construction period, and, after completion, the proposed project will diminish the safety of the trail users; and 4) Reed Street should be kept open for the benefit of the trail users and to provide safe passage to Bethesda (Ex. 28).

Comments were sought from the government agencies and public utility companies listed in Section 49-62(h) of the Montgomery County Code. The evidence in the record indicates that the relevant public agencies and public utilities have reviewed the abandonment petition or foregone the opportunity to provide comments on the proposed Reed Street abandonment. Those responding agencies and utilities either had no objection to the proposed abandonment, or if they did object, they proposed conditions, which if satisfied, would eliminate their objection to the abandonment. Responses were not received from the Montgomery County Police Department, and Verizon. Pursuant to Section 49-62(g) of the Montgomery County Code, these entities are presumed not to oppose the proposed abandonment because the required sixty days has elapsed from the date of the notices of the public hearing which were published on January 17 and 24, 2008 in the *Montgomery County Sentinel*, and on January 23, 2008 in *The Gazette*, Bethesda Edition (Ex. 4).

The Montgomery County Department of Public Works and Transportation (now

the Department of Transportation, by memorandum dated January 30, 2008, recommended approval of the Reed Street abandonment subject to the Petitioners receiving Site Plan approval from the Montgomery County Planning Board for the Woodmont East Phase II development. Such approval must address the continuity of the Capital Crescent Trail, the approval of safe alternatives if the trail has to be closed for a limited amount of time, and the commitment to minimize the duration of the closure (Ex. 27).

The Montgomery County Planning Board, by letter dated March 17, 2008, recommended support of the proposed abandonment petition with the following two conditions proposed in the staff memorandum. First, the recommended reservations and public use easements for the necessary rights-of-way to accommodate the Purple Line and Georgetown Branch Trail must be as outlined in the Transportation Planning memorandum for Woodmont East, Phase II, Project Review Plan No. 920070070 and Preliminary Plan No. 120070200 dated February 20, 2008. Second, the proposed abandonment must be shown on the subsequent site plan and take effect at recordation of a plat pursuant to Chapter 50 of the County Code to incorporate the rights-of-way into the proposed redeveloped property associated with the Project Review Plan No. 920070070 and Preliminary Plan No. 120070200 (Ex. 29).

Washington Gas, by letter dated January 2, 2008, stated that it objected to the proposed abandonment because it has a gas line in the area of the proposed abandonment, and that Washington Gas will require an easement to protect its gas pipeline located in the public right-of-way.

The Potomac Electric Power Company ("Pepco"), by letter dated January 16,

2008, stated that it objected to the proposed abandonment because they have an existing Underground Equipment for electrical services to 4735 Reed Street. However, Pepco stated that “[w]e can withdraw our objection provided that the petitioner(s) are willing to grant, prepare and record easement(s) to Pepco’s satisfaction allowing our facilities to remain at their current locations and to provide the perpetual right of ingress to and egress from the easement area at any time or the petitioner(s) are willing to pay the costs to relocate these facilities and grant any easements necessary to do so” (Ex. 5).

The Montgomery County Fire and Rescue Service, by email dated January 28, 2008, stated that it had no objections to the proposed abandonment (Ex. 24).

The Washington Suburban Sanitary Commission, by email dated January 23, 2008, stated that, in general, developers are required to give right-of-way to WSSC if the County permits the abandonment of public streets where WSSC has water and/or sewer facilities, and indicated that they needed an easement in the right-of-way as part of the Reed Street abandonment for its facilities (Ex. 6).

III. Conclusions and Recommendations

The abandonment of road rights-of-way is governed by the provisions of Sections 49-62 and 49-63 of the Montgomery County Code. Section 49-62 permits an application for abandonment of a right-of-way by any person or government agency, provides for public agency and utility company review of the proposed abandonment, and requires notice of the proposed abandonment be given to certain parties and that a public hearing be held. In this case, the hearing and notice provisions have been satisfied, and the required public agencies and utility companies have been given the opportunity to review and comment on the petition for abandonment as described above.

Section 49-63 allows the abandonment of a right-of-way if 1) the right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future, or 2) the abandonment is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned. In assessing the health, safety and welfare issues, the County 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.

Preliminarily, the undersigned public hearing officer rejects the applicants argument that the pedestrian and bicycle use of Reed Street does not fall within the scope of the grant of Reed Street for “highway purposes.” The decision of the Maryland Court of Appeals in *Chevy Chase Land Company, et al v. the United States*, 355 Md. 110 (1999) governs this matter. Simply stated, our highway cases have consistently recognized that easements for public highways include within their scope the doctrine of shifting modes of transportation. *See*, 355 Md. At p. 147 quoting from *Water Company v. Dubreuil*, 104 Md. 424 (1907):

[W]e have been governed by the fact that such [electric railway] uses, of both streets and rural highways, were only new modes of travel and transportation, and the right, originally acquired, to use them was not simply for the then existing modes, but for all such as might arise in the ordinary course of improvement. It could therefore be presumed that such improved modes of travel and transportation were within the contemplation of the parties....

In its discussion, the Court went on to note that in *Poole v. Falls Road Ry. Co.*, 88 Md. 533 (1898), the purpose of a highway easement is for passing and repassing and only

when the use does not relate to such passage is it an additional servitude. The Court of Appeals in *Chevy Chase Land Company* concluded that hiker and biker trail use was consistent with the grant of an easement for train passage just as it would have been for highway usage. The Petitioners' rely on the decision of the Maryland Court of Special Appeals in *Welker v. Strosnider*, 22 Md. App. 401(1974) which discussed whether periodic recreational use of an unimproved right-of-way to get to a local park by pedestrians and bicyclists amounted to acceptance of a dedication by the County. Given that there is no issue about whether Reed Street was ever accepted by the County (it was a paved road) and the fact that the bicyclists and pedestrians currently use this road for access to the Georgetown Branch and the Capital Crescent Trail, Petitioners' reliance on *Welker v. Strosnider* is misplaced. Rather, the matter is governed by the longstanding decisions of the Maryland Court of Appeals as summarized and reaffirmed by the Court of Appeals in *Chevy Chase Land Company v. the United States*. For this reason the Petitioners' argument that the hiking and biking uses are additional servitudes for which just compensation would need to be paid is rejected.

Some of the email correspondence expresses a desire that the right-of-way which was expressly granted for a *highway* should not be abandoned and instead put to use as a park at some future date. This particular grant was not made for a more generic "public use." It was granted for a highway. While hiking and biking uses are transportation uses, a park is not *per se* a transportation use. Further, the existing sector plan for the Bethesda CBD does not currently or as a prospective future use identify Reed Street as a park. Therefore, it would be inappropriate to determine that Reed Street should not be abandoned in favor of retaining it as a park.

The evidence of record is clear that pedestrians and bicyclists are currently using the remaining stub of Reed Street to access the interim trail through the tunnel in Bethesda. It is also evident that users can access the interim trail from Woodmont Avenue. There was anecdotal testimony, emails and letters from members of the public that they use the Reed Street right-of-way for access to the interim Georgetown Branch/Capital Crescent Trail and therefore registering their opposition to the requested abandonment. A lot of comments and concerns were provided about the abandonment and the temporary closing of the tunnel for the development of the Woodmont East development project. However, the closing of the tunnel, temporary or otherwise, is not part of the abandonment process for Reed Street and will be addressed by the Montgomery County Planning Board, the Department of Transportation, the Department of Permitting Services and others with jurisdiction over the matter during the development process.

Given that the right-of-way is being used presently, the inquiry must then turn to whether the Reed Street right-of-way will be needed for anticipated future use or if the abandonment is needed to protect the health, safety and welfare of the residents near the right-of-way. To determine if the abandonment is necessary to protect health, safety and welfare of residents near the right-of-way, the council may consider 1) any adopted land use plan for the neighborhood, 2) safe and efficient pedestrian and vehicular traffic patterns and flow, together with alternatives, in the immediate neighborhood for local and through traffic, and 3) changes in fact and circumstance since the original dedication. See, Montgomery County Code section 49-63(c).

While the Reed Street right-of-way provides access to the tunnel as shown

respectively on Exhibits 18 and 19 (copies of which are attached), the area is currently asphalt, dirt and grass and not particularly inviting other than as functional access to the tunnel leading to the interim Georgetown Branch Trail.

The Petitioners have a proposed development plan for the Woodmont East II project and have submitted a proposed Landscape Plan dated January 25, 2008 which is included in the Hearing Record as Ex. 13 and is incorporated into the Montgomery County Planning Board Staff Report dated March 6, 2008. This plan shows proposed crosswalks across both Woodmont Avenue and Bethesda Avenue. Per the Landscape Plan, the Woodmont Avenue crossing connects directly to the right-of-way for the Capital Crescent Trail and the area reserved for the 32' Georgetown Branch easement leading into the tunnel. The Bethesda Avenue crosswalk likewise connects to a paved area that provides direct access to the trail and transportation areas. It should also be noted that as discussed in the Planning Board documents comprising Exhibit 29, the Woodmont East II project is being planned to accommodate the permanent trail and Purple Line facilities. The Landscape Plan reflects the connection to these permanent facilities with streetscaping and amenities to make the overall area and access more inviting for the public and creating a better urban area with directed access to the trail.

The Woodmont East II project is located in the southern central area of the Bethesda Central Business District within the Metro Core District of the Bethesda CBD Sector Plan. See, Exhibit 8 and page 5 of MCPB Development Review Division Staff Memo dated March 6, 2008 and attached to Exhibit 29. As noted at page 10 of the MCPB Development Review Division Staff Report the proposed project will be set back from the street allowing for a large, linear green space creating a linear urban Park along

Woodmont Avenue. Moreover, Planning Board staff found at page 13 of its report that the proposed plan's "unique outdoor features" will be designed to promote an integrated public space and will further the Sector Plan's objective of enhancing the pleasure, safety, and convenience of walking and bicycling. The undersigned public hearing officer finds that this improved, integrated public space will further the Sector Plan's objectives for the walking and bicycling uses, and with this new space, there will be no anticipated future use for Reed Street. The proposed future connections on the Landscape Plan with clearly identified crosswalks and sidewalks and improvements will allow for safer and more efficient pedestrian traffic patterns and flow and will provide clear visual cues to drivers, pedestrians and bicyclists as well. These improvements, as reflected on the Landscaping Plan, and as stated by Planning Board staff, will provide an improved environment and experience for pedestrians and bicyclists when compared to the rough asphalt, dirt and grass areas reflected in Exhibits 18 and 19.

The Montgomery County Planning Board and its staff, the Montgomery County Department of Transportation and the Maryland Transit Administration through its comments on the Project Plan for the Woodmont East II development project did not object to the abandonment of Reed Street. Respectively, these comments are found in the record as Exhibits 29, 27, and Exhibit 29, Attachment B to February 20, 2008 Memorandum from Montgomery County Planning Board Transportation Planning Staff to Montgomery County Planning Board Development Review Division. The Montgomery County Department of Transportation conditioned its approval of the abandonment upon the Petitioners receiving site plan approval for the Woodmont East II development project from the Montgomery County Planning Board in a manner that

addresses the continuity of the Capital Crescent Trail, the approval of safe alternatives if the Trail has to be closed for a limited amount of time and the commitment to minimize the duration of any closure. (*See*, Ex. 27).

In its consideration of the proposed abandonment, the Planning Board staff points out that the Reed Street right-of-way is a paved surface that is not used for vehicular access either to and from any other adjoining properties, but that pedestrians and bicyclists use the right-of-way to access the trail via the entrance to the tunnel under Wisconsin Avenue. The staff indicated that the Petitioners will provide pedestrians and bicyclists a direct connection from Woodmont Avenue to the tunnel, and that this connection will eliminate any future need for Reed Street to provide this connection. The Planning Board staff concluded that the public right-of-way proposed for abandonment will not adversely impact present or future circulation patterns by motorists, bicyclists, or pedestrians (Attachment to Ex. 29). The Planning Board recommended support of the proposed abandonment with certain conditions which are set out below.

While the testimony and evidence indicates that citizens use the Abandonment Area for access to the trail and the tunnel, the Petitioners, in a letter, dated March 28, 2008, indicated that the hikers and bikers use of Reed Street to access Bethesda Avenue requires that they traverse over a 17-foot wide strip of land which is owned in fee simple by the Petitioners. This property is subject to a License Agreement between the County and the Petitioners' predecessor in interest which allows the public to use this property to access the Georgetown Branch right-of-way and tunnel, but the License Agreement may be terminated by either party with 180 day notice. Thus, if the License Agreement were terminated by the Petitioners there would be no direct access from the Abandonment

Area to access the trail and tunnel unless the hikers and bikers traverse across private property (Ex. 31, Attachments A and B) without legal right. The Petitioners will provide for permanent access as part of their Woodmont East II project. The permanent unimpeded right of access is in the overall longterm interest of the pedestrians and bicyclists that use the trail.

Neither the Sector Plan for the Bethesda CBD, nor the MTA Purple Line Draft Environmental Impact Statement extracts included in the Planning Board Staff documents indicates that Reed Street is planned or programmed for future use in connection with the Purple Line or the Georgetown Branch/Capital Crescent Trail. See, the Planning Board Staff memorandum dated February 20, 2008 attached to Ex. 29. See also Planning Board Staff memorandum dated March 6, 2008 (discussed earlier) finding that the proposed plan will further the Sector Plan's objective of enhancing the pleasure, safety, and convenience of the walking and bicycling public. (*See*, Ex. 29).

The evidence and testimony of record demonstrates that the proposed Reed Street Abandonment Area is not needed for future public use as better and more inviting permanent trail access and improvements will replace the interim trail usage and access thereto that is occurring today across the remaining stub of Reed Street and the above described license area. Reed Street is a dead-end, stub street in rough condition as shown in the photos that can no longer provide access to Elm Street from Bethesda Avenue and provides functional access to private property leading to the interim Georgetown Branch Trail. The evidence sufficiently demonstrates that the Petitioners have proposed improved access as part of their redevelopment plan and that the Department of Transportation and the Planning Board are requiring the Petitioners to provide for the

Purple Line and permanent trail and access thereto rather than the interim uses that exist today.

There is sufficient evidence in the record to support that the Reed Street right-of-way is no longer needed for anticipated public use in the foreseeable future and that abandonment of the right-of-way is therefore permitted under Section 49-63(c)(1) of the County Code. Additionally, there is adequate evidence in the documents submitted from the Planning Board and its staff to support the conclusion that the proposed abandonment will protect the health, safety and welfare of neighborhood residents by implementing the adopted land use plan, and providing safer, more efficient and permanent access to the Georgetown Branch/Capital Crescent Trail. It is clear from the record and the evolution of changes and actions taken with respect to the remaining portion of Reed Street that the area has changed since the dedication and that abandonment as conditioned herein is appropriate.

Based upon a thorough review of the testimony, exhibits, and the evidence of record, I recommend that the petition to abandon the Reed Street Abandonment Area consisting of approximately 8,308 square feet as described and shown on Ex. 1, Attachment C, be granted, subject to the following requirements:

1) Petitioners must have received Site Plan approval for the Woodmont East II development project described in Project Review Plan No. 920070070 and Preliminary Plan No. 120070200 which addresses the access to and the continuity of the Capital Crescent Trail, the approval of safe alternatives and access to the trail if the tunnel has to be closed for a limited amount of time, provided that any such closure should be minimized.

2) The recommended reservations and public use easements for the necessary rights-of-way to accommodate the Purple Line and the Georgetown Branch Trail must be as outlined in the Transportation Planning memorandum for Woodmont East, Phase II, Project Review Plan No. 920070070 and Preliminary Plan No. 120070200, dated February 20, 2008 and must provide convenient access for pedestrians and bicyclists crossing Woodmont Avenue and Bethesda Avenue, which access must also be approved by the Department of Transportation;

3) The proposed abandonment must be shown on the subsequent site plan and take effect upon the later to occur of 1) recordation of a plat pursuant to Chapter 50 of the Montgomery County Code to incorporate the rights-of-way into the proposed redeveloped property associated with the Project Review Plan No. 920070070 and Preliminary Plan No. 120070200 and 2) Petitioners providing reservations and public use easements as described in paragraph 2 above that are not subject to any prior liens or encumbrances;

4) Petitioners must grant, prepare, and record any necessary easements for County storm drains and public utility facilities, including but not limited to gas lines, electric facilities and water and sewer to the satisfaction of the County or the public utility, as applicable, allowing facilities to remain at their current or relocated locations and providing perpetual right of ingress and egress from the easement area at any time (which rights must not be subordinate to other interests); and

4) Petitioners must at their sole cost prepare and record a new record plat incorporating the Abandonment Area into the lots.

Respectfully submitted,

April 29, 2009
Date

Diane R. Schwartz Jones
Diane R. Schwartz Jones
Public Hearing Officer

The Public Hearing Officer's Recommendations in Petition AB702 have been reviewed and are approved.

April 29, 2009
Date

Isiah Leggett
Isiah Leggett, County Executive





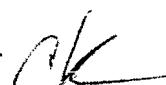
MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

February 20, 2008

MEMORANDUM

TO: Neil Braunstein, Planner
Joshua Sloan, Site Plan Reviewer
Development Review Division

VIA: Shahriar Etemadi, Supervisor
Transportation Planning 

FROM: Tom Autrey, Supervisor  TA
Ed Axler, Planner/Coordinator ER
Charles S. Kines, Planner/Coordinator  CK
Transportation Planning

SUBJECT: Woodmont East, Phase II
Project Plan No. 920070070 and Preliminary Plan No. 120070200
Bethesda Central Business District Policy Area

This memorandum updates Transportation Planning staff's October 29, 2007-memorandum that was prepared for the Planning Board's public hearing held on November 8, 2007. The Adequate Public Facilities (APF) review is updated for the subject project plan and preliminary plan to add mixed-use development to the existing retail/office building in downtown Bethesda. The Applicant proposes to maintain the access to the Georgetown Branch Trail and assure right-of-way access for the Purple Line and Georgetown Branch Trail on the site.

RECOMMENDATIONS

We recommend the following conditions as part of the APF test for transportation requirements related to the approval of the subject project plan and preliminary plan:

1. The development is limited to a maximum of 250 high-rise apartments, a 225-room hotel, and 12,350 square feet of retail space that is proposed to be added to the existing 28,000 square feet of retail space and 78,300 square feet of office space.
2. The Applicant must satisfy Local Area Transportation Review (LATR) by providing the following operational improvements as required by the Montgomery County Department of Public Works and Transportation (DPWT):
 - a. Construct the frontage improvements along Elm Street, Woodmont Avenue, and Bethesda Avenue.

(35)

- b. Design the bicycle and pedestrian facilities, both interim and permanent, to provide a trail crossing of the Bethesda Avenue/Woodmont Avenue intersection that is as straight as possible between the off-road trail segments. Special signalization must allow bicyclists and pedestrians to pass through the intersection from the southwest to the northeast corner in one traffic signal phase.

These improvements must be complete and open to traffic prior to release of the initial use and occupancy permit.

3. The Applicant must satisfy LATR by providing the following operational improvement to accommodate the vehicular queuing under future build-out traffic conditions by:

Construct an exclusive left-turn lane and a shared through/right-turn lane on the westbound approach of Elm Street at the intersection with Woodmont Avenue if and when required by DPWT.

4. The tunnel located under Wisconsin Avenue, through which the interim Georgetown Branch Trail passes, must remain open to bicycle and pedestrian traffic during and after construction of this development.

The Applicant may satisfy this condition by detouring the trail users at the western terminus of the tunnel either north to Elm Street or south to Bethesda Avenue, pursuant to one of the following three alternatives:

- a. The trail will exit the tunnel through the northern "knock out" panel located along the northwestern corner of the Apex property;
- b. The trail will exit the tunnel through the existing western terminus and will be temporarily rerouted south through the Artery Property; or
- c. The trail will exit the tunnel through the existing western terminus onto the northeastern corner of the Woodmont East II Property.

Any detour along Woodmont Avenue must have a sufficient physical barrier to protect bicyclists from moving vehicles in the adjacent travel lane.

The precise route and details regarding the temporary roadway, intersection and streetscape improvements, construction methods, directional signage and other safety measures must be determined during the time of Site Plan review and prior to the Planning Board hearing on the Site Plan.

5. The temporary Georgetown Branch Trail connection must be reviewed and approved by Planning Board staff and the relevant County agencies prior to certification of the Site Plan. This temporary route must include adequate signage and markings to help

trail users navigate between the tunnel and the Capital Crescent Trail trailhead at Bethesda Avenue adjacent to Lot 31/Lot 31A.

6. Prior to release of the Record Plat, the Applicant must obtain the Montgomery County Council's approval for the abandonment of the Reed Street right-of-way.
7. Provide a perpetual easement 32 feet in width along or within the Georgetown Branch right of way extending from the western property line to the eastern property line to be finalized at site plan and delineated on the record plat. This easement is for the Purple Line.
8. Place in reservation for a period of no less than 40 years from the date of the plat recordation the following areas for future easements to be granted in perpetuity:
 - a. An area of 514 square feet beginning at the eastern property line and extending west toward Woodmont Avenue adjacent to the 32 foot easement area – this 514 square foot area of reservation necessary to provide a total width of 38 feet for the Purple Line at the eastern property line per the MTA.
 - b. An area of 2,170 square feet parallel to the 32 foot easement area for the Purple Line to accommodate a paved shared use path consistent with American Association of State Highway and Transportation Officials (AASHTO) standards of no less than ten feet in width with two feet of lateral clearance on each side. This area extends from the western property line to the eastern property line and is a total of 14 feet wide the entire length.
 - c. A rectangular area of 1,960 square feet along the property eastern edge to accommodate a future ramp for the Georgetown Branch Trail. The shared use path on the ramp must be a minimum of ten feet wide.

The above three reservation areas are to be finalized at site plan and delineated on the record plat.

9. Provide the following minimum vertical clearances in the area designated for the Purple Line:
 - a. A clear area beginning from any point at the top of the rails (elevation to be designated by the MTA) for the Purple Line to any point within four feet below the top of the rails for the Purple Line.
 - b. A clear area beginning from any point at the top of the rails (elevation to be designated by the MTA) for the westbound Purple Line track to any point within 23 feet above the top of the rails.

10. Prior to the Planning Board's hearing on the Site Plan, the Applicant must enter into a Memorandum of Understanding (MOU) with the County that identifies the interim and permanent future alignments and sketch level designs for the Georgetown Branch Trail.
11. At the time of site plan review, the Applicant must provide a pedestrian and bicycle circulation plan for the construction phase for review by the Planning Board, relevant County and State agencies, and the public and for inclusion in the staff packet for their future site review.

This detailed plan must include specific detour routes, adequate barrier to protect Capital Crescent Trail users traveling any on-road detour route against vehicle moving in the adjacent travel lane, proposed wayfinding signage and pavement markings, and the expected duration of any disturbances to bicycle and pedestrian mobility through and around the site. The Applicant must clearly and convincingly justify any duration(s) for which the Georgetown Branch Trail traffic through the site is closed to bicycle and pedestrian traffic, and make a good faith effort to minimize the duration of these disturbances.

12. At the time of site plan review, the Applicant must provide a detailed intersection design for the Woodmont Avenue/Bethesda Avenue intersection. The crosswalks across the northern Woodmont Avenue leg and western Bethesda Avenue leg must be aligned to provide users of the regional Georgetown Branch Trail a direct connection from the tunnel opening, across this intersection, and to the existing park trail on the south side of Bethesda Avenue. Further the Applicant must consider and submit their findings on providing a physical barrier in the northeastern corner of the Woodmont Avenue/Bethesda Avenue intersection. This barrier is necessary to direct pedestrians to cross at the designated crosswalks and prevent them from crossing through the center of the intersection.
13. The Applicant must enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and DPWT to participate in the Bethesda Transportation Management Organization (TMO). The TMAg must be signed and executed by all parties prior to certification of the Site Plan.
14. The Applicant must provide 20 bike lockers for residents, 5 inverted-U bike racks for visitors of the residential apartments, 5 bike lockers for hotel employees, 10 inverted-U bike racks for retail customers, and 2 inverted-U bike racks for hotel patrons. The Applicant must coordinate with the Transportation Planning staff to determine the location and timing of installation of the bicycle parking facilities prior to approval of the certified site plan.

Refer to the attached letters from:

1. DPWT letter of August 27, 2007, Attachment A, for their requirement at the time this memorandum was written for the preliminary plan. DPWT requirements are subject to change between certification of the Site Plan.

2. MTA letter dated October 26, 2007, Attachment B, regarding the Purple Line and the Woodmont East development plan.

DISCUSSION

Site Location and Vehicular Access Points

The subject property is located on the east side of Woodmont Avenue between Elm Street and Bethesda Avenue. The Reed Street right-of-way within this site is to be abandoned as part of the preliminary plan. The Georgetown Branch Trail and the master-planned Purple Line alignment bisect the site from east to west. The vehicular access points to the proposed underground parking garage are from the south side of Elm Street and the north side of Bethesda Avenue.

Pedestrian and Bicycle Circulation

The site's open space on the east side of Woodmont Avenue is heavily used by pedestrians and bicyclists especially on weekends. The surrounding local restaurants and service retailers draw a high volume of clientele on late evenings and weekends when area sidewalks, bike paths, and roadways are carrying a heavy volume of pedestrian, bicycle and vehicular traffic.

There is currently a substantial demand for weekend recreational use of the surface parking lot as a loading/unloading area for users of the Capital Crescent Trail to access downtown Washington, DC and the interim Georgetown Branch Trail to access Rock Creek Park and downtown Silver Spring. These Capital Crescent Trail users coming from the tunnel must cross the north leg of Woodmont Avenue and west leg of Bethesda Avenue to reach the Capital Crescent Trail trailhead at Bethesda Avenue adjacent to Lot 31/Lot 31A.

At the Woodmont Avenue/Bethesda Avenue intersection along the Capital Crescent Trail, the observed peak-hour usage in September 2006 was as follows:

Peak Usage in Sept. 2006	Time of Day	Total Users	Percentage of Each Type of User				
			Bicycle	Walking	Jogging	Skating	Infants*
Weekday AM	7:00 a.m.	231	32%	35%	32%	0%	1%
Weekday PM	5:00 p.m.	339	42%	40%	15%	1%	2%
Weekend (Sunday)	11:00 a.m.	565	44%	31%	19%	1%	5%

* The infants are pushed or carried by their with caregiver

These numbers were obtained from the 2006 *Capital Crescent Trail Survey* that the Planning Board was briefed on at its public hearing held on July 19, 2007. The 2006 Trail usage given above has increased by 105% between 1996 and 2006.

Sector-Planned Roadways and Bikeways

In accordance with the *Bethesda Central Business District Sector Plan* and the *Countywide Bikeways Functional Master Plan*, roadways and bikeways are designated as follows:

1. Wisconsin Avenue (MD 355) is classified as a major highway, M-6, with a minimum recommended 114-foot right-of-way near the site.
2. A regional shared use path, SP-6, also known as the Georgetown Branch Trail runs from the Silver Spring Metrorail Station to the Woodmont Avenue/Bethesda Avenue intersection, and is contiguous with the Capital Crescent Trail that continues south into the District of Columbia.
3. Woodmont Avenue is classified as an arterial, A-68, with a minimum recommended 80-foot right-of-way. Bike lanes, BL-6, are identified along Woodmont Avenue between Battery Lane and the Capital Crescent Trail.
4. Arlington Road is classified an arterial, A-82, with a minimum recommended 80-foot right-of-way.
5. Bethesda Avenue is classified as a business district street with a minimum recommended 60-foot right-of-way width and a Biker Friendly Area between Arlington Road and Woodmont Avenue. A signed shared roadway, SR-9, is identified along Bethesda Avenue between Exeter Road and Woodmont Avenue. A shared use path, SP-44, is also identified as the above-ground alternative route for the Georgetown Branch Trail along Bethesda Avenue between Woodmont Avenue and Elm Street Park (i.e., located on the east side of Wisconsin Avenue at Elm Street and 44th Street).
6. Elm Street is classified as a business district street with minimum recommended 60-foot right-of-way and a Biker Friendly Area. Bike lanes, BL-7, are identified along Elm Street between Exeter Road and the Capital Crescent Trail.
7. Hampden Lane is classified as a business district street with minimum recommended 60-foot right-of-way and a Biker Friendly Area.

Available Transit Service

The Bethesda Circulator (formally Ride-On route 92 that is now operated by the Bethesda Urban Partnership) operates along Woodmont Avenue between Bethesda Avenue and Old Georgetown Road and along Bethesda Avenue between Woodmont Avenue and Arlington Road. The Bethesda Metrorail Station is approximately 700 feet north of the site.

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Bicycling Parking

The following bicycle parking facilities are required due to the proximity of this project to the Georgetown Branch Trail and other numerous nearby bikeways:

1. Twenty (20) bike lockers *for residents of the apartments* in a highly visible, well-lit location of the parking garage within 50 feet of the elevators.
2. Five (5) bike lockers *for hotel employees* in a highly visible, well-lit location of the parking garage within 50 feet of the elevators.
3. Ten (10) inverted-U bike racks *for retail customers* located in a highly visible, well-lit and weather-protected area on the plaza.
4. Five (5) inverted-U bike racks *for visitors of the residential apartments* located in a highly visible, well-lit and weather-protected area near the main public entrances.
5. Two (2) inverted-U bike racks *for hotel patrons* located in a highly visible, well-lit and weather-protected area near the main public entrance.

As discussed in Recommendation No. 13, the ultimate number, location, and timing of installation of the bicycle parking facilities will be determined prior to approval of the certified Site Plan.

Georgetown Branch Trail

The Georgetown Branch Trail refers to the trail east of Woodmont Avenue, while the Capital Crescent Trail refers to the trail west of Woodmont Avenue. The Georgetown Branch Trail passes through the project site.

The Capital Crescent Trail/interim Georgetown Branch Trail is one of the most popular and extensive recreational and commuter trails in the DC Metropolitan region. It provides off-road trail access to downtown DC and Bethesda, as well as to downtown Silver Spring. The interim Georgetown Branch Trail (with crushed stone surface east of the site) offers connection across Montgomery County to Stewart Avenue in the Lyttonsville Area. Future plans continue the Georgetown Branch Trail into and through downtown Silver Spring as part of the Purple Line. The trail connects to the planned Metropolitan Branch Trail at the Silver Spring Transit Center, which ultimately will take users to Union Station in Washington, DC. The trail is a major transportation facility that's use, at times especially in the vicinity of Woodmont Avenue, exceeds the vehicular traffic volumes on the streets approaching the Bethesda Avenue/Woodmont Avenue intersection; it, therefore, needs to be accommodated in the intersection at least as well as the intersecting streets, which are only a local transportation infrastructure.

The Applicant proposes to close the access to the Georgetown Branch Trail tunnel during construction of subject development. As mitigation for closing the tunnel, the Applicant will

develop a temporary connection along adjoining streets to take trail users from the tunnel entrance to the Capital Crescent Trail. As part of this alternative connection, the Applicant will also negotiate a temporary access route to the tunnel either through the Artery Plaza site (garage) or the adjacent property along Elm Street (breaking through tunnel wall). Prior to the Planning Board's hearing on the Site Plan, the proposed interim temporary route must be submitted to Planning Board staff for review by County agencies and the public as specified in Recommendation No. 10.

Georgetown Branch Master Plan Amendment Recommendations Related to the Purple Line

1. *The Georgetown Branch Master Plan Amendment, Approved and Adopted on January 1990* includes the following features or recommendations:
 - a. A terminal point of the "Bethesda & Silver Spring Trolley" within the Georgetown Branch right-of-way is located at Woodmont Avenue (refer to attached Exhibit C, Figure 5 from the *Master Plan*). The planned "Bethesda & Silver Spring Trolley" is now more commonly referred to as the planned "Purple Line"¹. The master-planned right-of-way for the Purple Line as shown in the plan is located under the planned hotel and extends west to Woodmont Avenue where the right-of-way ends.
 - b. The southern entrance to the Bethesda Metrorail Station is to be connected to the trolley facility to provide a convenient, direct transfer from the Bethesda (Purple Line) Terminal Station to the Metrorail system.
 - c. The Bethesda Station design includes an extension of a concourse (that is long enough to accommodate the trail) through the platform area in order to provide adequate trail width and safety."

The Bethesda Terminal Station Concept Plan is depicted as attached Exhibit D, Figure 20 in the *Georgetown Branch Master Plan Amendment*. The plan includes the following features:

- a. The track that extends west of the actual station platform is referred to as a "tail track" and is required at the end-of-line locations to provide operational flexibility (i.e., storing spare or disabled trains, staging equipment for track maintenance in non-operating hours, etc.).
- b. The connection with the Metrorail South entrance is by elevator. More information on the latest concept design for the Bethesda Terminal Station is provided under the section that discusses the Draft Environmental Impact Statement (DEIS) that is now underway.

¹ The Maryland Mass Transit Administration (MTA) is currently developing a Draft Environmental Impact Statement (DEIS) for a Purple Line that would extend from this terminal point in Bethesda to New Carrollton in Prince George's County. The modes under consideration include Light Rail and Bus Rapid Transit.

Bethesda CBD Sector Plan Recommendations related to the Purple Line

In accordance with the *Bethesda Central Business District Sector Plan, Approved and Adopted on July 1994*, the recommendations for the "Bethesda & Silver Spring Trolley" or Purple Line in the vicinity of the Applicant's project include the following:

1. The construction of a south entrance to the Bethesda Metrorail Station.
2. The connection of a light rail to the Silver Spring CBD using the Georgetown Branch right-of-way with a terminal: This connection is located near the south entrance to Bethesda Metrorail Station in the Bethesda CBD Core.
3. A final trolley alignment and terminal location decision to be made in the context of federal and state requirements: This alignment includes the evaluation of all reasonable alternatives.
4. The introduction of two alternatives (refer to attached Exhibit E) for locating the Bethesda Station terminal point and the deletion of the existing (Georgetown Branch) Master Plan terminal: One alternative is west of the Apex Building and another is north of the Apex Building. Both locations are described as being within the Georgetown Branch right-of-way although the north option is also described as being within the right-of-way of Elm Street at Wisconsin Avenue. The west alternative is described as requiring a tunnel under Elm Street to access the new south entrance to Metrorail. The north alternative would have access to the Metrorail via an elevator. It is this north alternative that has been carried over to the DEIS work (refer to the next section).
5. The recommendation of the hiker-biker trail in the Georgetown Branch Master Plan must be accommodated: The Plan acknowledges the space constraints in the tunnel under the Air Rights and Apex Buildings at Wisconsin Avenue and recommends an on-street bicycle route to either replace or supplement the tunnel route. The route departs the trail at Elm Street Park and is on-street via Willow Lane and Bethesda Avenue.

The Purple Line's Draft Environmental Impact Statement

The current DEIS is evaluating the following two options at the Bethesda Terminal Station:

1. Light Rail Transit (LRT): The LRT option includes the station platform approximately 200 feet in length within the tunnel and "tail tracks" that would extend out of the tunnel towards Woodmont Avenue through the Applicant's plaza area (refer to attached Exhibit F). A conceptual drawing of how the Purple Line station would relate to the planned southern entrance to the Bethesda Metrorail Station is shown as attached Exhibit G.
2. Bus Rapid Transit (BRT): The BRT option includes bus routing that could involve buses traveling through the plaza area from Woodmont Avenue into the plaza and tunnel in route eastbound to Silver Spring over the Georgetown Branch right-t-of-way. Whether

LRT or BRT the anticipated peak period service frequencies are expected to be between six and ten minutes.

The important concepts discussed below specifically relate to those being evaluated as part of the DEIS and the Applicant's project:

1. The Trail Connection within the Tunnel: As previously noted, accommodating the trail in the tunnel is a challenge. The current plans call for the trail to enter the tunnel above the LRT/BRT vehicles and for trail users to descend to the surface via a switchback ramp that is to be constructed within an area provided by the Applicant as a condition of project approval. Refer to the attached drawing in Exhibit H of the trail over the right-of-way. The Applicant is reserving space on-site to accommodate a switchback ramp to take trail users from the plaza up to the future trail above the Purple Line. The Applicant assumes that this facility will be constructed by MTA at the time the Purple Line is built.
2. Coordination with MTA: The MTA and the Applicant have been reviewing the respective plans for this area for two years. Please refer to MTA letter dated October 26, 2007. It is anticipated that the conditions outlined in the attached DPWT letter of August 27, 2007, (Attachment A) will meet the MTA requirements. These conditions include the following:
 - a. Establish and record separate easements and reservations to accommodate construction and operation of the following:
 - 1) The proposed Purple Line would traverse through the tunnel under the Apex Building and stop at Woodmont Avenue.
 - 2) The permanent Georgetown Branch Trail in accordance with Montgomery County requirements in the event the Purple Line is constructed.
 - 3) A ramp that would provide access to the elevated portion of the permanent Georgetown Branch Trail to be located in the tunnel in the event the Purple Line is constructed.
 - b. To satisfy MTA requirements, the easement and reservation must include the following:
 - 1) A reservation width for the Purple Line that provides a minimum of 38 feet at the Applicant's building and the Apex Building and an easement width of minimum of 32 feet at Woodmont Avenue.
 - 2) A lower elevation of the easement for the Purple Line that is four feet below the top of the rail for the Purple Line as identified by the MTA.

- 3) An upper elevation of the easement for the Purple Line that is 23 feet above the top of the rail for westbound track/lane of the Purple Line as identified by MTA.
- 4) Additional space/widths as identified by MTA to accommodate the 10 foot wide hiker/biker trail on the ramp west of the tunnel.

Local Area Transportation Review

In accordance with the *Local Area Transportation Review Guidelines*, the Applicant was required to submit a traffic study to analyze the impact of this proposed subject development. The traffic generated by proposed land uses within the weekday morning (7:30 to 9:30 a.m.) and evening (4:00 to 6:00 p.m.) peak periods are as follows:

Land Use	Number or Area	Peak-Hour Trips	
		Morning	Evening
Hotel	225 rooms	50	50
Apartments	250 units	113	113
Additional Retail	12,350 square feet	8	32
Total Additional Trips		171	195

Based on the results of the traffic study, the table below gives the calculated Critical Lane Volume (CLV) values at studied intersections in the existing, background, and total traffic conditions:

Intersection	Weekday Peak Hour	Traffic Condition		
		Existing	Background	Total
1. Arlington Road & Bethesda Avenue	Morning	948	1,068	1,083
	Evening	1,043	1,273	1,288
2. Woodmont Avenue & Bethesda Avenue	Morning	585	733	745
	Evening	648	973	990
3. Wisconsin Avenue & Bethesda Avenue	Morning	859	976	1,022
	Evening	991	1,198	1,266
4. Wisconsin Avenue & Elm Street	Morning	801	857	926
	Evening	1,057	1,147	1,178
5. Woodmont Avenue & Elm Street	Morning	584	625	640
	Evening	789	914	928
6. Woodmont Avenue & Hampden Lane	Morning	538	560	563
	Evening	707	768	775

After we reviewed the traffic study, a new combination of land uses was proposed that is slightly different than the one that the LATR was based on. The new combination of land uses results in a reduction of 4 trips in the weekday morning peak hour and 3 trips in the evening peak hour. These changes are not significant to alter the results of the CLV values in the table above.

At all six studied intersections, the CLV values are less than the congestion standard of 1,800 CLV for the Bethesda Central Business District Policy Area and, thus, the LATR test is satisfied.

Traffic Operation Analysis in Vicinity of the Site

In response to concerns raised by DPWT and the Planning staff, an operational analysis of the studied intersections above was performed using a traffic simulation program called SYNCHRO. The analysis included the current and future traffic conditions for the proposed intersection improvements. The traffic simulation analysis included the build-out of the private mixed-use developments, composite increase in public parking spaces, and pedestrian/bicycle circulation improvements.

Table 2 below shows in longest average queue length resulting from this analysis with a left-turn lane at westbound Elm Street at the intersection with Woodmont Avenue for the worst-use weekday evening peak hour:

	Intersection Approach			
	Northbound	Southbound	Eastbound	Westbound
Average Length of Queued Vehicles	61	155	100	118
Distance for the Next Upstream Intersection	301	194	68	552
% of Time the Upstream Intersection is Blocked	0%	19%	31%	0%

With the left-turn lane on westbound Elm Street, “the percentage of the time the upstream intersection was blocked” decreased by 40%.

Policy Area Mobility Review

Policy Area Mobility Review (PAMR) is not required under the *FY 2007-2009 Growth Policy* because the preliminary plan was filed before January 1, 2008.

Sector-Planned Transportation Demand Management

The site is located in the Bethesda Transportation Management District (TMD). The Applicant must enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and DPWT to participate in the Bethesda Transportation Management Organization (TMO) to assist in achieving the 37% non-auto-driver mode share goal for employees working in Bethesda Central Business District.

EA:tc

Attachments

cc: Doug Alexander
Larry Cole
Judy Daniel
Marian Elsasser
Gary Erenrich
Wes Guckert
Pat Harris
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April 16, 2009

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VIA ELECTRONIC MAIL

Mr. Michael Madden
Project Manager
Maryland Transit Administration
Office of Planning & Programming
William Donald Schaefer Tower
6 St. Paul Street
Baltimore, MD 21202-1614

Re: Woodmont East II

Dear Mr. Madden:

Thank you for taking the time to meet with representatives of JBG Associates ("JBG") and the Maryland-National Capital Park and Planning Commission ("M-NCPPC") Staff on April 3, 2009, to address the issues that were raised by RK&K, LLP Engineering's email from March 16, 2009, in connection with the proposed Woodmont East II Project Plan Amendment, Preliminary Plan Amendment, and Site Plan (the "Plans"). The purpose of this letter is to confirm the actions that JBG will take in order to address the concerns to which the attendees have agreed.

As we discussed, JBG will revise the Plans as follows:

1. Relocate the storm drain located within 110 feet of the entrance to the Wisconsin Avenue tunnel to a location outside the 32-foot wide Perpetual Easement area (the "Easement Area") and the additional six foot (approximately) future easement area previously referred to as Reservation Area No. 1. After this point, the storm drain will enter the Easement area in order to reach the storm drain structure at Woodmont Avenue.
2. Eliminate the planting wall located on the north side of the Easement Area between the steps accessing the existing parking facility and the face of the Wisconsin Avenue tunnel. In order to preserve JBG's ability to construct the planting wall in the future (in the event the construction of the Purple Line is significantly delayed or the Purple Line project is eliminated), the Site Plan will provide the wall as an "optional" improvement, thus eliminating the need for further Site Plan approval. This "optional" improvement would align with the existing steps accessing the existing parking facility at Elm Street.

3. Relocate the foundation wall of the office building along the south side of the Easement Area and the additional six foot (approximately) future easement area previously referred to as Reservation No. 1, a minimum of 12 inches further to the south in order to provide sufficient space to apply finish materials to the north wall of the underground garage which will be exposed during the construction of the Purple Line. The final office building design will not rely upon any excavation support. Any excavation support that is constructed within the Easement Area will be considered as "abandoned in place", thus allowing MTA to remove it as necessary as a part of the Purple Line construction. The easement agreement establishing the Easement Area will provide MTA with these rights.
4. Prior to the issuance of the building permit for the office building, JBG shall provide a copy of the garage plans to MTA in order that MTA may review the permit plans to confirm that the garage design can accommodate the future ramp construction.

In addition to the three revisions outlined above, Maryland-National Capital Park and Planning Commission Staff will propose the following conditions of approval:

1. Any utilities within the future easement for the Georgetown Branch of the Capital Crescent Trail that must be relocated to construct the Trail Ramp will be done at the Applicant's expense.
2. JBG will not construct and/or install any permanent facilities within the Purple Line easements or future easements areas that may interfere with access to the tunnel by MTA or Montgomery County emergency, maintenance, and construction equipment.
3. The record plat shall include a note providing that the public use space will provide unobstructed access between the face of the tunnel and Woodmont Avenue, along the north side of the Easement Area.
4. Sloped sections of the trail ramp shall not exceed 8.33 percent.

Please confirm that the information set forth above reflects the agreement reached with JBG representatives and M-NCPPC Staff at the April 3, 2009 meeting. As we discussed, MTA's confirmation will provide M-NCPPC Staff with the written indication needed for their Staff Report.

If you have any questions or if for any reason we have not accurately represented what was agreed to at our meeting, please contact me.

Mr. Michael Madden
April 16, 2009
Page 3

Very truly yours,

HOLLAND & KNIGHT LLP


Patricia Harris

AGREED TO:
MARYLAND TRANSIT ADMINISTRATION

By:  Project Manager

cc: Mr. Robert Kronenberg
Mr. Joshua Sloan
Mr. Neil Braunstein

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