

T&E COMMITTEE #1
September 22, 2016

MEMORANDUM

September 20, 2016

TO: Transportation, Infrastructure, Energy & Environment Committee
FROM: Jean C. Arthur, ^{JCA} Legislative Analyst
SUBJECT: **Abandonment and Closure of a portion of Hermitage Avenue
DOT Docket No. AB747, Hermitage Avenue
Kensington-Wheaton Planning Area, 13th Election District**

The County Executive has requested abandonment and closure of approximately 200 feet of Hermitage Avenue in Wheaton, in conjunction with the development of the new Wheaton Library and recreation facility.

Hermitage Avenue goes from Nairn Road at the Eastern end, to Georgia Avenue. The portion proposed to be closed is immediately east of Georgia Avenue and going to just past the new library. The purpose is to allow for safe pedestrian passage between the library and recreation center on the south side of Hermitage and the play fields on the north side. See illustration at ©13. Residents on Hermitage Avenue will be able to access their homes by way of Nairn Road. See map at ©14.

As with all requests for abandonments, the County Executive's hearing office held a public hearing on this proposal. Before the hearing, Executive branch staff requested comments from governmental agencies, public utility companies and members of the public. None of the governmental agencies or public utilities are opposed to the closure.

Neighborhood Opposition

Many residents are opposed to the closure. Residents on Parker Avenue are opposed because the closure will have an impact on their ability to access southbound Georgia Avenue. The portion of Parker Avenue that is east of Georgia Avenue has no outlet except Georgia Avenue. Going southbound on Georgia Avenue would require drivers to navigate across three northbound lanes of Georgia and try to merge onto the southbound lanes. A daunting challenge during busy travel periods.

The alternative is to get onto northbound Georgia Avenue, work across the three lanes of traffic to access the left lane and make a U-turn at Shorefield Road. That move also is tricky. The intersection of Shorefield Road and Georgia Avenue is controlled by a traffic signal, but there is no dedicated turn lane or turn signal at the northbound side.

Currently, residents cut through the parking lot of the old community recreation center, cut across Hermitage Avenue to use the parking lot of the old library to get onto Arcola Avenue and use the signal at Georgia Avenue to go south. That is an illegal traffic maneuver and some residents have gotten traffic violation citations for doing it; but most prefer this route than trying to cut across Georgia Avenue without the benefit of a traffic signal.

Residents on Hermitage Avenue will experience less of an impact because they can access Arcola by way of Nairn Road. However, many of them have expressed their opposition to the closure because they believe it will have a negative effect on their ability to get in and out of the neighborhood and access to Georgia Avenue.

Residents on Nairn are concerned about the increase traffic on their street and how it will affect pedestrians and bicyclists using that entrance to Wheaton Regional Park.

Possible Solutions

The various agencies have studied whether a traffic signal would be appropriate at Georgia Avenue and Parker Avenue as many residents have suggested; the studies have found that the area does not have the necessary warrants. Before a traffic control device is installed, the Manual on Uniform Traffic Control Devices requires an engineering study of traffic conditions, pedestrian characteristics, and physical characteristics of the location. The investigation of the need for a traffic control signal must include an analysis of factors related to the current conditions and safety at the location and the potential to improve these conditions, and the factors contained in the following traffic signal warrants:

- Warrant 1, Eight-Hour Vehicular Volume
- Warrant 2, Four-Hour Vehicular Volume
- Warrant 3, Peak Hour
- Warrant 4, Pedestrian Volume
- Warrant 5, School Crossing
- Warrant 6, Coordinated Signal System
- Warrant 7, Crash Experience
- Warrant 8, Roadway Network
- Warrant 9, Intersection near a Grade Crossing

Residents have made a few proposals to make travel in that area easier. One proposal from Joel Kennet is to turn on Martin Street, currently just a foot path into an actual street that would run into Amherst. Others have suggested that a crosswalk between the library and recreation center will be adequate since people have been crossing Hermitage from one side to the other for some time.

Staff Comments

With the community recreation center and library on one side of Hermitage Avenue and the playing fields on the other side, pedestrian safety is a concern. Some have argued that pedestrians safely went across Hermitage Avenue between the old community center and the old

library for years but, the facilities did not include playing fields. The introduction of a new modern library and community recreation center; with the playing fields and a play area on the other side will attract more users and more people crossing Hermitage. Additionally, many people for whom the destination is the play area or playing fields, will park their vehicles at the library and cross over Hermitage.

Staff believes pedestrian safety has to take priority and is recommending that the abandonment and closure of the subject-portion of Hermitage Avenue be approved. Staff also suggests that the Departments of Transportation and General Services explore ways to ease the traffic issues the closure will create. In particular, all agencies should explore ways for residents from Parker Avenue to go southbound on Georgia Avenue. With the current traffic volume on Georgia Avenue, it will be difficult for a driver to navigate across the northbound lanes and try to merge into southbound traffic in the middle of the day, near impossible during peak travel times.

The possible solutions suggested by residents should all be evaluated. However, from a non-traffic engineer point-of-view, Council staff can identify several problems with those solutions.

Crosswalks – in most cases, crosswalks are not enough to allow safe passage for a pedestrian. First, a significant portion of drivers do not stop at crosswalks even when a pedestrian has stepped into it. Second, if the crosswalk is not located at a spot that the pedestrian deems convenient, that person will not use it, choosing instead to cross in between vehicles at a better area. One also has to factor in the unpredictable behavior of small children excited to get onto the play area on the other side of the street.

Martin Street – adding a road that is parallel to Georgia Avenue to the east would help. However, it would add significant cost and time to the project. Also, a new road would impact the residents whose homes now sit adjacent to the foot path.

Staff Recommendation

Approve the abandonment and closure of the subject portion of Hermitage Avenue.

This packet contains the following:

County Executive's Transmittal Memorandum	1
Draft Resolution AB747	2-3
Memo requesting the abandonment from David E. Dise	4
Executive Order No. 58-15, Effective Date December 22, 2015	5
Public Hearing Officer's Report and Recommendation	6-11
Maps noting locations of areas to be abandoned and maps AB747	12-13
Hermitage Avenue Map	14



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

August 15, 2016

TO: Nancy Floreen, President
Montgomery County Council

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

SUBJECT: DOT Docket No. AB747, Hermitage Avenue
Kensington-Wheaton Planning Area, 13th Election District

I am attaching for your consideration, a proposed Resolution by which the County Council might approve the closure of a one block long portion of Hermitage Avenue in the Kensington-Wheaton Planning Area. The following supporting materials are also attached to this memorandum:

1. County Council Resolution.
2. Decision Memorandum dated September 2, 2015 from the Director of the Department of General Services to the Chief Administrative Officer requesting this closure.
3. Executive Order No. 194-15 Corrected, Effective Date December 22, 2105, which authorized a Public Hearing to be held on January 27, 2016 (which was continued on February 24, 2016).
4. A copy of the Hearing Examiner's Report and Recommendation.
5. A location map and a drawing highlighting the area.

IL:mc

Attachments

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DOT Docket No. AB747
Closure –Hermitage Avenue
Kensington-Wheaton

Background

1. By decision memorandum dated September 2, 2015 from the Director of the Department of General Services (the Applicant) to the Chief Administrative Officer a request was made for the County to close a one block long portion of Hermitage Avenue in the Kensington-Wheaton planning area. The portion of the right-of-way for which closure is sought runs easterly from its intersection with Georgia Avenue (MD 97) one block, approximately 210 feet. It adjoins property owned by the County and Maryland-National Capital Park and Planning Commission and is associated with Applicant's Wheaton Library-Community Recreation Center project.
2. Public Hearings to consider the proposed closure were held on January 27, 2016 and February 24, 2016 by the designee of the County Executive.
3. The Montgomery County Planning Board endorsed the proposed closure.
4. The Department of Transportation (DOT) recommended approval.
5. The Department of Fire and Rescue Services conditioned its approval upon vehicular access and adequate water supply.
6. The Police Department did not respond within 60 days and therefore, concurrence is presumed.
7. PEPCO, Verizon, WSSC, and Washington Gas did not respond within 60 days and therefore, concurrence is presumed.
8. The County Executive recommends approval of the proposed closure.

Action

The County Council for Montgomery County, Maryland, finds that the portion of Hermitage Avenue running easterly from its intersection with Georgia Avenue approximately 210 feet in the Kensington-Wheaton planning area proposed for closure is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the closure subject to the following condition which must be satisfied prior to the closure becoming effective:

1. The Applicant in its development plan for the Wheaton Library-Community Recreation project must include vehicular access and an adequate water supply for the Department of Fire and Rescue Services.
2. Any person aggrieved by the action of the Council for closure 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



DEPARTMENT OF GENERAL SERVICES

Isiah Leggett
County Executive

David E. Dise
Director

DECISION MEMORANDUM

September 2, 2015

TO: Timothy L. Firestine, Chief Administrative Officer
Office of County Executive

FROM: David E. Dise, Director
Department of General Services

SUBJECT: Decision Memorandum: Request for Closing of Hermitage Avenue

The purpose of this memorandum is to request approval to proceed with an application for closing a portion of Hermitage Avenue in Wheaton in conjunction with construction of the Wheaton Library-Community Recreation Center Project. In accordance with Section 49-62 of the County Code, an application to close a public right of way must be filed prior to County Council action.

In implementing the Wheaton Library-Community Recreation Center Project the Department of General Services will make road improvements and re-alignments that will eliminate the need for the subject section of pavement. An exhibit is attached for your review.

Thank you very much for your attention to this matter.

Chief Administrative Officer Decision:

Agree Disagree Schedule Briefing See/Call Me

Chief Administrative Officer

Date: 9 / 8 / 15

cc: Greg Ossont
Ernest Lunsford
Michael Cassedy

Office of the Director

101 Monroe Street, 9th Floor • Rockville, Maryland 20850
www.montgomerycountymd.gov/dgs



MONTGOMERY COUNTY EXECUTIVE ORDER

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

Subject: Closure – Hermitage Avenue, Wheaton	Executive Order No. 194-15 Corrected	Subject Suffix AB 747
Originating Department: Transportation	Department Number 58-15	Effective Date 12/22/15

AB747

- 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 7:30 p.m. on Wednesday January 27, 2016
 Executive Office Building Lobby Auditorium
 101 Monroe Street
 Rockville, Maryland 20850

to consider an application received from the Department of General Services, the Applicant, seeking the closure of a portion of Hermitage Avenue at its intersection with Georgia Avenue, MD Route 97, Wheaton.

- After the aforesaid Hearing, the Hearing Officer shall report his findings and recommendations to the County Executive for further consideration as prescribed by County Code.

Approved as to Form and Legality
 Office of the County Attorney

APPROVED

By: *Robert Birenbaum*
 Robert Birenbaum
 Assistant County Attorney
 Date: 12/22/2015

Ramona Bell-Pearson
 Ramona Bell-Pearson
 Assistant Chief Administrative Officer
 Date: 12/22/15

Distribution:

- Department of Transportation
- Department of Finance
- Office of the County Attorney



OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

**IN THE MATTER OF: CLOSURE OF A PART OF HERMITAGE AVENUE,
WHEATON, MD**

**Proposed closure of approximately 200-feet of Hermitage Avenue, easterly from its
intersection with Georgia Avenue, Maryland 97.**

BEFORE: Michael L. Subin, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. BACKGROUND

On September 2, 2015, David E. Dise, Director of the Montgomery County Department of General Services (the "Applicant"), sent a Decision Memorandum to Timothy L. Firestine, the Montgomery County Chief Administrative Officer ("CAO"), requesting the closure of Hermitage Avenue in conjunction with the construction of the Wheaton Library-Community Recreation Center Project. (Exhibit 1) The CAO approved the request to move forward with the process on September 8, 2015. According to the request, the closure of the road is to be undertaken in order to provide a safe pedestrian access to the playground and green space associated with the new Wheaton Regional Library and Community Recreation Center project.

The intent of §49-62, Procedures; Hearings, of the Montgomery County Code (2004), as amended, Abandonment authority (the "Code"), is to establish procedures for the closure to public use or abandonment of the County's right to use a right-of-way ("ROW"). Pursuant to §49-62(f), Executive Order 194-15, authorizing a hearing, was issued on December 22, 2015. (Exhibit 2) In accordance with §49-62(d), notices were sent to nearby civic associations and residents. (Exhibit 3) Pursuant to §49-62(e), public notice of the hearing appeared in *The Montgomery Sentinel* on January 14 and 21, 2016. (Exhibit 4) Signage announcing the public hearing was posted at the site of the abandonment on January 11, 2016. (Exhibit 6) An aerial photograph of the proposed closure is included as Exhibit 5.

In accordance with §49-62(h)(1-8), comment was requested from appropriate governmental agencies, public utility companies, and the public and the following comments were received:

Exhibit 7: Montgomery County Planning Board (“MCPB”) letter, dated December 10, 2015, endorsing the proposed closure;

Exhibit 8: Montgomery County Department of Transportation memorandum, dated January 27, 2016, recommending approval;

Exhibit 9: Office of the Fire Marshall e-mail, dated January 29, 2016, noting the required Department of Fire and Rescue Services vehicular access and water supply plan;

Exhibit 10: Citizen comments;

Exhibit 11: Department of General Services responses to citizen comments;

Exhibit 12: Required traffic impact study;

Exhibits 13-14: Correspondence from the community;

Exhibit 15: Additional responses from the Applicant.

Missing were comments from: the Montgomery County Police Department; Pepco, Verizon, WSSC, and Washington Gas. The Code assumes concurrence with the proposal if an agency does not respond to the request within 60 days. Mr. Michael Cassedy, representing the Montgomery County Department of Transportation (“MCDOT”) stated he felt that since the Applicant had received approval from the Maryland National Capital Park and Planning Commission Board through its mandatory referral, those entities felt they had already provided input into the issue.

Public hearings were held on January 27, 2016 and February 24, 2016, in the Executive Office Building lobby auditorium, 101 Monroe Street, Rockville, Maryland. The record remained open until 5:00 pm, March 9, 2016.

II. EVIDENCE AND SUMMARY OF TESTIMONY

A. Project Description

Mr. Michael Cassedy testified on behalf of the Montgomery County Department of Transportation (“MCDOT”) as to the elements of the project. Mr. Cassedy testified that the Applicant has requested the closure of 200 feet of Hermitage Ave. easterly from its intersection with Georgia Ave., MD 97. He stated that while the ROW would have its pavement removed and sodded, it would remain accessible to pedestrians and the public utility companies for facilities maintenance, but no vehicular traffic will be permitted. The Applicant intends to build a new ROW, to be named Hermitage Ave., north of the closure for full public use, including

vehicles prior to the closure becoming effective. Mr. Donald Scheuerman, representing the Applicant, stated that the new Hermitage Ave., from the point of the closure, will proceed south to Arcola Ave. rather than continuing on to Georgia Ave., from where vehicles can proceed to the controlled intersection at Arcola Ave. and Georgia Ave.

According to Mr. Scheuerman, the closure of the ROW has been precipitated by the fact that the current recreation center and the library are located on properties directly across from each other along Georgia Ave. but bisected by Hermitage Ave. Currently, the Wheaton Community Recreation Center is located on parkland owned by the Maryland National Capital Parks and Planning Commission; that land will remain parkland/greenspace to be used by the community and programmatically by the recreation center. The closure of the ROW will allow the parcels to be merged to allow the two functions to be housed in one facility, with a park for recreational activities, and safe access from the recreation center to the park.

Mr. Michael Kay, a Senior Engineer, representing the Applicant, stressed that the area of Hermitage Ave. that is being proposed for closure does not border any nongovernmental property owners. He indicated that closing Hermitage Ave. was not the first option to safely move people from the facility to the park, but that building a pedestrian bridge was simply not a practical solution because of cost and the reality of there not being enough space to build one.¹ He also pointed out that rather than going through to Georgia Ave., Hermitage Ave. would take a 90-degree turn south at the point of the proposed closure and go to Arcola Ave., where vehicles could take a right-turn and proceed to a stop light at Georgia Ave. Patrons of the Recreation Center or Library could then access parking from Hermitage Ave. Initially, the plan was to close Hermitage Avenue only for the period of construction, but the Hearing Officer has subsequently learned that Phase 1 of the construction will be to construct the new piece of Hermitage Ave. and then proceed to Phase 2, the actual construction of the facility.²

B. Favorable Testimony

Ms. Luisa Montero-Diaz, Director of the Mid-County Regional Service Center, which covers the Mid-County Area, including Wheaton and the area of Hermitage Ave. stated that the

¹ ADA standards regarding distance and elevation would prevent building a bridge which would effectively move people from the facility to the park.

² There was much discussion regarding Parker Ave., the street just north of Hermitage Ave., however, that will be discussed in II(C), Unfavorable Testimony, below.

design of the combined library and recreation center project is one which the community has supported in the past and continues to.

Correspondence was received in favor of the closure. Those commenting, including the Kemp Mill Elementary PTA, focused on the need for safety for individuals moving from the facility to the park/greenspace.

C. Unfavorable Testimony

Opposition to the project centered around the ability of motor vehicles to proceed south on Georgia Ave. by making a left turn from Parker Ave., the first street north of Hermitage Ave. and adjacent to the greenspace and park, marking the northern end of the County's complex. At the present time, individuals have been able to access Arcola Ave., which marks the southern end of the County's complex. Arcola Ave. is the first street south of Hermitage Ave., and has a traffic control light at its intersection with Georgia Ave. Prior to the closing of the Recreation Center and the Library, residents on Parker Ave. could drive to Arcola Ave. by going past the Recreation Center, through the Library parking lot, making a right turn on Arcola Ave. and then turning southbound onto Georgia Ave. at the controlled intersection. Not only will that option not be available if Hermitage Ave. is closed, but that shortcut is illegal.

Those opposed to the closure also suggested that a light be placed at the intersection of Parker and Georgia Avenues. This possibility had been investigated by MCDOT and the State Highway Administration; however, the warrants were found insufficient to make that a controlled intersection. It was also suggested that the intersection of Hermitage and Arcola Avenues be made a controlled intersection; however, the warrants failed there also.

III. CONCLUSIONS AND RECOMMENDATIONS

The abandonment of road rights-of way is governed by the provisions of sections 49-63, Montgomery County Code (2004) as amended. Section 49-63 permits application for abandonment of a right-of way by any person or government agency, provides for public agency and utility company review, and requires a public hearing with notice. I find that the hearing and notice procedures have been satisfied, and the public, public agencies, and utility companies have been given an opportunity to review the petition for abandonment and closure as described above.

Section 49-63 allows abandonment if the right-of-way is not needed for public use or if abandonment is necessary to protect the health, safety and welfare of the residents in the

neighborhood. In determining health, safety and welfare issues, the Council may consider: 1) any adopted land use plan applicable to the neighborhood; 2) the safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives in the immediate neighborhood for local and through traffic; or, 3) changes in fact and circumstances since the original dedication of the right-of-way. In this case, the abandonment turns on whether or not the right-of-way is needed for public use. Based on testimony from the Applicant's and MCDOT's representatives, I find that it is not, and that the right-of-way is no longer needed for a public purpose, that the abandonment will serve the health, safety, and welfare of the community, and that it provides a safe and efficient pedestrian traffic pattern, and that the application should be approved.

However, approval of the request is conditioned upon the required Department of Fire and Rescue Service vehicular access and water supply plan.

The Hearing Examiner did take the objection to the request into consideration; however, the objection to the closure of Hermitage Ave. because of the Parker Rd. situation does not present the Hearing Examiner with a valid rationale to recommend denial of the Applicant's request since the cut through to Arcola Ave. is not a public road. The Hearing Examiner understands the situation regarding Parker Ave. and the difficulty of proceeding south on Georgia Ave., but the closure of Hermitage Ave. cannot be factored into the decision because of the non-public nature of the alternative. The ability to ameliorate the situation is one that the residents of Parker Ave. will have to pursue separately.

SIGNATURE PAGE FOLLOWS

Respectfully submitted,



Michael L. Subin

Date: June 28, 2016

The Public Hearing Officer's Recommendations regarding AB 747, Hermitage Avenue, Wheaton Closure have been reviewed and are APPROVED.



Isiah Leggett, County Executive

Date: June 29, 2016

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Joins Map 5166

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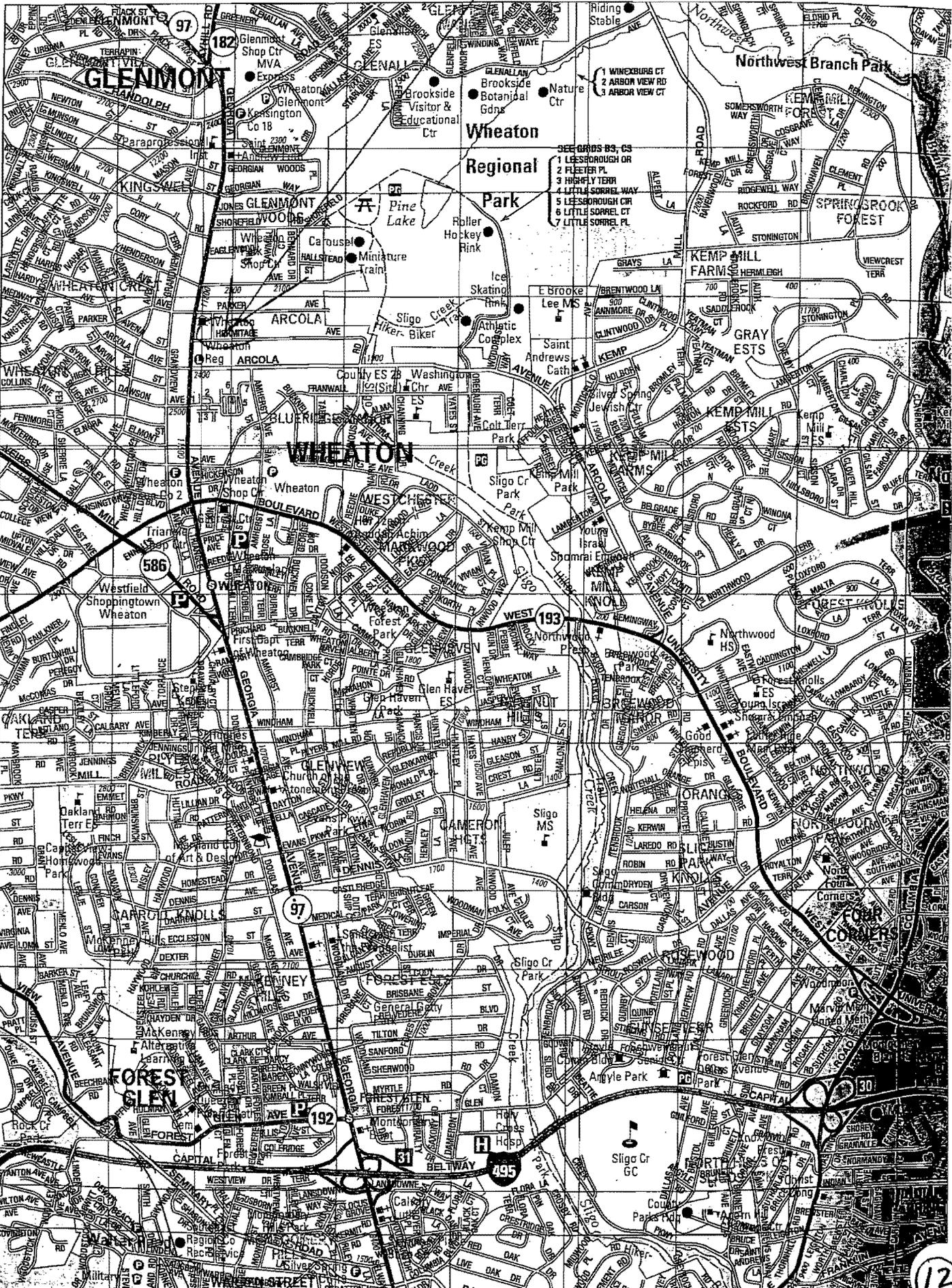
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Go gle Maps Hermitage Ave



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