

Resolution No.: 18-290  
Introduced: October 13, 2015  
Adopted: October 13, 2015

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: County Council

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**SUBJECT:** DOT Docket No. AB743  
Abandonment – Unimproved Alley  
Crestview Subdivision, Bethesda

**Background**

1. By letter dated September 23, 2014 from Shulman, Rogers, Gandal, Pordy & Ecker on behalf of its client, Richard Culp, the Applicant, a request was made for the County to abandon a portion of an unimproved alley in the Crestview Subdivision of Bethesda. The portion of the right-of-way for which abandonment is sought adjoins the Applicant's property known as 4817 Bayard Boulevard, also known as Block L, Lots 26 and 27, in the Crestview Subdivision of Bethesda. It is 40.65 feet long, the width of the Applicant's rear lot line, by 7.5 feet wide (see metes and bounds description by Snider & Associates attached).
2. A Public Hearing to consider the abandonment proposal was held on December 17, 2014 by the designee of the County Executive.
3. Verizon had no objection.
4. Washington Suburban Sanitary Commission did not respond within 60 days and therefore, consent is presumed.
5. Washington Gas did not respond within 60 days and therefore, concurrence is presumed.
6. PEPCO did not respond within 60 days and therefore, concurrence is presumed.
7. The Montgomery County Police Department did not respond within 60 days and therefore, concurrence is presumed.
8. The Montgomery County Planning Board approved the abandonment request.
9. The Department of Transportation (DOT) recommended approval of the abandonment request subject to granting any necessary public utility and storm drain easements.

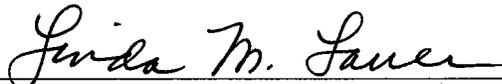
10. The Department of Fire and Rescue Services had no objection.
11. The County Executive recommends approval of the proposed abandonment.

**Action**

The County Council for Montgomery County, Maryland, finds that the portion of the unimproved alley in the Crestview Subdivision of Bethesda 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 which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective:

1. The Applicant must grant any necessary public utility and storm drain easements;
2. The Applicant must file a new record plat incorporating the former portion of the right-of-way into Applicant's lot;
3. 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; and
4. 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



# MONTGOMERY COUNTY EXECUTIVE ORDER

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

<b>Subject:</b> Abandonment - Alley Crestview Subdivision, Bethesda	<b>Executive Order No.</b>  177-14	<b>Subject Suffix</b> AB
<b>Originating Department:</b> Transportation	<b>Department Number</b> AB 04-14	<b>Effective Date</b> 10/12/14

AB743

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 7:30 p.m. on Wednesday December 17, 2014  
Executive Office Building Lobby Auditorium  
101 Monroe Street  
Rockville, Maryland 20850

to consider an application received from Shulman Rogers on behalf of its client, Richard W. Culp, the Applicant, seeking abandonment of a portion of an alley in the Crestview Subdivision of Bethesda.

2. 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:   
Eric C. Willis  
Assistant County Attorney  
Date: 10/12/14

  
Ramona Bell-Pearson  
Assistant Chief Administrative Officer  
Date: 10/12/14

**Distribution:**  
Department of Transportation  
Department of Finance  
Office of the County Attorney



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

**IN THE MATTER OF: Abandonment Petition AB743**

**Petition for the Abandonment of a Portion of an Unimproved Alley in the Crestview Subdivision in Bethesda, MD**

**BEFORE: Michael L. Subin, Public Hearing Officer**

**PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION**

**I. Background**

The Law Office of Shulman, Rogers, Gandal, Porfy, & Ecker, P.A. submitted a request, dated September 23, 2014, on behalf of Richard Culp ("Applicant"), requesting the abandonment of a Portion of an Unimproved Alley located behind a property known as 4817 Bayard Boulevard, also known as Block L, Lots 26 and 27, in the Crestview Subdivision of Bethesda, MD 20816. (Exhibit 1)

Executive Order 117-14, authorizing the hearing, was issued on October 12, 2014. (Exhibit 2) Notices were sent to nearby civic associations, residents, public utilities, and public agencies. (Exhibit 3) Public notice of the hearing appeared in *The Montgomery Sentinel* on December 4 and 11, 2014. (Exhibit 4) Signage was posted at the site of the abandonment. (Exhibit 6) A public hearing was held on December 17, 2014, at approximately 7:46 p.m., in the Lobby Auditorium of the Montgomery County Executive Office Building, 101 Monroe Street, Rockville, MD 20850.

**II. Summary of Testimony and Evidence**

At the hearing on the proposed abandonment, Mr. Michael Cassidy, representing the Montgomery Department of Transportation ("MCDOT"), testified on behalf of the Department. He read into the record the evidence and exhibits required by the Montgomery County Code (2004), as amended ("Code"). In addition to the exhibits above, Mr. Cassidy read the following exhibits into the record: an aerial photograph showing the subject area and vicinity (Exhibit 5); an e-mail from Verizon, dated October 24, 2014, voicing no objection (Exhibit 7);

an e-mail from the Montgomery County Department of Fire and Rescue Services, dated November 28, 2014, voicing no objections (Exhibit 8); a memorandum from the Director of the MCDOT, dated December 17, 2014, recommending approval subject to the granting of any necessary public utility and storm drain easements (Exhibit 9); a memorandum from the Staff of the Montgomery County Planning Department ("MCPD"), dated December 3, 2013, finding that the ROW is not necessary for present or future public use and recommending approval of the abandonment (Exhibit 10); a property map provided by the Maryland Department of Planning ("MDP") (Exhibit 11); and, an aerial photograph of the subject area (Exhibit 12). In addition to reading the exhibits into the record, Mr. Cassedy testified that his office requested comments from the public, government agencies, and public utility companies in fulfillment of the requirements of § 49-62 of the Montgomery County Code (2004), as amended. Neither the Montgomery County Police Department, Pepco, nor Washington Gas provided comments.

Mr. Cassedy then testified as to the elements of the project. The Right-of-Way ("ROW") was dedicated for public use by Plat No. 213 and is 15-foot wide. The area under consideration is immediately adjacent to and along the Applicant's rear property line situated at 4817 Bayard Boulevard, Bethesda, MD, and is 7 ½-feet by 40.65-feet.<sup>1</sup> Over time, this ROW has been the subject of other successful abandonment requests, the original request dating back to 1974. He did note that there is no longer any public use for the ROW. Nancy Regelin, Esq, representing the Applicant, reiterated Mr. Cassedy's statement that there already are new subdivided lots which have been incorporated into minor subdivisions by MCPB in the ROW.<sup>2</sup>

### **III. Conclusions and Recommendations**

The abandonment of road rights-of-way is governed by the provisions of § 49-63, Montgomery County Code (2004), as amended. Section 49-63 permits application for the 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 that the public, public agencies, and utility companies have been given an opportunity to review the petition for abandonment and closure as described above.

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<sup>1</sup> While the ROW is 15-foot wide, the petitioner can only receive half of that since the remaining 7 ½-feet would revert to the property owner on the other side of the ROW.

<sup>2</sup> While the ROW currently looks like a checkerboard of abandoned and unabandoned spaces, one might presume that the reason for the disparate designation is because some of the adjacent property owners do not want to assume ownership of the unabandoned spaces.

Section 49-63 allows abandonment if the ROW is not needed for public use or if the abandonment is necessary to protect the health, safety and welfare of the residents in the neighborhood or the general public. 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, I find that the abandonment turns on whether or not the ROW is needed for public use or whether there have been changes in fact and circumstance since the ROW was created. I find that the ROW is not needed for public use and that there have been no changes in fact and circumstances since the right-of-way was created.

Consequently, based on testimony and the record, I find that the proposed abandonment of a Portion of an Unimproved Alley behind 4817 Bayard Boulevard, in the Crestview Subdivision of Bethesda, MD, will be in the public interest, and meets the provisions of § 49-63 of the Code. The "public interest" is a broad concept that manifests itself in a variety of contexts. When, as is the case here, the abandonment is considered to be in the "public interest" if it will do such things as promote the general health and safety of the citizenry, protect the environment, preserve open space, or otherwise advance the community's quality of life. (*See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 701 (1999)) This includes providing for the safe and efficient flow of vehicular and pedestrian traffic generally. (*See, Wheaton Moose Lodge No. 1775 v. Montgomery County Maryland*, 41 Md. App. 401, 397 A.2d 280 (1979)) I find that the proposed project will protect the environment, preserve open space, and advance the community's quality of life.

However, approval of the application is to be conditioned upon the granting of any necessary public utility and storm drain easements.

Signature Page Follows

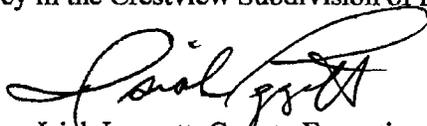
Respectfully submitted,



Michael L. Subin

July 15, 2015  
Date

I have reviewed the Public Hearing Officer's Recommendations regarding AB743, the Abandonment of a Portion of an Unimproved Alley in the Crestview Subdivision of Bethesda, MD, and it is APPROVED.



Isiah Leggett, County Executive

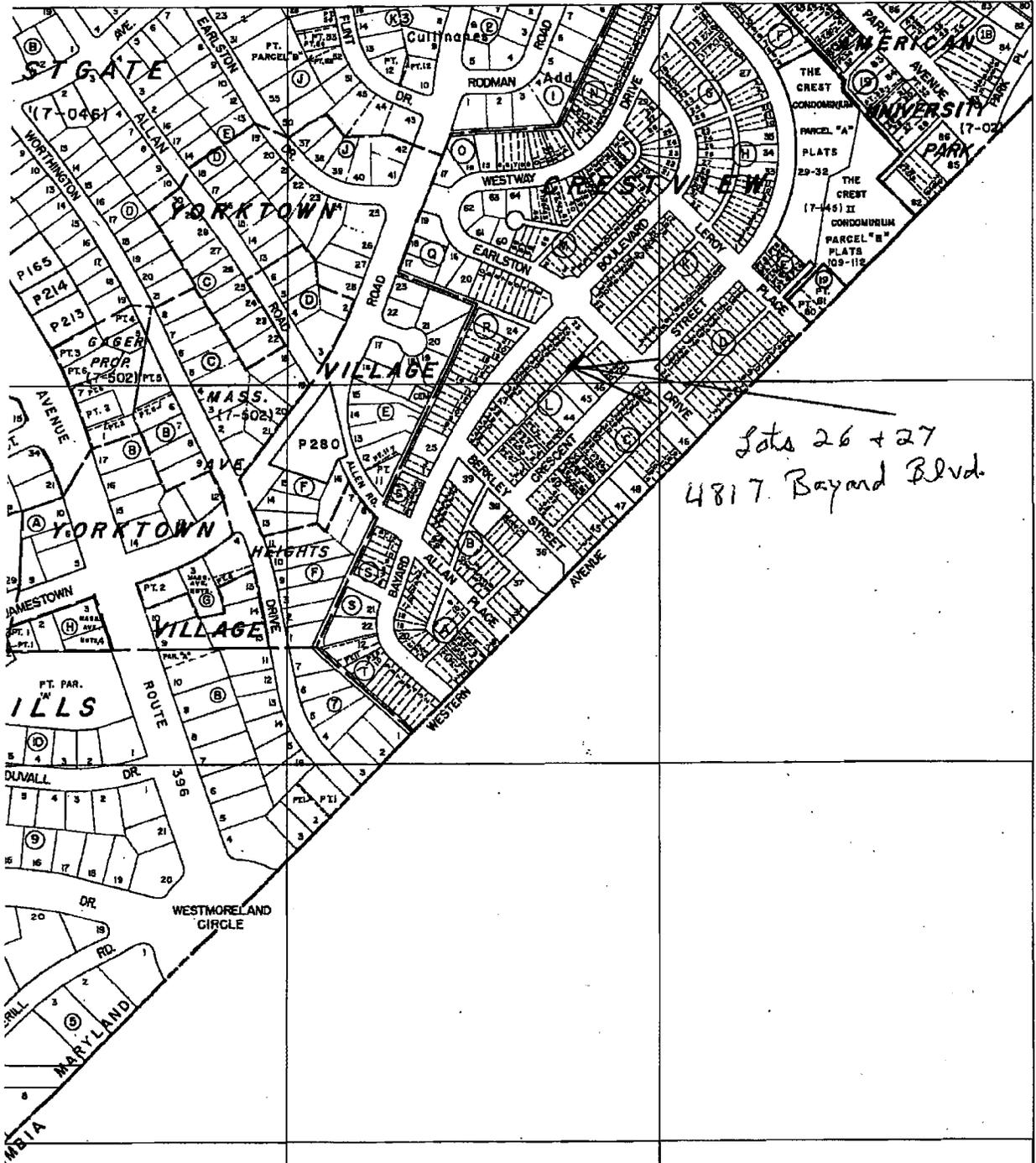
July 16, 2015  
Date

Tax Map H M 22

H 2

W24000

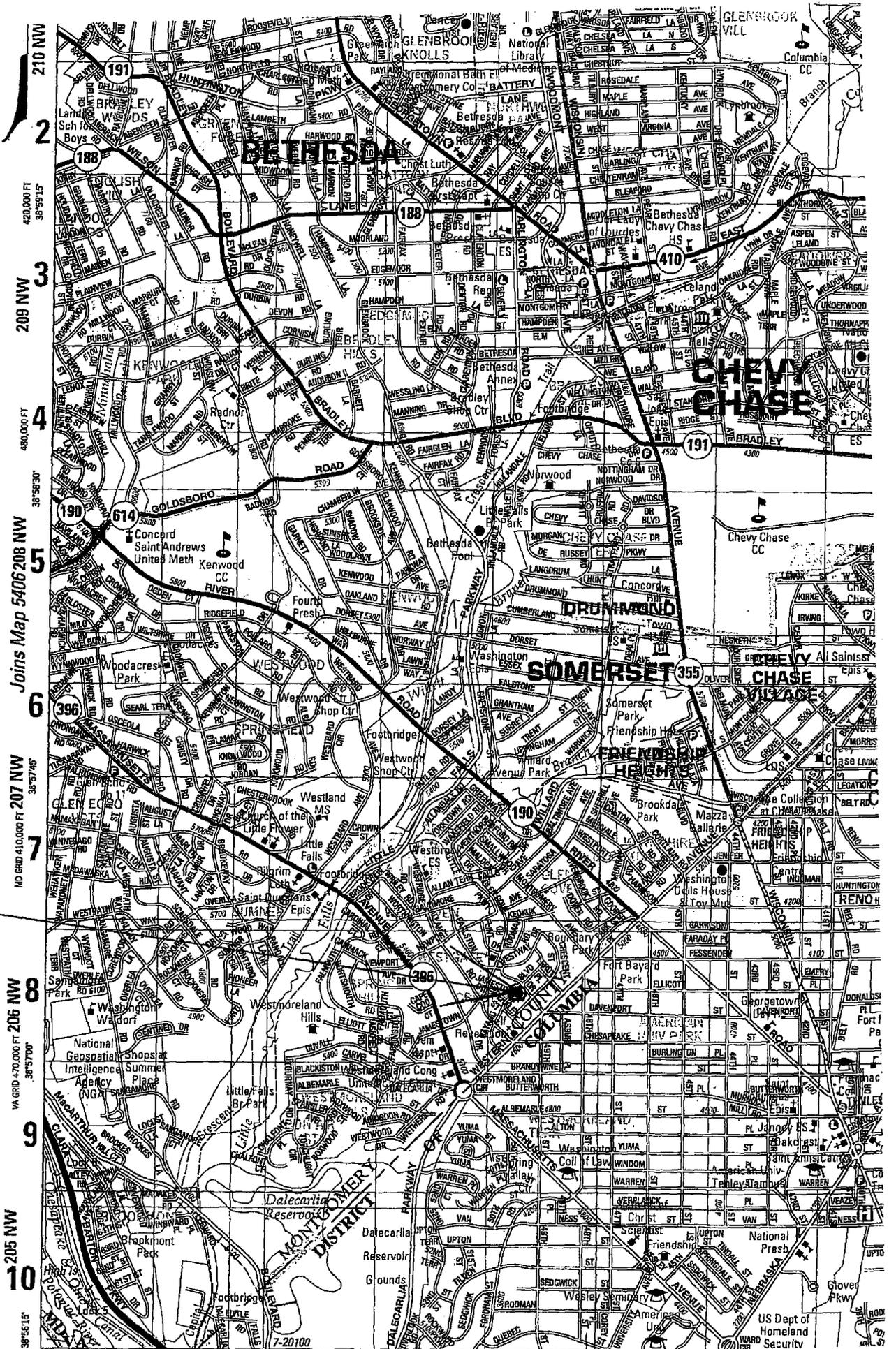
N24000



HM 342

M 2

ADC Map  
5407



210 NW  
420,000 FT 38°59'15"  
209 NW  
480,000 FT 38°58'30"  
190 NW  
540,000 FT 38°57'45"  
207 NW  
600,000 FT 38°57'00"  
206 NW  
660,000 FT 38°56'15"  
205 NW  
720,000 FT 38°55'30"

1817  
Myard Blvd.

Joins Map 5406 208 NW

205 NW  
10