

MEMORANDUM

June 18, 2025

TO: Transportation & Environment Committee

FROM: Stephen Kenny, Legislative Analyst

SUBJECT: Washington Grove Lane abandonment

PURPOSE: **Worksession** to develop recommendations for Council action

Expected participants:

- Eric Willis, Engineering Services Manager, Division of Transportation Engineering, Montgomery County Department of Transportation (MCDOT)

The Committee will develop recommendations for Council action on a petition for abandonment of two portions of Washington Grove Lane in Gaithersburg (AB 784). The applicants – the Housing Opportunities Commission (HOC) and the Emory Grove United Methodist Church (EGUMC) – are jointly pursuing the abandonment in support of the proposed Heritage Emory Grove redevelopment, which includes affordable housing and community revitalization efforts to honor the area's historic Black heritage.

After public hearing, the Montgomery County Department of Transportation (MCDOT) recommends that the Council approve the petition with conditions.

Abandonment Areas

- Abandonment Area #1: Approximately 41,997 square feet on the south side of Washington Grove Lane, between Mid-County Highway and Shady Spring Drive.
- Abandonment Area #2: Approximately 2,946 square feet on the north side of Washington Grove Lane, between Mid-County Highway and Emory Grove Road.

Together, these comprise the "Abandonment Areas."

Abandonment Area #1 is listed in the original transmittal and introduced Council resolution (© 3-22) as being 56,826 square feet in area. After introduction, the applicants provided Council staff with an updated land survey (© 23-25) that corrects this measurement, updating the area to be 41,997 sq. ft..

Council staff suggests the Committee recommend that the Council amend the resolution approving the abandonment to reflect the updated Abandonment Area #1.

Background

The abandonment areas were originally reserved for future roadway widening, including a potential relocation of MD 124 that was never realized. The applicants plan to incorporate these areas into a new development, [Heritage Emory Grove](#), that includes affordable housing, enhanced pedestrian facilities, and historical features that reflect the heritage of Emory Grove.

Public Agency and Utility Comments

On January 25, 2024, MCDOT held a public hearing in accordance with Section 49-62 of the County Code. The complete public hearing record can be found at <https://montgomerycountymd.gov/dot-dte/PAS/washingtongroveln/index.html>.

The following stakeholders indicated no objection to the abandonment request:

- Montgomery County Fire and Rescue Service
- MCDOT Traffic Division
- Montgomery County Police Department (MCPD)
- Department of Permitting Services (DPS)
- Maryland-National Capital Park and Planning Commission (M-NCPPC)
- Verizon
- Washington Gas
- Pepco (conditional on easement)
- Washington Suburban Sanitary Commission (WSSC – conditional on easement)

MCDOT recommended approval of the abandonment subject to several conditions, primarily:

- That public utility easements be preserved or utilities be relocated at the applicant's expense (this meets requests made by Pepco and WSSC).
- That access and connectivity be maintained through future redevelopment.
- That title issues for non-dedicated areas be resolved through the subdivision process.

In their public hearing testimony, both MCDOT and the Planning Department established that rights-of-way contained in the abandonment areas are not needed for current or foreseeable public use.

The Public Hearing Officer, Michael Paylor, recommended approval of the abandonment, and County Executive Elrich concurred in a transmittal dated March 24, 2025.

Title Issues

While the bulk of Abandonment Area #1 was dedicated via recorded plats in 1969 and 1971, some segments – including all of Abandonment Area #2 – lack formal dedication records. However, circumstantial evidence, including old deeds, infrastructure presence, and historical maps, supports that these areas were historically used as roadway. The Hearing Officer concluded that the County holds sufficient right-of-way interest to abandon.

To protect the County's interests, the resolution includes a condition requiring the applicants to address any title deficiencies at their own cost during the subdivision platting process.

Action

The draft resolution as introduced (© 21-22), if approved, would:

- Grant the abandonment of the two portions of Washington Grove Lane (collectively 59,772 square feet).
- Require the applicants to:
 1. Record a new subdivision plat incorporating the abandoned areas.
 2. Resolve title issues and indemnify the County against claims.
 3. Grant or relocate public utility easements as required by Pepco, WSSC, or any other relevant utility company.

Council staff suggest that the Committee recommend amending the resolution to change the square footage of Abandonment Area #1 from 56,826 square feet to 41,997 square feet but otherwise recommend supporting the resolution.

This report contains:

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|---|---------|
| - Executive's transmittal memo (March 24, 2025) | © 1–2 |
| - Public Hearing Officer's Report and Recommendations (March 7, 2025) | © 3–20 |
| - Draft adoption resolution | © 21-22 |
| - Updated abandonment area #1 land survey | © 23-25 |




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

March 24, 2025

TO: Kate Stewart, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: DOT Docket No. AB 784 – Abandonment of portions of Washington Grove Lane

I am attaching for your consideration, a proposed Resolution by which the County Council might approve the request to abandon two portions of the public right of way known as Washington Grove Lane in Gaithersburg. A summary of this abandonment petition is as follows:

By letter dated November 1, 2022, the Housing Opportunities Commission (HOC) (the “Applicant”) petitioned for the abandonment of portions of the public right of way known as Washington Grove Lane in Gaithersburg. The Applicant subsequently revised its petition by letter dated September 27, 2023. By letter dated December 5, 2023, the Emory Grove United Methodist Church (EGUMC), requested to join in the petition for abandonment of the Abandonment Areas. EGUMC owns four parcels of real property located along the north side of Washington Grove Lane between Mid-County Highway and Emory Grove Road. The Applicant and the EGUMC are partners in a proposed redevelopment project known as Heritage Emory Grove. This abandonment is being sought in connection with the necessary upgrade and replacement of the Applicant’s Emory Grove Village property, which is being undertaken as part of the larger Heritage Emory Grove redevelopment project.

The subject abandonment case considered the Applicant’s revised petition to abandon two areas along Washington Grove Lane between Mid-County Highway and Shady Spring Drive. Area 1 totals approximately 56,826 square feet on the south side of Washington Grove Lane adjacent to the Applicant’s property between Mid-County Highway and Shady Spring Drive (hereafter Abandonment Area #1); Area 2 totals approximately 2,946 square feet on the north side of Washington Grove Lane adjacent to properties owned by the EGUMC, between Mid-County

Highway and Emory Grove Road (hereafter Abandonment Area #2). Abandonment Area #1 and Abandonment #2, collectively, are hereafter referred to as “the Abandonment Areas”. At issue in the abandonment case was whether the Abandonment Areas were needed for present or anticipated future public use.

For the reasons set forth in the attached Report and Recommendations, the Hearing Officer recommended that the request for abandonment of the Abandonment Areas be approved. I concur with the Hearing Officer’s Report and Recommendation.

The following supporting materials are transmitted with this memorandum:

1. Hearing Officer’s Report and Recommendation, dated March 7, 2025, recommending approval of the abandonment petition.
2. Proposed County Council Resolution

The hearing transcript and exhibits transmitted with this memorandum may be accessed through the MCDOT Property Acquisition Section website at the following link:

[AB 784 - Washington Grove Lane Abandonment](#)

The contents contained within the above link are incorporated herein as if fully set forth as the complete record of proceedings before the Hearing Officer. A physical copy of the record can be made available upon request.

Enclosures: 2

OFFICE OF THE COUNTY EXECUTIVE
EXECUTIVE OFFICE BUILDING
ROCKVILLE, MARYLAND

IN THE MATTER OF:	*	DEPARTMENT OF
	*	TRANSPORTATION
PETITION OF: HOUSING	*	
OPPORTUNITIES COMMISSION	*	PETITION NO. AB 784
	*	
FOR THE ABANDONMENT OF	*	BEFORE:
PORTIONS OF WASHINGTON GROVE	*	
LANE	*	MICHAEL L. PAYLOR
	*	PUBLIC HEARING OFFICER
	*	
* * * * *	*	* * * * *

PUBLIC HEARING OFFICER’S REPORT AND RECOMMENDATION

I. Introduction

The above captioned matter was processed for consideration of the Housing Opportunities Commission’s (the “Applicant”) formal petition to abandon certain portions of the public right of way known as Washington Grove Lane in Gaithersburg. The Applicant operates as an affordable housing agency, a housing finance agency and a housing developer, in accordance with State of Maryland and Montgomery County codes. (*See Exhibit A*). The Applicant is the owner of two parcels of real property located along the south side of Washington Grove Lane between Mid-County Highway and Shady Spring Drive, on which is located a residential community known as Emory Grove Village.

This matter considers the Applicant’s revised petition to abandon two areas along Washington Grove Lane between Mid-County Highway and Shady Spring Drive. Area 1 totals approximately 56,826 square feet on the south side of Washington Grove Lane adjacent to the Applicant’s property between Mid-County Highway and Shady Spring Drive (hereafter Abandonment Area #1); Area 2 totals approximately 2,946 square feet on the north side of

Washington Grove Lane adjacent to properties owned by the Emory Grove United Methodist Church, between Mid-County Highway and Emory Grove Road (hereafter Abandonment Area #2). Abandonment Area #1 and Abandonment #2, collectively, are hereafter referred to as “the Abandonment Areas”.

Joining in this application is the Emory Grove United Methodist Church (EGUMC), which owns four (4) parcels of real property located along the north side of Washington Grove Lane between Mid-County Highway and Emory Grove Road (*See Exhibit U*). The Applicant and the EGUMC are partners in a proposed redevelopment project known as Heritage Emory Grove. This abandonment is being sought in connection with the necessary upgrade and replacement for the Applicant’s Emory Grove Village property, which is being undertaken as part of the larger Heritage Emory Grove redevelopment project. (*See Exhibit A at p. 2*)

The Heritage Emory Grove redevelopment project seeks to revitalize and pay respect to the historic Emory Grove community through a mix of new housing options, an improved transportation network focused on pedestrian safety and the inclusion of several historical landmarks and other features recognizing certain elements of the original community (*See Heritage Emory Grove Conceptual Master Plan, excerpts of which are attached as Exhibit F to the Applicant’s Revised Petition for Abandonment (Ex. A)*).

This report and recommendation relies upon the public hearing record that may be found at the following link: [AB 784 - Washington Grove Lane Abandonment](#) (the “Hearing Record”). The Hearing Record is incorporated herein as if fully set forth. All references to “Exhibits” in this report and recommendation may be found in the Hearing Record with a corresponding exhibit label. The scope of this report and recommendation is limited to a determination of whether Abandonment Area #1 and Abandonment Area #2 (collectively, the

Abandonment Areas) are no longer needed for present or anticipated future public use.

A. Area Overview

Washington Grove Lane is classified as a Neighborhood Connector (formerly Primary Residential) that runs in an East-West direction from roughly Railroad Street at the south end to MD 124 (Woodfield Road) at the north end. The focus of this abandonment case is on the section of the roadway located adjacent to the Emory Grove community between Mid-County Highway to the west and Shady Spring Drive to the East. The overall roadway width for Washington Grove Lane is variable, but for the section between Mid-County Highway and Shady Spring Drive, the paved roadway is approximately 48 feet wide. (*See Exhibit Z at p.5*)

B. Hearing Procedure

The Applicant submitted its original petition for abandonment by letter dated November 1, 2022 (Exhibit B). Through this petition, the Applicant sought the abandonment of five (5) separate areas of right of way (Exhibit D).¹ A hearing date on the original petition was scheduled for March 23, 2023. According to the Applicant, concerns about the original petition were raised by staff at Montgomery County Department of Transportation and the Maryland-National Capital Park and Planning Commission in connection with the Concept Plan submitted for the Heritage Emory Grove development, which were primarily focused on the proposed alignment of the intersection of Washington Grove Road and Shady Spring drive. In order to provide adequate opportunity for the Applicant to address those concerns with the County

¹ The 5 separate pieces of right of way originally sought by the Applicant for abandonment are helpfully color coded. While the original petition was amended to exclude a request to abandon Areas # 3 and 5 on Exhibit D, the color coded delineation of Areas # 1, 2 and 5 on Exhibit D are a useful tool for the purpose of discussing and drawing attention to how title issues to the underlying fee may be implicated when it comes to platting and incorporating those areas into a proposed development.

agencies, the Applicant requested a stay in the proceedings (*Exhibit H*).

The Applicant subsequently revised its petition by letter dated September 27, 2023 (*Exhibit A*). The revised petition reduced the areas to be abandoned to two areas: 1) Abandonment Area #1 being located on the South side of the existing Washington Grove Lane roadway and consisting of 56,826 square feet of land², and 2) Abandonment Area #2 located on the north side of the existing Washington Grove Lane roadway and consisting of 2,946 square feet of land. A new hearing date was scheduled for January 25, 2024.

By letter dated December 5, 2023, the Emory Grove United Methodist Church requested to join the revised petition for abandonment submitted by the Applicant (*Exhibit U*).

As noted further herein a public hearing was held on January 25, 2024. Following the public hearing, the hearing record was kept open to receive supplemental submissions and the hearing record includes those supplemental submissions. The hearing record consists of a total of 35 exhibits (not including sub-exhibits) and a total of 188 pages.

II. SUMMARY OF STATEMENTS MADE AT THE HEARING HELD ON JANUARY 25, 2024 AND OF SUBSEQUENTLY SUBMITTED CORRESPONDENCE.

1. Ms. Tiara McCray, Section Chief, Montgomery County Department of Transportation Property Acquisition Section.

Ms. McCray spoke on behalf of the Montgomery County Department of Transportation (“MCDOT”). Ms. McCray explained that the Property Acquisition Section (“PAS”) is charged

² It should be noted that Abandonment Area #1 in the Revised petition is inclusive of both Area #1 and Area #2 from the Applicant’s original petition on Exhibit D, but curiously, no longer draws any distinction between the two areas that are separately delineated with different colors on Exhibit D (compare Exhibit C and Exhibit D). Area #1 on Exhibit C consists of that area dedicated by plats #9277 and #9635, together with additional land beyond the dedicated area that extends to the roadbed (as more clearly depicted on Exhibit D delineated in blue). Area #2 on Exhibit C being what the Applicant described in the original petition as the former roadbed for Washington Grove Lane, which is depicted in green on Exhibit D.

with the administration of requests to abandon County rights of way. In so doing, Ms. McCray explained that the PAS received the Petition from the Applicant and thereafter scheduled a public hearing and solicited various County and outside agencies for comment about the proposed abandonment in accordance with Section 49-62 of the Montgomery County code. In addition, Ms. McCray stated that PAS provided all the requisite notices for this hearing and summarized the documents and correspondence that MCDOT had received in response to the Applicant's Petition at the time of the hearing and introduced them as exhibits.

2. Mr. Gordon Woodward, on behalf of the Applicant.

Mr. Woodward, counsel for the Applicant, introduced a PowerPoint presentation prepared by the Applicant's team and entered into the hearing record as *Exhibit X*. He noted that the Applicant's request is to abandon certain rights of ways along Washington Grove Lane that were previously dedicated for road-widening purposes but are no longer needed for those purposes. This includes the areas previously identified as Abandonment Area #1 and Abandonment Area #2 on *Exhibit C*.

According to Mr. Woodward, Washington Grove Lane was originally a stagecoach road with its origins dating back to the early 1880s (*Exhibit AI* at p. 21). He noted that the Emory Grove community was founded by recently emancipated men and women who acquired land from Quaker farmers after the Civil War. (P.36). He stated that the center of the community was the Emory Grove United Methodist Church and that the Heritage Emory Grove redevelopment project is a joint effort among the Applicant, the EGUMC and the Maryland-National Capital Park and Planning Commission to preserve the history of Emory Grove while introducing new housing and other amenities to meet the needs of today's population. (p. 37). According to Mr. Woodward, the redevelopment seeks to maintain the historical integrity of the community, while

adding housing, promoting green space and minimizing vehicular traffic. (p. 38).

Abandonment Area #1:

Mr. Woodward noted that several decades ago, the County was contemplating a state highway (Md Rte. 124) through Gaithersburg and that the proposed alignment for Md Rte. 124 at that time included an expansion of what was then known as Gaithersburg-Laytonsville Road. (p. 38). This proposed expansion is shown on the subdivision plats attached to the Applicant's petition at *Exhibit B1* (Subdivision Plat #9277) and *Exhibit B2* (Subdivision Plat #9635).³

Subdivision Plat #9277, recorded in 1969, proposed a re-subdivision of Lot #1 within the Emory Grove Village subdivision. Through this plat, the owners of the subject land (Lot #1) dedicated to public use a 29,004 square foot area for the "Relocation of Rte 124." The 29,004 square feet appears to consist of an approximately 100-foot wide area running parallel to the Washington Grove Lane roadway for the full width of Lot #1. (See *Exhibit E*).

Subdivision Plat #9635, recorded in 1971, proposed a re-subdivision of Lot #2 within the Emory Grove Village subdivision. Through this plat, the owners of the subject land (Lot #2), which is located adjacent to Lot #1 referenced above, dedicated to public use a 24,765 square feet section of land running parallel to the roadway for the full width of Lot #2. (See *Exhibit E*). The combined areas of dedicated land in Plats #9277 and #9635 total 53,769 square feet and make up *part of* the Abandonment Area #1 being sought for abandonment under the Applicant's revised petition (the "Dedicated Area"). An additional 3,057 square feet of land outside the dedicated area described above is also sought for abandonment (the "Additional Area").⁴ Thus,

³ These 2 plats are included in the hearing record collectively as *Exhibit E*.

⁴ The Additional Area is depicted in blue on Exhibit D, but is not separately delineated on Exhibit C, except with reference to the "old dedication line." There is no explanation as to how the Applicant contends that the Additional Area came to be County Right of Way.

the Dedicated Area and the Additional Area collectively contain a total of 56,826 square feet, which makes up Abandonment Area # 1 as depicted on Exhibit C (which is delineated as Areas # 1 and 2 on Exhibit D).

According to Mr. Woodward, by 1986, the alignment for Md Rte. 124 had been fixed in its current location at Woodfield Road (p. 40). Accordingly, the areas dedicated by Plats #9277 and #9635 are no longer needed for the relocation of Md Rte. 124 and, by implication the Additional Area is also no longer needed.

Mr. Woodward did not address in his presentation the Additional Area making up that portion of Abandonment Area #1 that was previously identified as being outside of the dedicated area but was alleged to have been within the former roadbed of Washington Grove Lane (formerly Gaithersburg-Laytonsville Road). Nonetheless, Mr. Woodward contends that all relevant agencies have expressed support for the abandonment of all of Abandonment Area #1.

Abandonment Area #2:

While Mr. Woodward acknowledged that there is no written dedication to establish Abandonment Area #2 as public right of way, he asserted that circumstantial evidence, in the form of the County's use of the area and the establishment of certain public infrastructure in the area, supported a finding that the land included in Abandonment Area #2 was public right of way, being formerly part of the roadbed of Washington Grove Lane.

During Mr. Woodward's presentation, there was a lengthy discussion among Mr. Woodward, Mr. Robert Birenbaum, an Assistant County Attorney participating in the hearing and Ms. Francoise Carrier, attorney for EGUMC, concerning the legal status of Abandonment Area #2 and whether a lack of clear title over the area may complicate the inclusion of Abandonment Area #2 into a subsequent subdivision plat should this abandonment request be

approved. During this discussion, Ms. Carrier noted that the Abandonment Area #2 land is shown as public right of way on “the County’s GIS map and zoning map.” (*Exhibit AI* at p. 24). After further discussion, it became apparent that with respect to Abandonment Area #2, the Applicant was requesting that the County abandon any right-of-way interest it may have, even if the specific right-of-way interest could not be determined.

In conclusion, Mr. Woodward asserted that in light of Md. Rte. 124 being relocated in a different location, there is no longer a present need or anticipated future need to widen Washington Grove Lane. Consequently, the 56,826 square feet of land constituting Abandonment Area #1) is no longer needed for present or anticipated future public use and is suitable for abandonment. (*Exhibit AI* at p. 42-44). With respect to Abandonment Area #2, Mr. Woodward stated that there seemed to be agreement among the various agencies that Abandonment Area #2 was no longer needed for present or anticipated future public use and he asserted that the transportation improvements contemplated by the proposed Heritage Emory Grove redevelopment would enhance the public safety and welfare of the surrounding area. While Mr. Woodward recognized that there was some ambiguity concerning the title interests over Abandonment Area #2, he argued there was no ambiguity over the land no longer being needed for public use and he suggested that the County could abandon whatever interest it had in Abandonment Area #2. (*Exhibit AI* at p. 44-45).

3. Mr. Jay Shepherd

Mr. Shepherd identified himself as a Housing Acquisition Manager for the Applicant. He clarified that the Emory Grove Village housing complex was demolished in 2022 to make way for the proposed new development. He highlighted that the current development application is an example of cooperation among various agencies, including Maryland-National Park and

Planning Commission, MCDOT, MC Fire and Rescue Services (MCFRS) and WSSC. (*Exhibit AI at p.48*).

4. Pastor Timothy Warner

Pastor Timothy Warner is the pastor of the Emory Grove United Methodist Church. Pastor Warner stated that the Emory Grove community was established by former slaves and had once been a vibrant community, noting that it had been a meeting place for “camp meetings” for “almost a century.” (*Exhibit AI at p. 50*). Pastor Warner stated that the community had been “destroyed” in the 1960s due to the implementation of urban renewal policies. (*p.50*).

According to Pastor Warner, the proposed Heritage Emory Grove development is an effort by the EGUMC and the Applicant to “drive a change that . . . has to do . . . with equity in this community” by providing a full range of affordable housing and enhanced walkability. (*p. 50-51*). He also noted that the County Council had recently introduced legislation that allowed for faith communities to use their land to develop affordable housing.⁵

5. Summary of Subsequently Submitted Correspondence

In a letter dated March 7, 2024, Ms. Francoise Carrier, on behalf of the EGUMC, highlighted certain historical actions that she argued provide evidence that Abandonment Area #2 was in fact public right of way. (*See Exhibit AF*). In particular, Ms. Carrier noted that property descriptions contained in 3 deeds dating back to 1879, 1880 and 1918 referred to “the County road” as being a property boundary line. According to Ms. Carrier, these deeds referred

⁵ Pastor Warner seems to be referring to Zoning Text Amendment 24-01, also known as the Facility Affordable Inclusive Transformational Housing (FAITH) ZTA, which was approved by the County Council on or about April 2, 2024.

to land that is presently identified as 17810, 17812 and 17816, each of which is located adjacent to current Washington Grove Lane and is owned by the EGUMC. Ms. Carrier's letter provides additional documentation concerning the presence of public utility facilities within Abandonment Area #2. Finally, Ms. Carrier's letter includes documentation of subdivision plats as recent as 2001 that shows the parcels to the north of Washington Grove Lane as sharing boundary line with Washington Grove Lane. (*See Plat #21904*).

By letter dated March 8, 2024, Mr. Gordon Woodward, on behalf of the Applicant, provided supplemental comments to further support the abandonment of the Abandonment Areas. Mr. Woodward noted that with respect to Abandonment Area #1, "all relevant entities agree that abandonment is appropriate (subject to easements being provided to protect water and electrical infrastructure)." (*Exhibit AG at p. 2*). With respect to Abandonment Aea #2, Mr. Woodward stated that the Applicant supports of the position expressed by EGUMC in its supplemental letter dated March 7, 2024, which is summarized above. In particular, the Applicant was relying on the supporting documentation attached to the EGUMC letter as evidence that, "a) the road exists; b) sometime in the late 19th or 20th century, it shifted slightly to the south⁶; and c) the County, in all likelihood, retains a right to use the gap between the existing road and the property lines of the neighboring properties owned by the Church, for road purposes." The Applicant further asserts in this supplemental letter that a Pepco utility pole is located within Abandonment Area #2, providing further evidence that Abandonment Area #2 should be treated as public right of way.

This supplemental letter also addresses comments made by Mr. Robert Birenbaum of the

⁶ For this assertion, the Applicant cites a letter signed by Wayne F. Aubertin, a license professional surveyor which was not included with the EGUMC supplemental letter, but is attached to the Applicant's supplemental letter as Exhibit B.

County Attorney's Office (OCA) during the public hearing concerning the nature of the County's interest in those portions of the Abandonment Areas that were not expressly dedicated to public use. In this regard, Mr. Woodward notes that while the OCA has not expressed a formal opposition to the proposed abandonment, the OCA did express some hesitation during the public hearing concerning the nature of the County's title interest (or lack thereof) in the non-dedicated areas. Mr. Woodward concedes in the letter that the County's right-of-way interest in Abandonment Area #2 is "not well-documented," but he asserts that the research and supplemental documents provided by EGUMC demonstrates sufficient circumstantial evidence that the County has an interest in Abandonment Area #2 that it can abandon. Mr. Woodward further cites a variety of policy and equity considerations that he asserts support the abandonment of the Abandonment Areas. (*Exhibit AG*)

V. RESPONSES FROM GOVERNMENT AGENCIES AND PUBLIC UTILITY COMPANIES FROM WHICH RESPONSES WERE SOLICITED PURSUANT TO § 49-62(h) OF THE MONTGOMERY COUNTY CODE

1. Montgomery County Fire and Rescue Service. By email dated January 17, 2024, the MCDPS Section of Fire Department Access and Water Supply indicated that it had no objection to the requested abandonment, but reserving its rights to review and comment on the forthcoming development plan for Heritage Emory Grove. *See* Exhibit R.
2. Montgomery County Police Department ("MCPD"). MCPD did not respond to the notices to solicit a response. Pursuant to § 49-62(g), it is presumed that there is no opposition.
3. Montgomery County Department of Permitting Services ("DPS"). DPS did not respond to the notices to solicit a response. Pursuant to § 49-62(g), it is presumed that there is no opposition.
4. Maryland National Capital Park and Planning Commission ("MNCPPC"). By memo dated January 3, 2024, Planning Board staff stated that they support the revised Petition for Abandonment. The memo noted that in response to the original Petition for abandonment, Planning Board staff requested that the Applicant provide a Concept Plan of the proposed Heritage Emory Grove development that addressed

- certain concerns raised by planning staff at that time. The January 3, 2024 memo states that the previous concerns have been addressed by the Applicant and that planning staff is supportive of the revised request for abandonment. (*See Exhibit P*)
5. Montgomery County Department of Transportation (“MCDOT”). In its Memorandum dated December 21, 2023, the MCDOT Development Review Team within the Office of Transportation Policy recommended approval of the Revised Petition for Abandonment, subject to the following conditions: 1) that the existing street/ access shall be maintained unless the adjacent properties are redeveloped in the future; and 2) that any existing utilities located within the Abandonment Areas shall remain in place within a public utility easement or shall be relocated at the Applicant’s expense. (*See Exhibit S*). By email dated January 7, 2023, MCDOT Division of Traffic Engineering indicated that it had no comments on the proposed abandonment (*See Exhibit Q*).
 6. Verizon. Verizon did not respond to the notices to solicit a response. Pursuant to § 49-62(g), it is presumed that there is no opposition.
 7. Power Companies. In supplemental correspondence from the Applicant to MCDOT, the Applicant provided a copy of a letter from the Applicant to Pepco dated March 7, 2024 as well as email correspondence from Pepco regarding the proposed abandonment. (*See Exhibit AH*). In that correspondence, Pepco indicated that it had no objection to the proposed abandonment subject to an easement being granted to Pepco allowing for its facilities to remain in their present location.
 8. Washington Gas. Washington Gas did not respond to the notices to solicit a response. Pursuant to § 49-62(g), it is presumed that there is no opposition.
 9. Washington Suburban Sanitary Commission (“WSSC”). In a letter dated January 25, 2024, WSSC indicated that it has existing facilities within both Abandonment Area #1 and Abandonment Area #2. WSSC recommend approved of the requested abandonment, subject to the Applicant granting easements to WSSC of sufficient area to operate and maintain their facilities as set forth in their letter. (*See Exhibit T*).

VI. CONCLUSIONS AND RECOMMENDATIONS

The abandonment of road rights of way is governed by the provisions of sections 49-62 et seq., Montgomery County Code (2024) as amended. Section 49-62 permits application for abandonment of a right of way by any person or government agency, provides for public agency and utility company review, and requires a public hearing with notice. In evaluating the evidence, 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 as described above and provide comment.

Pursuant to Article 6 of Chapter 49 of the Montgomery County Code, right of way means “... any road, street, alley, crosswalk, pedestrian walkway, shared use path, sanitary sewer, storm sewer, or storm drainage right-of-way used at any time by the public, including use by pedestrians and bicyclists.”

Section 49-63 allows the County Council to abandon or close a right of way if the Council finds by Resolution that: (1) the right of way is no longer needed for present public use or anticipated public use in the foreseeable future, *or* (2) the abandonment or closing is necessary to protect the health, safety and welfare of the residents in the neighborhood. In assessing 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, there is general agreement among the commenting agencies that the proposed Heritage Emory Grove development will provide needed housing and an improved transportation network that will benefit this community. Moreover, the record supports that much of the Abandonment Areas (particularly, a significant portion of Abandonment Area #1) was dedicated to public use for a particular purpose and that such purpose is no longer needed for present or anticipated future use.

However, there is a legitimate concern that certain portions of the Abandonment Areas (the Additional Area and Abandonment Area #2) lack clear evidence of their status as public right of way or the nature of who holds title to those areas. Based on the materials submitted into

the record, the Applicant and EGUMC have done extensive research into the origins of the Washington Grove Lane (formerly Gathersburg-Laytonsville Road) roadway and its relationship with the adjacent properties. The Applicant and EGUMC have presented a compelling case that there is sufficient circumstantial evidence to show that those portions of the Abandonment Areas that are outside of the expressly dedicated areas were, at some point in time, part of the road/ right of way. Additionally, the record does not reflect any evidence of an intervening interest by any outside party in the non-dedicated areas nor does it reflect any opposition to those areas being abandoned (to the extent the County maintains a right-of-way interest in them). To the contrary, and as noted above, the public agencies providing comment in this case support the abandonment of both Abandonment Area #1 and Abandonment Area #2.

In evaluating the evidence presented in the record, a portion of Abandonment Area #1 is clearly public right of way, having been dedicated to the County by subdivision plat nos. 9277 (filed April 11, 1969) and 9635 (filed July 16, 1970). The stated purpose of the dedication on each of those subdivision plats was the relocation of Md Rte. 124. As set forth in the Applicant's revised petition, during the 1970s and 1980s, the proposed relocation/ re-alignment of Md Rte. 124 shifted away from Washington Grove Lane and to Woodfield Road, approximately $\frac{1}{4}$ of a mile north of Washington Grove Lane, where it remains today. Thus, the record supports the intended purpose of the dedications shown on plats 9277 and 9635 is no longer necessary for any current or anticipated future public use. I find, therefore, that the portion of Abandonment Area #1 that was dedicated to public use by subdivision plats #9277 and #9635 is no longer need for present or anticipated future public use and recommend that the Applicant's petition be granted with respect to that portion of Abandonment Area #1.

While not specifically addressed by the Applicant during the public hearing, it appears

from the surveys introduced in the record that a portion of Abandonment Area #1 (the Additional Area) is outside of the dedicated areas referenced above. With respect to this non-dedicated portion of Abandonment Area #1, the arguments made by the Applicant and EGUMC concerning Abandonment Area #2 would similarly apply.

To that end, the Applicant concedes that there is no written dedication or grant establishing Abandonment Area #2 as public right of way. The Applicant instead relies on circumstantial evidence to show that Abandonment Area #2 was once public right of way that has shifted over time. Of particular note in this regard is the March 7th letter submitted after the public hearing by Ms. Carrier on behalf of the EGUMC. As noted in Section II.5 of this report and recommendation, Ms. Carrier's letter references several deeds to properties on the north side of Washington Grove Lane that reference the "County road" as its boundary line. These deeds date back to the early 1800s and appear to support the Applicant's contention that the roadway had at one point abutted the properties to the north of it. Ms. Carrier's letter is well-reasoned and the arguments raised therein are compelling and supported by the documentation provided therein. The Applicant further contends that the original roadway may have shifted to the south over time and left a gap between the edge of the roadway and the property boundary. This contention is supported by the opinion offered by Wayne Aubertin, a Professional Land Surveyor, in his letter to Ms. Carrier, which is attached as Attachment B to *Exhibit AF*.

Finally, it is worth noting that certain public utility infrastructure in the form of a Pepco utility pole and WSSC facilities appears to be present within Abandonment Area #2 (*See Exhibits AH, T and Z*)

I find that there is sufficient evidence to support the Applicant's claim that Abandonment Area #2 and the Additional Area that is a non-dedicated portion of Abandonment Area #1 were

once public right of way. I also find the Applicant's claim that the roadway may have shifted to the south over time to be feasible. Furthermore, there is also nothing in the record that indicates an intervening ownership over the non-dedicated areas. While concerns regarding the clarity of title over the non-dedicated land may be well founded, I find that in so far as the County retains a right-of-way interest in the land identified as Abandonment Area #2 and the non-dedicated portion of Abandonment Area #1, there is no longer a public need for that right-of-way interest. With that in mind, I am also recommending that the County abandon any right-of-way interest it has in the land identified as Abandonment Area #2 and in the non-dedicated portion of Abandonment Area #1. To the extent that the Applicant encounters issues with the establishment of title over the subject non-dedicated land as part of its incorporation of the abandoned area into its (or EGUMC's) land through the subdivision process, then those issues will need to be addressed by the Applicant as part of that process.

For all of the foregoing reasons, I find that subject to the conditions set forth herein, the Abandonment Areas are no longer needed for present or anticipated future public use and therefore recommend that the Applicants' petition to abandon be granted, subject to the following requirements that are conditions precedent to the abandonment becoming effective:

- 1) That the Applicant must at its sole cost prepare and record a new subdivision plat that incorporates the Abandonment Areas into the adjacent properties.
- 2) That to the extent the Applicant or EGUMC must undertake actions to secure a title interest in any portion of the Abandoned Areas as part of the subdivision process, the Applicant or EGUMC shall undertake those actions at their sole cost and expense and shall, on the subdivision plat, indemnify, defend and hold harmless the County for

any claims or damages relating to a deficiency in title over any portion of the Abandonment Areas.


- 3) The Applicant and EGUMC must demonstrate that they have granted, and that Pepco, WSSC, or any other relevant utility company has accepted, any necessary easement(s) for existing public utilities located within the Abandonment Area or, with Pepco, WSSC, or any other relevant utility company's approval, the Applicant and EGUMC must relocate the existing utilities, and grant the necessary easement(s) for the relocated utilities.

[signature page follows]

Respectfully submitted,

March 7, 2025

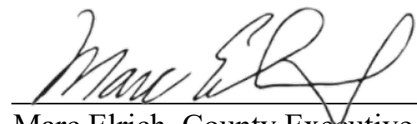
Date


Michael L. Paylor
Public Hearing Officer

The Public Hearing Officer's Recommendations in Petition AB 784 have been reviewed and are approved.

March 21, 2025

Date


Marc Elrich, County Executive

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the Request of the County Executive

SUBJECT: DOT Docket No. AB 784
Abandonment of portions of Washington Grove Lane
Gaithersburg, 9th Election District

Background

1. On or about September 27, 2023, the Housing Opportunities Commission (the “Applicant”) submitted a petition to abandon two segments of the Washington Grove right of way in Gaithersburg. By letter dated December 5, 2023, the Emory Grove United Methodist Church (EGUMC) joined in the Applicant’s petition. The petition was submitted pursuant to Montgomery County Code Section 49-62, which governs the abandonment or closure of public rights of ways.
2. A Public Hearing to consider the closure request was held on January 25, 2024, by the designee of the County Executive.
3. The County Executive forwarded to the County Council the application for abandonment, a report based on the record of the proceedings, together with exhibits relied upon and a transcription of the hearing, and recommended approval of the abandonment request, subject to conditions contained in Executive’s report.

Action

The County Council for Montgomery County, Maryland, finds that the areas requested for abandonment consisting of: 1) 56,826 square feet of land adjacent to the south side of Washington Grove Lane between Mid-County Highway and Shady Spring Drive, and 2) 2,946 square feet of land adjacent to the north side of Washington Grove Lane between Mid-County Highway and Emory Grove Road (collectively, the “Abandonment Areas”) are no longer needed for public use, pursuant to Section 49-63 of the Montgomery County Code. Accordingly, the County Council hereby adopts the conclusions and recommendations contained in the Public Hearing Officer’s Report and Recommendation executed by the Public Hearing Officer on March 7, 2025 and approves the abandonment subject to the following conditions which must be satisfied at the Applicant’s sole cost and expense prior to the abandonment becoming effective:

- 1) That the Applicant must at its sole cost prepare and record a new subdivision plat that incorporates the Abandonment Areas into the adjacent properties.
- 2) That to the extent the Applicant or EGUMC must undertake actions to secure a title interest in any portion of the Abandoned Areas as part of the subdivision process, the Applicant or EGUMC shall undertake those actions at their sole cost and expense and shall, on the subdivision plat, indemnify, defend and hold harmless the County for any claims or damages relating to a deficiency in title over any portion of the Abandonment Areas.
- 3) The Applicant and EGUMC must demonstrate that they have granted, and that Pepco, WSSC, or any other relevant utility company has accepted, any necessary easement(s) for existing public utilities located within the Abandonment Area or, with Pepco, WSSC, or any other relevant utility company's approval, the Applicant and EGUMC must relocate the existing utilities, and grant the necessary easement(s) for the relocated utilities.

The County Attorney must record, among the Land Records of Montgomery County, Maryland, a copy of this Resolution.

Any person aggrieved by the action of the Council for the abandonments 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.

Sara Tenenbaum
Clerk of the Council



**Description of part of
Washington Grove Lane
(formerly Gaithersburg-Laytonsville Road, Rte. 124)
“EMORY GROVE VILLAGE”
Plat Nos. 9277 & 9635**

Gaithersburg Election District No. 9
Montgomery County, Maryland

BEING all that piece or parcel of land, hereinafter described as **AREA #1**, situate, lying and being in the Gaithersburg Election District No. 9 of Montgomery County, Maryland, being part of that area dedicated to public use for **Gaithersburg-Laytonsville Road** (variable width right-of-way), as delineated on a Plat of Subdivision entitled “Lot One, **Emory Grove Village**” and recorded among the Land Records of Montgomery County, Maryland as Plat No. **9277** and as delineated on a Plat of Subdivision entitled “Lot Two, **Emory Grove Village**” and recorded as Plat No. **9635**, and being more particularly described, *as now surveyed*, in the meridian as established by the Maryland State Grid as defined by the North American datum of 1983 and adjusted in 2011 (NAD ‘83/’11), as follows:

AREA #1:

BEGINNING for the same at a point on the southeasterly or North 02°13’36” West, 34.05 foot right-of-way line of said Gaithersburg-Laytonsville Road, 5.01 feet northwesterly from the southeasterly end thereof; thence leaving said southeasterly right-of-way line and running in, through, over and across that area dedicated for the aforesaid Gaithersburg-Laytonsville Road, as delineated on the aforesaid Plat Nos. 9277 & 9635, the following seven (7) courses and distances

1. **North 50°52’31” West, 26.36** feet to a point; thence
2. **North 05°24’28” West, 70.13** feet to a point lying perpendicular to and forty (40’) feet southeasterly from the existing centerline of the aforesaid Gaithersburg-Laytonsville Road; thence running parallel with and forty (40’) feet southeasterly of the existing centerline of Gaithersburg-Laytonsville Road and also continuing in, through, over and across that area dedicated for Gaithersburg-Laytonsville Road
3. **North 40°03’36” East, 194.77** feet to a point; thence
4. **320.37** feet along the arc of a tangential curve deflecting to the **right**, having a radius of **1,135.00** feet and a chord bearing and distance of **North 48°08’46” East, 319.31** feet to a point; thence

5. **North 56°13'57" East, 40.55** feet to a point lying perpendicular to and forty (40') feet southeasterly from the existing centerline of said Gaithersburg-Laytonsville Road; thence
6. **South 81°53'40" East, 37.23** feet to a point; thence
7. **South 40°01'17" East, 45.32** feet to a point lying on the southwesterly or North 40°00'17" West, 523.63 foot right-of-way line of Shady Spring Road, as delineated on a Plat of Subdivision entitled "Plat One, Mineral Springs Village" and recorded as Plat No. 10630; thence leaving said southwesterly right-of-way line and running with the North 87°30'39" West, 33.78 foot right-of-way line of said Shady Spring Road
8. **North 87°31'39" West, 32.17** feet to a point lying on the southeasterly or North 44°53'25" East, 324.14 foot right-of-way line of Gaithersburg-Laytonsville Road, as delineated on the aforementioned Plat No. 9635, said point also lying on the northwesterly outline of Lot Two, as delineated on said Plat No. 9635; thence running reversely with and along a part of said southeasterly right-of-way line and with and along the northwesterly outline of said Lot Two
9. **South 45°05'06" West, 279.83** feet to a point lying at the northeasterly corner of Lot One, as delineated on the aforementioned Plat No. 9277; thence leaving said Lot Two and continuing with and along said southeasterly right-of-way line of Gaithersburg-Laytonsville Road and running with and along the northwesterly outline of said Lot One, the following two (2) courses and distances
10. **South 45°05'06" West, 291.69** feet to a point; thence
11. **South 02°01'55" East, 29.04** feet to the point of beginning, containing **41,997** square feet or **0.9641** of an acre of land.

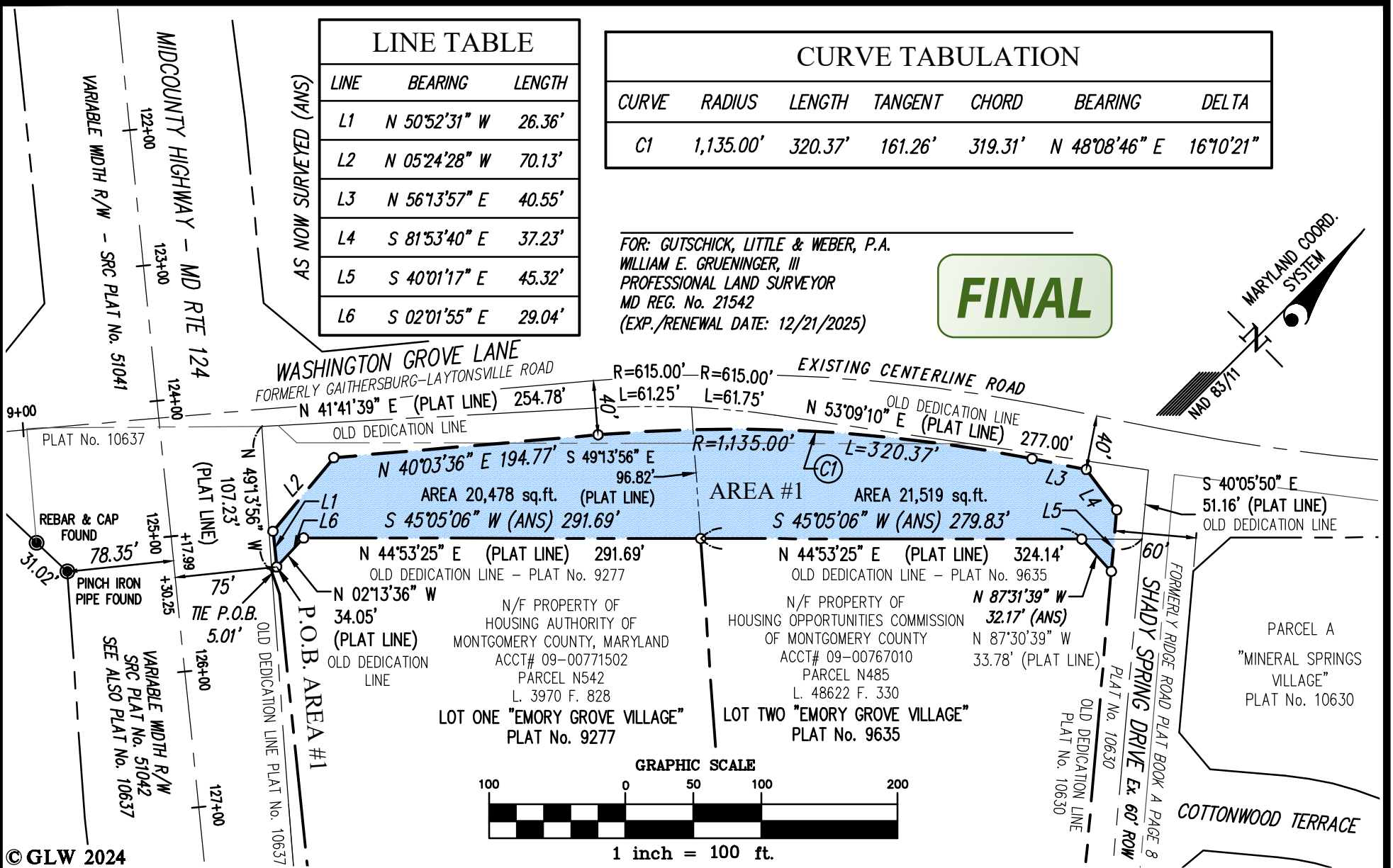
The licensee below was in responsible charge over the preparation of this metes and bounds description and the surveying work reflected in it, all in compliance with requirements set forth in COMAR Title 09, Subtitle 13, Chapter 06, Regulation .12.

For: Gutschick, Little & Weber, P.A.

FINAL

William E. Grueninger, III
Professional Land Surveyor
MD Reg. No. 21542 (Exp. / Renewal Date: 12/21/2025)

S:\Survey Drawings\22097\SKETCHES\22097 South EmoryGrove ALT-Aband.dwg, PLOTTED:10/17/2024 3:17 PM, LAST SAVED:9/4/2024 2:46 PM, PLOTTED BY: Bill Grueninger



AREA TO BE ABANDONED - TOTAL 41,997 sq.ft. OR 0.9641 Ac.

EXHIBIT ' xx '



3909 NATIONAL DRIVE | SUITE 250 | BURTONSVILLE, MD 20866 | GLWPA.COM
PHONE: 301-421-4024 | BALT: 410-880-1820 | DC&VA: 301-988-2524 | FAX: 301-421-4186

DES.
DRN. WEG
CHK.

PREPARED FOR :
HOUSING OPPORTUNITIES
COMMISSION & HOUSING AUTHORITY
OF MONTGOMERY COUNTY
10400 DETRICK AVE.
KENSINGTON MD 20895
ATTN: JAY SHEPHERD

AREA OF EXISTING
WASHINGTON GROVE LANE
ROW ABANDONMENT
PROJECT 5-20230260

G. L. W. No. 22-097
ZONING
TAX MAP/GRID GT-22
DATE OCTOBER 2024
SCALE 1"=100'
SHEET 1 OF xx