



Committee: T&E

Committee Review: Completed

Staff: Carlos Camacho, Legislative Analyst

Glenn Orlin, Senior Analyst

Robert H. Drummer, Senior Legislative Attorney

Purpose: Final action – vote expected

Keywords: #Abandonment

AGENDA ITEM #5G

July 13, 2021

Action

SUBJECT

DOT Docket No. AB757, Abandonment of Portion of Reed Street, Miller's Second Addition to Bethesda Subdivision, Bethesda, 7th Election District

EXPECTED ATTENDEES

Eric Willis – Chief, Property Acquisition Section, Montgomery County Department of Transportation (MCDOT)

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The Transportation and Environment (T&E) Committee met on June 28, 2021 to discuss and make a recommendation on the abandonment of a portion of the Reed Street right-of-way (ROW) located in Miller's Second Addition to Bethesda Subdivision in Bethesda.

The Committee unanimously recommended that the Council approve the resolution abandoning the ROW subject to the specific conditions outlined in the County Executive's proposed resolution as the ROW is "no longer necessary for present public use or anticipated public use in the foreseeable future" pursuant to Section 49-63(c)(1) of the Montgomery County Code.

The Committee was also given information regarding an Option Agreement entered into by the applicant and the Maryland-National Capital Park and Planning Commission (M-NCPPC) on March 31, 2021, which gives M-NCPPC the option to acquire the abandoned property, if the abandonment is approved, no earlier than 30 years after the date the subdivision recordation of the abandoned property occurs. The Committee did not consider this agreement when making their recommendation as the agreement was executed after the official record was closed. The Committee felt they were able to make a recommendation on the abandonment while only considering the evidence entered into the official record, regardless of the Option Agreement.

DESCRIPTION/ISSUE

The County Council will take action on a resolution that would grant conditional approval to abandon an 18-foot wide, 3,303 square foot portion of the Reed Street ROW.

Reed Street is an improved public ROW measuring 50-feet in width that carries the Capital Crescent Trail between Bethesda Avenue and the former Apex Building site/Capital Crescent Trail at 7272 Wisconsin Avenue. The ROW is currently accessed by a curb cut on Woodmont Avenue and is

restricted to authorized vehicles only. Given its close proximity to the intersection of Woodmont Avenue and Bethesda Avenue, it is unlikely to ever be needed for vehicular access. Reed Street is intended primarily for pedestrian and bicycle access, as it aligns with a crosswalk across the northern leg of the intersection of Woodmont Avenue and Bethesda Avenue and the termination of the northern end of the ROW at the tunnel entrance to the Capital Crescent Trail.

The applicant, JBG Woodmont II, LLC (JGB), owns the property abutting the eastern edge of Reed Street and has already improved the portion of Reed Street in question through entering into a Maintenance and Liability Agreement with the County. The County has the power to order the removal of any or all improvements at any time through the current agreement. Thus, the applicant argues that the abandonment would provide “assurance that its investment in the improvements within the proposed Abandonment Area will be preserved as an active outdoor area that will enhance the viability of the larger adjacent public area,” in addition to providing the applicant “with the flexibility to make needed improvements and provide desired upgrades within the Abandonment Area.”

SUMMARY OF KEY DISCUSSION POINTS

- The applicant first submitted an abandonment petition in 2007 for the entirety of Reed Street. The Council ultimately approved the proposed abandonment in 2009, however, the conditions required to satisfy the abandonment were never fulfilled within the five-year period specified in Section 49-65 of the County Code, thus automatically revoking the approval.
- On March 22, 2017, JBG filed a second petition for abandonment of the entire 50-foot width of the Reed Street ROW but later amended the petition in 2018 to only cover the 18-foot portion currently in question. The amended petition was a result of discussions with the Maryland Transit Authority (MTA) and Montgomery County’s Department of Transportation (MCDOT) regarding a Franchise Agreement entered into by the County and MTA, via Council Resolution No. 18-883, regarding the use of Reed Street and other ROWs for the construction and operation of the Purple Line.
- Both MCDOT and MTA recommended approval of the abandonment. MCDOT deemed the ROW to not be necessary for present or anticipated public use and MTA agreed to relinquish its franchise rights to the proposed section of the ROW as the 18-foot section would not interfere with MTA’s future access to the Purple Line tracks and other facilities contemplated under the Franchise Agreement.
- The Montgomery County Planning Board and Planning Board Staff also recommended approval of the abandonment. Staff found that the applicant’s proposed improvements for the portion of Reed Street to be consistent with the 2017 Bethesda Downtown Sector Plan goal for Bethesda Row District by creating “a major central gathering space that can be a hub of activity and connect Bethesda Row to regional transit, trails and surrounding districts.” Also, staff found that while Reed Street is still heavily used by pedestrians and cyclists traveling on the Capital Crescent Trail, the portion of the ROW that JBG is petitioning for abandonment is not occupied by the trail, is not needed to carry pedestrians and bicyclists or to access the future Purple Line, and is not part of a roadway network and thus not used by motor vehicles.

- All appropriate government agencies and public utilities either consented to the abandonment, gave conditional approval, or did not respond with any comment.
- The Public Hearing Officer recommends conditional approval of the abandonment petition after reviewing all of the evidence entered into the public record and determining that all hearing and notice procedures for the abandonment petition process were satisfied.
- MCDOT received opposition from community members arguing that the ROW is still needed for present public use and will be needed to carry an increasing number of pedestrians and cyclists on the Capital Crescent Trail. Furthermore, community members argued that the abandonment should not be approved until more information is known regarding Purple Line operations, bicycle usage on the portion of the Capital Crescent Trail within the Reed Street ROW, and the Montgomery County Parks Department facilities plan for the Capital Crescent Trail Civic Green that will be developed on the Western edge of the ROW.

This report contains:

June 28, 2021 T&E Committee Staff Report

©1-82

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T&E COMMITTEE #1
June 28, 2021
Worksession

MEMORANDUM

June 23, 2021

TO: Transportation & Environment Committee

FROM: Carlos Camacho, Legislative Analyst
Glenn Orlin, Senior Analyst
Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Abandonment of Portion of Reed Street
DOT Docket No. AB757
Miller's Second Addition to Bethesda Subdivision, Bethesda, 7th Election District

PURPOSE: Discuss and make recommendation for Council consideration

Expected Attendees:

- Eric Willis – Chief, Property Acquisition Section, Montgomery County Department of Transportation (MCDOT)

Today, the Transportation & Environment (T&E) Committee will review the petition and accompanying proposed Resolution from the County Executive recommending conditional approval to abandon an 18-foot wide, 3,303 square foot portion of the Reed Street right-of-way (ROW) in the Miller's Second Addition to Bethesda Subdivision in Bethesda.

Executive Summary

The County Executive's proposed Resolution finds the portion of the Reed Street ROW, the subject of this abandonment, no longer necessary for present public use or anticipated public use in the foreseeable future pursuant to Section 49-63 of the Montgomery County Code (see ©3-5). The Resolution 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 grant, to the satisfaction of the County, any necessary easements for County storm drains and public utility facilities, or, at the Applicant's expense, relocate the facilities and grant the necessary easements to the satisfaction of the County;
2. That the Applicant grant, prepare and record easements to Pepco to provide the perpetual right of ingress to and egress from its access to underground equipment for electrical service to 4735 Reed Street;

3. That the Applicant grant easements to WSSC where it has water and sewer lines;
4. That the Applicant grant easements to Washington Gas to protect its gas pipeline located in the right-of-way;
5. That the Applicant be required to record a covenant acceptable to the County that covenants that the area to be abandoned will not be developed with a structure, and shall be available for either outdoor restaurant dining use or to support pedestrian activity in the area, including pedestrian access to the adjacent ground floor buildings; and,
6. That the Applicant must at its sole cost prepare and record a new record plat incorporating the abandoned area into its adjacent subdivision.

MCDOT, the Maryland Transit Authority (MTA), the Montgomery County Planning Board and Planning Board Staff all recommend approval for the abandonment. Pepco, Washington Suburban Sanitary Commission (WSSC), and Washington Gas require easements to access their facilities in order to recommend approval. Montgomery Fire and Rescue did not object to the abandonment. Verizon and the Montgomery County Police Department (MCPD) did not respond to comment and therefore are assumed not to object. The Public Hearing Officer also recommends approval with the conditions listed in the County Executive's proposed Resolution.

Several community members expressed opposition to the proposed abandonment and particularly expressed their desire to delay any decision until more information is collected regarding the future public use and need for the area in question.

Description of Property

Reed Street is an improved public right-of-way (ROW) measuring 50-feet in width (20-feet of paving) that carries the Capital Crescent Trail between Bethesda Avenue and the former Apex Building site/Capital Crescent Trail (7272 Wisconsin Avenue). The ROW is accessed by a curb cut on Woodmont Avenue. This access point is restricted to authorized vehicles only and, given its close proximity to the intersection of Woodmont Avenue and Bethesda Avenue, is unlikely to ever be needed for vehicular access. Rather, Reed Street is intended primarily for pedestrian and bicycle access, as it aligns with a crosswalk across the northern leg of the intersection of Woodmont Avenue and Bethesda Avenue and the termination of the northern end of the right-of-way at the tunnel entrance to the Capital Crescent Trail (see ©11-15).

Applicant and Background

The applicant, JBG Woodmont II, LLC (JGB), is petitioning for the abandonment of an approximately 18-foot portion measured from the eastern edge of the ROW encompassing a total of 3,303 square feet. JBG owns the property abutting Reed Street's eastern edge (Lot 93/4749 Bethesda Ave) and has constructed a two-story retail building on this property.

This is not the first time JBG has petitioned for the abandonment of Reed Street. In April 2007, JBG and Street Retail, Inc. – former owner of Lot 142 on the western edge of Reed Street –

petitioned for the abandonment of the entire 50-foot wide ROW in connection with the Woodmont East development project. The Council recommended approval of the abandonment in 2009, however approvals for the Woodmont East project were terminated and the conditions required to satisfy the abandonment were never fulfilled within the five-year period specified in Section 49-65 of the County Code, thus automatically revoking the approval.

Despite the expiration of the abandonment resolution JBG continued its efforts to redevelop the area surrounding 4749 Bethesda Avenue and consequently Reed Street. On April 15, 2016 JBG and Montgomery County entered into a Declaration of Covenants (also referred to as a Maintenance and Liability Agreement) whereby JBG expressed their desire to make improvements within the Reed Street ROW including special sidewalk pavers, benches, bike racks, planters, installation of a removable canopy, outdoor café seating, among others. All costs for the improvements and maintenance would be borne by JBG, and the County would not be held responsible for any liabilities related to the installation, maintenance, or use of the improvements and the County could order the removal of any or all improvements at any time. This declaration remains in full effect until all of the improvements are removed from the ROW or the County abandons the ROW, whichever occurs first (see ©17-26).

On March 22, 2017 JBG filed a second petition for abandonment of the entire 50-foot width of the Reed Street ROW. Half of the width of the ROW would have been reverted to JBG and the remaining half would have reverted to the owner of Lot 142 and ND625 to the west of the ROW. Both Lot 142 and ND625 were acquired from Street Retail, Inc. by the Maryland-National Capital Park and Planning Commission (M-NCPPC) through the Montgomery County Parks Department.

The second petition was amended on January 9, 2018 after JBG met with the Maryland Transit Authority (MTA) and Montgomery County's Department of Transportation (MCDOT) to discuss the Franchise Agreement entered into by the County, via Council Resolution No. 18-883, and MTA regarding the use of the Reed Street, and other ROWs, for the construction and operation of the Purple Line. The amended petition is the current petition being discussed and only covers the 18-foot portion measured from the eastern edge of the Reed Street ROW (see ©6-10).

Community Opposition

MCDOT did receive testimony in opposition from community members both via email and during the public hearing held on March 28, 2018.

Mary Flynn, acting in her capacity as Mayor of the Town of Chevy Chase and as President of the Coalition for Bethesda Area Residents (CBAR) submitted written testimony and spoke at the public hearing. Mayor Flynn states in her written testimony her belief that allowing the portion of Reed Street to be abandoned is premature and should not be considered until: 1) the Purple Line is built and operational, 2) data is collected regarding bicycle usage on the portion of the Capital Crescent Trail within the Reed Street ROW, and 3) the Montgomery County Parks Department has a facilities plan in place for the property it acquired on the western side of Reed street. Furthermore, Mayor Flynn does not believe that the area in question “is no longer necessary for present public use or anticipated public use” one of two conditions specified in Sec. 49-63 of the County Code allowing the Council to abandon or close a ROW. The other condition warranting

abandonment or closure is if the Council finds it “necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned or closed.” During her public statement, Mayor Flynn further reiterated her desire to postpone the abandonment to see what occurred in the area over the next six years based on the fact that over the next 5-10 years the community is expected to gain approximately 17,000 people.

Mayor Flynn also proposed that JBG enters into a legally binding agreement with the County to ensure the proposed abandonment area remains publicly accessible.

Comments were also submitted on behalf of the Capital Crescent Trail Coalition (CCTC) urging the Council to delay the petition for abandonment until more planning and coordination can take place with regards to the ROW and its impact on the Capital Crescent Trail and Purple Line.

Other arguments made by those in opposition of the abandonment include:

- The County should not give up rights to the use of the land until the Capital Crescent Trail Civic Green, part of the 2017 Bethesda Downtown Plan, is designed.
- There is no need to abandon the area as JBG already has a covenant in place with the County regarding the improvement and outdoor seating use of the area.
- Giving up rights to the ROW would create uncertainty regarding the area’s appearance and function.

Emails from community members in opposition to the abandonment can be seen at ©56-59.

Agency Input and Recommendations

MCDOT and MTA. MCDOT recommended approval of the abandonment in a March 28, 2018 memorandum to the Public Hearing Officer for this matter (see ©43-44). The recommendation for approval is contingent on JBG “granting any necessary easements to County storm drains and public utility facilities or at the Applicant’s expense relocating these facilities and granting easements and filing a new record plat incorporating the former rights-of-way.”

MCDOT’s recommendation is based on several factors. First, the applicant amended their petition after meeting with MCDOT and MTA to discuss the Franchise Agreement between MTA and the County concerning the Purple Line. Second, MTA confirmed in an April 11, 2019 memorandum that they find the proposed abandonment acceptable and agreed to relinquish its franchise rights to the proposed section of the Reed Street ROW as the 18-foot section would not interfere with MTA’s future access to the Purple Line tracks and other facilities contemplated under the Franchise Agreement (see © 45-46). Third, MCDOT deemed the portion of the Reed Street ROW to “not be necessary for present or anticipated public use.”

Montgomery Planning County Planning Board. Planning Board Staff recommended approval of the abandonment in its March 1, 2018 report (see ©48-55). Staff found that the applicant’s proposed improvements for the portion of the Reed Street ROW in question is consistent with the 2017 Bethesda Downtown Sector Plan goal for Bethesda Row District of creating “a major central

gathering space that can be a hub of activity and connect Bethesda Row to regional transit, trails and surrounding districts.”

Furthermore, while the Reed Street ROW is still heavily used by pedestrians and cyclists traveling on the Capital Crescent Trail, the portion of the ROW that JBG is petitioning for abandonment is not occupied by the trail, is not needed to carry pedestrians and bicyclists or to access the future Purple Line, and is not part of a roadway network and thus not used by motor vehicles. As such Planning concludes that the abandonment satisfies Section 49-63(c)(1) of the County Code authorizing the Council to abandon a ROW if “the right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future.”

The Planning Board voted 4-0, with one Commissioner absent, in favor of recommending the abandonment (see ©47) However, the Board did add one condition for approval requiring that the Petitioner:

“enter into a legal-binding, long-term agreement with Montgomery County in the form of a covenant or other appropriate legal instrument, to ensure that the subject abandonment area remain publicly accessible.”

This condition led to some discussion regarding what was meant by the definition of “publicly accessible” with both Mayor Flynn and the applicant’s legal counsel providing their own respective definitions for the term “publicly accessible.”

The Public Hearing Officer did ask the Planning Board for further clarification on the term. Planning stated that they were unable to provide additional details as further clarification and discussion on the matter would require an additional hearing, however they did reaffirm their conditional approval of the abandonment. An additional hearing was never requested by the Hearing Officer, instead the Hearing Officer uses comments from the Chair of the Planning Board at the Planning Board’s hearing on March 1, 2018 to interpret the meaning of “publicly accessible.” The Chair’s comments are:

“perhaps our recommendation to the County Council would be that any abandonment of this would be conditioned on entry into some kind of covenant which would run with the land on your [JBG Smith] property, to not build anything else there without the agreement of the County. So, effectively, if you want to come in and tear down your building and do something else, then we’ll have another discussion about what you can build and access, and all of that sort of thing.”

To this end, the Hearing Officer modified the Planning Board’s condition to add specificity to the aforementioned issue regarding the definition and intent of the term “publicly accessible.” The modified condition recommended by the Public Hearing Officer states,

“that the Applicant be required to record a covenant acceptable to the County that covenants the area to be abandoned will not be developed with a structure, and shall be available for either outdoor restaurant dining use or to support pedestrian activity in the area, including pedestrian access to the adjacent ground floor buildings.”

Other Government Agencies and Utilities. In accordance with Sec. 49-62(h) of the County Code, comments were requested from other appropriate public utilities and government agencies not already mentioned in this report; their responses are below:

- **Verizon** – Never responded to MCDOT’s publication of the notice of application for abandonment and it is presumed that Verizon has no objection to the request.
- **Washington Suburban Sanitary Commission (WSSC)** – Would require easements where it currently has water and sewer lines in the petitioned ROW.
- **Washington Gas** – Objected to the abandonment as it would require an easement to protect its gas pipelines located in the petitioned ROW.
- **Pepco** – Objected to the proposed abandonment unless the petitioner grants, prepares, and records easements to Pepco’s satisfaction allowing their facilities to remain in their current locations and provide perpetual rights to ingress to and egress from the easement area or the petitioner is willing to pay the costs to relocate these facilities and grant easements necessary to do so.
- **Montgomery County Police Department (MCPD)** – Never responded to MCDOT’s publication of the notice of application for abandonment and it is presumed that MCPD has no objection to the request.
- **Montgomery County Fire and Rescue** – Expressed no objection to the abandonment request.

Public Hearing Officer. After review of all evidence in the public record, the Public Hearing Officer recommends approval for the abandonment of the easternmost 18-foot portion of the Reed Street ROW subject to the conditions listed in the County Executive’s proposed Resolution (see ©27-42).

The Public Hearing Officer found that the hearing and notice procedures for the abandonment petition process were satisfied. Furthermore, the public, the appropriate government agencies, and public utilities were all given the opportunity to review the petition and comment. Those agencies and utilities that did offer comments did not object or only objected because they would require the necessary easements to access their facilities. The requested easements are included in the conditional approval.

Furthermore, The Public Hearing Officer found the testimony from witnesses on behalf of the applicant to be credible and persuasive, this includes testimony from: 1) Ms. Patricia Harris, Legal Counsel for the applicant; 2) Mr. George Hayward, Development Manager for the applicant; and 3) Mr. Kevin Johnson, Civil Engineer for the applicant.

Ms. Harris commented on the collaboration between JBG and MCDOT, MTA, and the Planning Department in amending the applicant’s petition to ensure that the 18-foot portion of the Reed Street ROW is neither currently needed nor will be needed in the future for public use. Furthermore, Ms. Harris argued that because the alignment of the Purple Line and the Capital

Crescent Trail tunnel and surface trail are known, the abandonment will cause no adverse consequences to the public.

Mr. Hayward expressed his belief that the abandonment will “jump start” the improvement of the area and is also necessary to attract a restaurant tenant as it will provide assurances that the space will continue to be available for outdoor restaurant use.

Mr. Johnson provided background on the transformation of Reed Street from a road originally used for motor vehicle traffic connecting Bethesda Avenue and Elm Street to a “stub” dead ending at a railroad track and further bisected by a building constructed at the Northern end of the ROW essentially creating a “road that went nowhere.” Mr. Johnson also detailed the specialty pavers installed by JBG to accommodate traffic for the Capital Crescent Trail and pointed to the fact that since Park and Planning now own the property west of the ROW, the public will have multiple options available to access the area.

The Public Hearing Officer provides further support for his recommendation for conditional approval. He states that the Reed Street ROW is currently 50 feet wide, meaning if the abandonment were to be approved it would still leave 32 feet to continue being used by the public. The applicant has already constructed a 14-foot-wide path that feeds into the Capital Crescent Trail for pedestrians and bicyclists leaving an additional 18 feet of the ROW, if needed, for any potential increase in usage of the ROW.

In conclusion, the Public Hearing Officer finds that the 18-foot section of the Reed Street ROW is not presently needed and will not be needed for future public use as it has no bearing on pedestrian or vehicular traffic and that the abandonment will serve the health, safety, and welfare of the community by promoting street life in a presently underutilized area.

Option Agreement. On March 31, 2021, after the close of the record and the decision of the Public Hearing Officer, the applicant and M-NCPPC entered into an Option Agreement where JBG grants M-NCPPC the option to acquire the abandoned property, if the abandonment is approved, for \$1.00 to use the property solely for public park trail purposes only, in conjunction with the property currently owned by M-NCPPC at 7229 Woodmont Ave, which is to be used as a public park (see ©60-74). The option can be exercised no earlier than 30 years after the date the subdivision recordation of the abandoned property occurs. If approval of the abandonment is not granted within five years of the execution date of the agreement, then the agreement may be terminated by either JBG or M-NCPPC by written notice to the other.

The notice to exercise this option must be given within 90 days prior to the 30th anniversary of the effective date. If MNCPPC fails to do so, it may exercise the option to acquire the abandoned property by giving notice to JBG within 90 days after the 35th anniversary of the effective date. If MNCPPC fails to do so within this second exercise window, then the option would automatically expire and the agreement would be void. If MNCPPC exercises their option, JBG would convey legal title of the property to MNCPPC by special warranty deed for \$1.00.

Committee Options

According to Section 49-63(a) of the County Code, “the Council must consider the record of the proceedings and the report and recommendations of the County Executive, including any recommendations of the government agencies and other parties listed in Section 49-62(h), and any other relevant and material information the Council receives from any person.”

Due to the new information presented in the March 2021 Option Agreement subsequent to the closing of the official record of the abandonment proceedings, Council staff recommends the Committee take one of two options:

- 1) If the Committee believes this new information is relevant in making a decision on the abandonment application, then Council staff recommends that the Committee should recommend that the Council remand the application back to the Executive to reopen the record and consider the Option Agreement along with any new information, as prescribed in Sec. 49-63(b), which states “the Council may at any time remand an application to the Executive or the Executive's designee to reopen the record or consider new information.”
- 2) If the Committee determines that this new information is not relevant to its decision on the abandonment application, then Council staff recommends the Committee make a recommendation to the Council based only on the information in the official record and ignore the execution of the Option Agreement by the applicant and the M-NCPPC.

This Packet Contains:

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OFFICE OF THE COUNTY EXECUTIVE
Rockville, Maryland 20850

Marc Elrich
County Executive

MEMORANDUM

November 18, 2020

TO: Sidney Katz, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: DOT Docket Nos. AB757 Abandonment of Portion of Reed Street
Miller's Second Addition to Bethesda Subdivision, Bethesda,
7th Election District

I am attaching for your consideration, a proposed Resolution by which the County Council might approve the abandonment of a portion of the Reed Street right-of-way in the Miller's Second Addition to Bethesda Subdivision in Bethesda. A brief summary of this abandonment request is as follows:

Reed Street is a 50' wide public right of way that runs in a north-south direction between Bethesda Avenue to the South and just west of the entrance to the tunnel under the Air Rights Building to the North; a distance of approximately 166 linear feet. The Applicant of the abandonment petition is JBG/Woodmont II, LLC, an affiliate of JBG Smith (JBG), which owns property adjoining the subject right-of-way (4749 Bethesda Avenue).

A petition to abandon the Reed Street right of way was originally filed in 2007 (AB 702) by multiple applicants, including JBG. On July 28, 2009, the Montgomery County Council adopted Council Resolution No. 16-1059 approving the requested abandonment. However, the conditions set forth in the Resolution were not met within the statutory time frame (5 years), so, pursuant to County Code section 49-65(d), AB 702 was nullified on July 28, 2014.

DOT Docket Nos. AB757 Abandonment of Portion of Reed Street, Miller's Second
Addition to Bethesda Subdivision, Bethesda, 7th Election District
November 18, 2020
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The subject abandonment petition (AB757) was submitted by Lerch, Early & Brewer on behalf of the Applicant by letter dated March 22, 2017. While the Applicant's original request sought the abandonment of the full length and width of the right of way (a total of 8,320 square feet), the Applicant amended its request by reducing the area sought for abandonment to that portion of Reed Street lying immediately adjacent to 4749 Bethesda Avenue for a width of 18 feet (a total of 3,303 square feet). The amended request was made by letter dated January 9, 2018.

A public hearing on the abandonment request was held on March 28, 2018.

The following supporting materials are also attached to this memorandum:

1. Proposed County Council Resolution
2. Binder containing Hearing Examiner's Report and Recommendation dated February 29, 2020 recommending approval of the amended abandonment request, including exhibits referenced and a transcript of the proceedings.

Attachments

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DOT Docket Nos. AB757
Abandonment – Reed Street
Miller's Second Addition to Bethesda Subdivision

Background

1. By letter dated March 22, 2017 from Lerch Early & Brewer on behalf of its client, JBG/Woodmont II, LLC, an affiliate of JBS Smith (the “Applicant”), the Applicant requested that the County abandon the full 50-foot width of the right-of-way for Reed Street in the Miller's Second Addition to Bethesda Subdivision in Bethesda. In a subsequent letter dated January 9, 2018, the Applicant reduced the area requested for abandonment to an approximately 18-foot wide portion measured from the eastern edge of the right-of-way that adjoins property owned by the Applicant and consisting of a total 3,303 square feet, more or less.
2. A Public Hearing to consider the abandonment proposal was held on March 28, 2018 by the designee of the County Executive after having been postponed from August 30, 2017.
3. Verizon never responded to the Montgomery County Department of Transportation's publication of the notice of the application for abandonment. It is presumed that Verizon has no objection to the abandonment request.
4. Washington Suburban Sanitary Commission indicated that it requires easements where it has water and sewer lines in response to the abandonment request.
5. Washington Gas indicated that it requires an easement to protect its gas pipeline located in the right-of-way in response to the abandonment request.
6. PEPCO objected to the abandonment request unless the Applicant grants easements to PEPCO to provide the perpetual right of ingress to and egress from access to underground equipment for electrical service to 4735 Reed Street.
7. The Montgomery County Police Department never responded to the Montgomery County Department of Transportation's publication of the notice of the application for abandonment. It is presumed that the Montgomery County Police Department has no objection to the abandonment request.

8. The Montgomery County Fire Marshal expressed no objection to the abandonment request.

9. The Montgomery County Planning Board recommended approval of the abandonment request subject to the following condition: "The petitioner must enter into a legally-binding, long-term agreement with Montgomery County in the form of a covenant or other appropriate legal instrument, to ensure that the subject abandonment area remain publicly accessible."

10. The Department of Transportation recommended approval of the abandonment request subject to the Applicant granting any necessary easements for County storm drains and public utility facilities, or at the Applicant's expense, relocating the facilities and granting easements and filing a new record plat incorporating the former right-of-way.

11. The County Executive recommended approval of the proposed abandonment request subject to conditions contained in the Executive's report.

Action

The County Council for Montgomery County, Maryland, finds that the subject portion of the Reed Street right-of-way that is proposed for abandonment consisting of 3,303 square feet of land, more or less, is no longer necessary for present public use or anticipated public use in the foreseeable future, 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. That the Applicant grant, to the satisfaction of the County, any necessary easements for County storm drains and public utility facilities, or, at the Applicant's expense, relocate the facilities and grant the necessary easements to the satisfaction of the County;
2. That the Applicant grant, prepare and record easements to Pepco to provide the perpetual right of ingress to and egress from its access to underground equipment providing electrical service to 4735 Reed Street;
3. That the Applicant grant easements to WSSC where it has water and sewer lines;
4. That the Applicant grant easements to Washington Gas to protect its gas pipeline located in the right-of-way;
5. That the Applicant be required to record a covenant acceptable to the County that covenants that the area to be abandoned will not be developed with a structure, and shall be available for either outdoor restaurant dining use or to support pedestrian activity in the area, including pedestrian access to the adjacent ground floor buildings; and
6. That the Applicant must at its sole cost prepare and record a new record plat incorporating the abandoned area into its adjacent subdivision.

This is a correct copy of Council Action.

Selena Mendy Singleton, Esq.
Clerk of the Council

Patricia A. Harris, Esq.
301-841-3832
paharris@lerchearly.com

January 9, 2018

By Federal Express

The Honorable Isiah Leggett
County Executive
Montgomery County, Maryland
101 Monroe Street
Rockville, Maryland 20850

Re: Petition for Abandonment of a Portion of Reed Street,
Bethesda, Maryland (the "Petition")

Dear Mr. Leggett:

This petition for abandonment of a portion of the Reed Street right-of-way is intended to replace the previously filed petition dated March 22, 2017. The subject petition reduces the requested area to be abandoned from the full 50 foot width of the Reed Street right-of-way (Exhibit A) to an approximately 18 foot wide portion measured from the eastern edge of the right-of-way.

Petitioner, JBG/Woodmont II, LLC ("JBG Smith"), the owner of 4749 Bethesda Avenue (Part of Lot 93), requests the abandonment of a portion of the Reed Street right-of-way encompassing a total of 3,303 square feet (see Abandonment Plan and corresponding metes and bounds Exhibit "B") pursuant to Section 49-62, *et seq.*, of the Montgomery County Code (the "Abandonment" or the "Abandonment Area"). JBG Smith owns the property abutting Reed Street's eastern boundary known as Part of Lot 93 (see the Local Vicinity Map attached hereto as Exhibit "C"). Based on the history of the creation of Reed Street discussed in more detail below, upon abandonment the Abandonment Area would revert to JBG Smith. The Montgomery County Tax Map showing the Abandonment Area in yellow is attached hereto as Exhibit "D". A list of owners whose property abuts the Abandonment Area is attached hereto as Exhibit "E".

Section 49-63(c)(1)-(2) of the Montgomery County Code (the "Code") authorizes the County Council to abandon a right-of-way, including a public road, upon a finding that "(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 or closing is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned or closed." As described

more fully below and in the attached materials, the Abandonment requested by this Petition satisfies Section 49-63(c)(1) of the Code as the Abandonment Area is no longer necessary for present public use or anticipated public use in the foreseeable future.

I. BACKGROUND

A. **Creation of Reed Street**

While the Petitioner seeks abandonment of only the 18 foot wide eastern portion of the Reed Street right-of-way, we have set forth below the history of the creation of the entire right-of-way, in the event the Maryland-National Capital Park and Planning Commission ("M-NCPPC"), as owner of the Property located to the west of Reed Street, seeks an abandonment in that portion of the right-of-way in which it has an interest at some time in the future. The Land Records of Montgomery County (the "Land Records") confirm that the western abandonment area was dedicated via plat by Montgomery County's predecessor in interest. The creation of Reed Street dates back to 1892, when a deed was recorded among the Land Records at L. JA 33 F. 143 reflecting the conveyance of certain property from Anna L. Miller and Julian Hite Miller to the Metropolitan South Railroad Company. This deed is attached hereto as Exhibit "F". A plat affixed to the deed was subsequently recorded among the Land Records at Plat Book B, pages 36 and 37 on March 15, 1893 (the "1893 Plat" is attached hereto as Exhibit "G"). The second page of the 1893 Plat entitled "Section 2, Metropolitan Southern R.R. Through the Miller Property" reflects the depiction of Reed Street as a 50 foot wide right-of-way connecting what is presently known as Bethesda Avenue and Elm Street between Lots 142 to the west and Lot 93 to the east. The 1893 Plat does not include street names or a note indicating any right-of-way dedications. Additionally, there are two handwritten "Vidi decree" notations on the 1893 Plat with references to two equity cases, which can indicate plat abandonment proceedings.

Later, Plat No. 414 entitled "Miller's Second Addition to Bethesda with Dedication of Elm Avenue,"¹ Bethesda Avenue, Arlington Road & Reed St., which is attached hereto as Exhibit "H", was recorded among the Land Records on June 12, 1930 (the "1930 Plat"). The 1930 Plat clearly shows Reed Street as a 50 foot wide right-of-way connecting Bethesda Avenue and Elm Street and includes an owner's dedication stating the dedication of "such lands for highway purposes as indicated hereon." At the time the 1930 Plat was recorded, two different owners owned Lots 142 and 93 abutting Reed Street (Metropolitan Southern Railroad Company and Thomas W. Perry, respectively).

There are three possibilities for the creation of Reed Street: that the 1893 Plat dedicated Reed Street and was later abandoned; that the 1930 Plat dedicated Reed Street for the first time; or that the 1930 Plat simply reaffirmed the dedication of Reed Street depicted in the 1893 Plat. Under each scenario, however, M-NCPPC is entitled to the western half of Reed Street abutting

¹ Although the plat title refers to Elm "Avenue," the roadway on the plat sketch is labeled Elm "Street."

Lot 142 and JBG Smith is entitled to the eastern half abutting Lot 93. If the 1893 Plat governs the dedication of Reed Street, both Lots 142 and 93 would have a claim to the centerline as the Millers owned both abutting lots as well as the public right-of-way in between. If the 1930 Plat controls the dedication of Reed Street, both Lots 142 and 93 would also have a claim to the centerline as two different parties (neither of which were the Millers) owned the lots abutting the right-of-way.

B. Existing Conditions

Reed Street is currently a 50-foot wide paved right-of-way that dead ends near the Georgetown Branch Interim Trail, to the west of the former B&O Railroad tunnel under the former Apex Building. It is acknowledged that that portion of the Reed Street right-of-way outside the Abandonment Area and designated as the Capital Crescent Trail is needed for public use as evidenced by County Council Resolution 18-883 granting a franchise to the Maryland Transit Administration to use a portion of the right-of-way for purposes of constructing and maintaining the Purple Line. In addition, there is a high volume of pedestrians and bicyclists using the Capital Crescent Trail. The Abandonment Area however, is not needed for public use. It is immediately adjacent to the 4749 building and outside the Capital Crescent Trail. Moreover, the Abandonment Area neither intersects with Bethesda Avenue at a shared grade nor provides a curb-cut to Bethesda Avenue and does not provide access to any parcels not already accessible from either Bethesda Avenue or Woodmont Avenue.

JBG Smith has constructed a two story retail building on its property at 4749 Bethesda Avenue. In connection with the completion of the new building, and in recognition that the subject abandonment would not be effectuated prior to JBG Smith's proposed improvements and use of the Reed Street right-of-way, JBG Smith entered into a Maintenance and Liability Agreement with the County (recorded among the Land Records of Montgomery County at Book 52645, page 24) that allows for non-standard improvements in the Reed Street right-of-way, including tables and chairs, special pavers, and improved landscaping and hardscaping associated with the building. These proposed improvements, including the Capital Crescent Trail ("CCT") bike path, are indicated on the Design Plan attached hereto as Exhibit "I" (the "Reed Street Improvements"), and have been approved by the County pursuant to the recently issued right-of-way permit.

C. 2007 Abandonment Petition

JBG Smith and Street Retail, Inc. (the former owner of Lot 142) petitioned for the abandonment of Reed Street in April 2007 ("AB 702") in connection with the Woodmont East development project. After all public governmental bodies and agencies charged with reviewing the petition recommended to approve AB 702, the County Council adopted a resolution abandoning the entire remaining portion of Reed Street (i.e., the same area as the subject abandonment request), determining it was no longer needed for public use. Ultimately the approvals for the Woodmont East Project were terminated and the conditions required to effectuate AB 702 were never satisfied, thus the abandonment was automatically revoked, pursuant to County Code Section 49-65c. Note that the conditions were unique to the

Woodmont East project and thus are not relevant to the subject abandonment request.

II. THE PETITION FOR ABANDONMENT

Section 49-63(c)(1) of the County Code permits the County Council to abandon a right-of-way if it finds that the same is no longer necessary for present public use or anticipated public use in the foreseeable future. The Abandonment is appropriate as the Abandonment Area can neither provide motorized vehicular access for any adjoining properties nor connect Bethesda Avenue with Elm Street as originally intended. The 1930 Plat (Plat No. 414) clearly establishing Reed Street, (Exhibit "H"), includes an owner's dedication specifically providing "such lands for highway purposes as indicated hereon." Clearly the Abandonment Area is no longer being used for the purposes for which it was created (i.e. "highway purposes").

In an effort to enhance the environment around the new 4749 Bethesda Avenue building and promote increased vitality in this area, JBG Smith voluntarily proposed the improvements set forth on the Reed Street Design Plan (with JBG Smith wholly responsible for the cost and construction of the improvements). The Design Plan significantly improves this quadrant of the Bethesda Avenue/Woodmont Avenue intersection and benefits all visitors to this area.

The abandonment of the Abandonment Area provides JBG Smith with the assurance that it's investment in the improvements within the proposed Abandonment Area will be preserved as an active outdoor area that will enhance the viability of the larger adjacent public area. In addition, the Abandonment provides JBG Smith with the flexibility to make needed improvements and provide desired upgrades within the Abandonment Area.

The Abandonment Area does not accommodate or contain any public utilities.

III. LIST OF EXHIBITS

The following materials are submitted in support of this Abandonment request:

- Exhibit "A" – Reed Street Plan
- Exhibit "B" – Abandonment Plan and Metes and Bounds
- Exhibit "C" – Local Vicinity Map
- Exhibit "D" – Tax Map
- Exhibit "E" – List of Abutting Owners
- Exhibit "F" – 1892 Deed
- Exhibit "G" – 1893 Plat
- Exhibit "H" – Plat No. 414
- Exhibit "I" – Reed Street Improvements

IV. CONCLUSION

As discussed herein, the Abandonment is appropriate as the Abandonment Area is no longer necessary for present public use or anticipated public use in the foreseeable future.

We look forward to your support of this request and would be happy to answer any questions.

Very truly yours,



Patricia A. Harris

Attachments

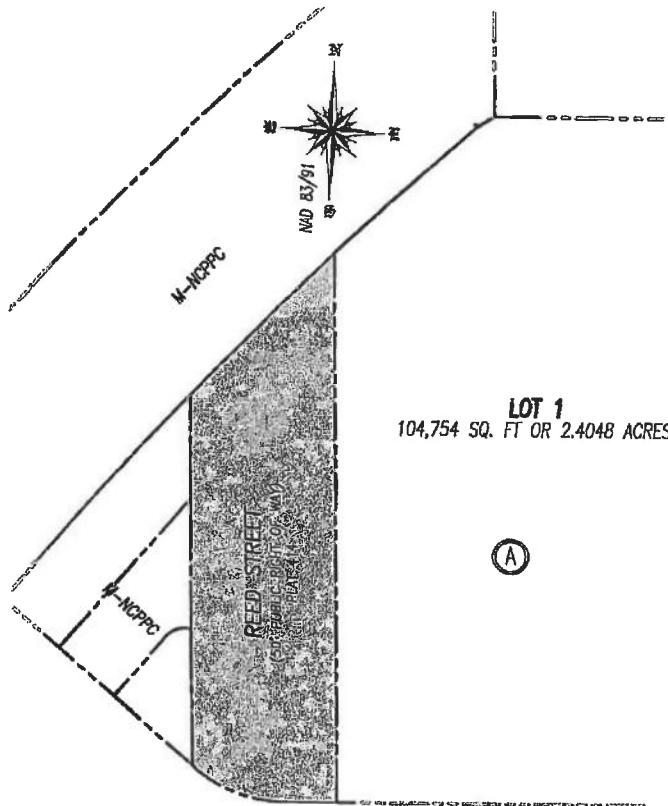
cc: Mr. Emil Wolanin
Mr. Mike Cassedy
Mr. Robert Kronenberg
Mr. Matt Folden
Mr. Josh Kaye
Ms. Kristi Smith
Mr. George Hayward
Mr. Kevin Johnson

PROPOSED STREET ABANDONMENT
REED STREET
SECTION 2 METROPOLITAN SOUTHERN RAILROAD
PLAT BOOK B PLAT NO. 37

BEING PART OF A PARCEL OF LAND, LYING IN THE 7TH ELECTION DISTRICT IN MONTGOMERY COUNTY, MARYLAND, AND BEING PART OF REED STREET (50' R/W) AS SHOWN ON A PLAT ENTITLED "SECTION 2 METROPOLITAN SOUTHERN RR" AS RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN PLAT BOOK B AS PLAT NO. 37 AND BEING MORE PARTICULARLY DESCRIBED IN MARYLAND STATE PLANE MERIDIAN (NADB3/91) AS FOLLOWS:

BEGINNING FOR THE SAME AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WOODMONT AVENUE (60' R/W) SAID POINT ALSO BEING AT THE BEGINNING OF THE NORTH 02°34'33" WEST, 47.44 FOOT LINE ON THE WESTERLY RIGHT-OF-WAY LINE OF SAID REED STREET AS SHOWN ON A RIGHT-OF-WAY PLAT ENTITLED "RIGHT-OF-WAY PLAT WOODMONT AVENUE EXTENSION MONTGOMERY LANE TO LELAND STREET" AS RECORDED AMONG THE AFOREMENTIONED LAND RECORDS AS RIGHT-OF-WAY PLAT 103, THEN BINDING WITH SAID LINE

1. NORTH 02°38'41" WEST, 128.88 FEET TO A POINT, SAID POINT BEING AT THE END THE NORTH 02°34'33" WEST, 36.86 FOOT LINE OF THE AFOREMENTIONED PLAT 103, SAID POINT BEING THE NORTHWESTERLY LIMITS OF SAID REED STREET; THENCE BINDING ON SAID LIMITS
- 2.70.82 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 1,399.50 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 42°47'35" EAST, 70.82 FEET TO A POINT, SAID POINT BEING THE NORTHWESTERN CORNER OF LOT 1, AS SHOWN ON A PLAT ENTITLED "J.H. MILLER'S ADDITION TO BETHESDA" AS RECORDED AMONG THE AFOREMENTIONED LAND RECORDS AS PLAT 25277; THENCE DEPARTING THE NORTHWESTERLY LIMITS OF SAID REED STREET AND BINDING WITH SAID LOT 1
3. SOUTH 02°37'25" EAST, 182.04 FEET TO A POINT, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF BETHESDA AVENUE (60' R/W) AND SOUTHWESTERN CORNER OF PARCEL "A", AS SHOWN ON A PLAT ENTITLED "J.H. MILLER'S ADDITION TO BETHESDA" AS RECORDED AMONG THE AFOREMENTIONED LAND RECORDS AS PLAT NO. 15013; THENCE DEPARTING SAID LOT 1 ALONG THE NORTHERLY RIGHT-OF-WAY LINES OF SAID BETHESDA AVENUE AND WOODMONT AVENUE
4. SOUTH 87°22'35" WEST, 17.37 FEET TO A POINT AT THE BEGINNING OF A CIRCULAR CURVE TO THE RIGHT; THENCE
- 5.35.06 FEET ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 50.00 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 71°57'40" WEST, 35.29 FEET TO THE POINT OF BEGINNING, CONTAINING 8,320 SF OR 0.1910 ACRES OF LAND



BETHESDA AVENUE
(60' PUBLIC RIGHT OF WAY)
P.B. "B" P.37

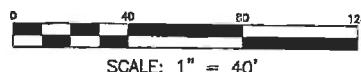
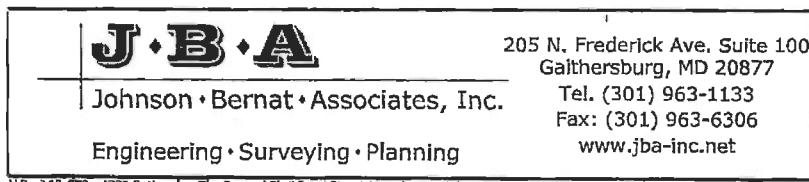


EXHIBIT 'A'
REED STREET
FULL STREET ROW

DATE: 1/4/18

PROPOSED STREET ABANDONMENT
REED STREET
SECTION 2 METROPOLITAN SOUTHERN RAILROAD
PLAT BOOK B PLAT NO. 37

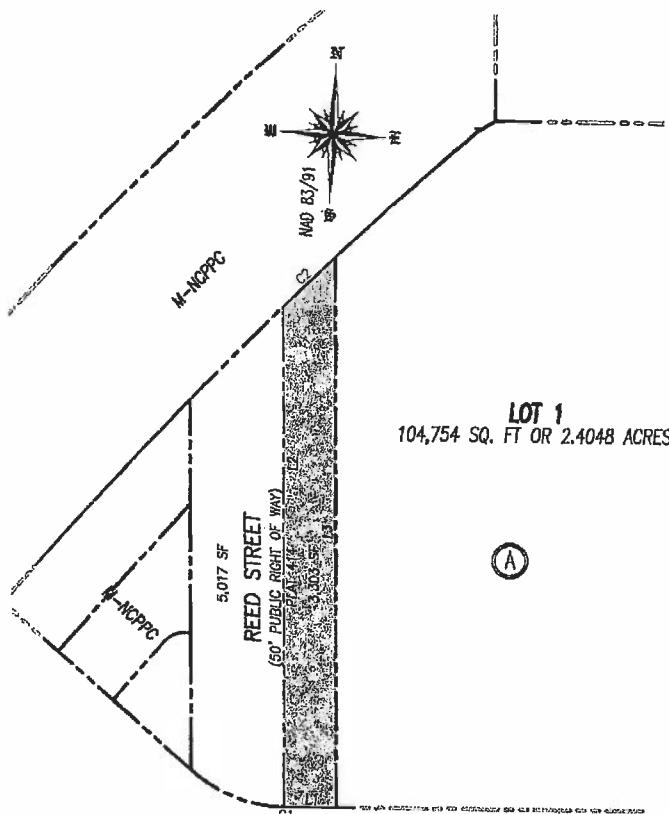
BEING PART OF A PARCEL OF LAND, LYING IN THE 7TH ELECTION DISTRICT IN MONTGOMERY COUNTY, MARYLAND, AND BEING PART OF REED STREET (50' R/W) AS SHOWN ON A PLAT ENTITLED "SECTION 2 METROPOLITAN SOUTHERN RR" AS RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN PLAT BOOK B AS PLAT NO. 37 AND BEING MORE PARTICULARLY DESCRIBED IN MARYLAND STATE PLANE MERIDIAN (NAD83/81) AS FOLLOWS:

BEGINNING FOR THE SAME AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WOODMONT AVENUE (80' R/W), SAID POINT ALSO BEING AT THE SOUTHWESTERN CORNER OF LOT 1, AS SHOWN ON A PLAT ENTITLED "J. H. MILLER'S ADDITION TO BETHESDA" AS RECORDED AMONG THE AFOREMENTIONED LAND RECORDS AS PLAT 25277, ALSO BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID REED STREET AS SHOWN ON A RIGHT-OF-WAY PLAT ENTITLED "RIGHT-OF-WAY PLAT WOODMONT AVENUE EXTENSION MONTGOMERY LANE TO LELAND STREET" AS RECORDED AMONG THE AFOREMENTIONED LAND RECORDS AS RIGHT-OF-WAY PLAT 103; THENCE ALONG THE NORTHERN RIGHT-OF-WAY OF BETHESDA AVENUE

1. SOUTH 87°22'35" WEST, 17.87 FEET TO A POINT AT THE BEGINNING OF CIRCULAR CURVE TO THE RIGHT; THENCE
2. 0.63 FEET ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 50.00 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 87°44'08" WEST, 0.63 FEET TO THE POINT; THENCE DEPARTING SAID BETHESDA AVENUE RIGHT-OF-WAY AS TO CROSS AND INCLUDE PORTION OF SAID REED STREET
3. NORTH 02°37'25" WEST, 174.87 FEET TO A POINT, SAID POINT BEING AT THE NORTHWESTERLY LIMITS OF SAID REED STREET; THENCE BINDING ON SAID LIMITS
4. 24.87 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 1,399.50 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 43°44'01" EAST, 24.87 FEET TO A POINT, SAID POINT BEING THE NORTHWESTERN CORNER OF AFOREMENTIONED LOT 1; THENCE DEPARTING THE NORTHWESTERLY LIMITS OF SAID REED STREET AND BINDING WITH SAID LOT 1
5. SOUTH 02°37'25" EAST, 192.04 FEET TO THE POINT OF BEGINNING, CONTAINING 3.303 SQUARE FEET OR 0.0756 ACRES OF LAND

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 87°22'35" W	17.37
L2	N 02°37'25" W	174.87
L3	S 02°37'25" E	192.04

CURVE TABLE						
CURVE	DELT A	RADIUS	LENGTH	TANGENT	CH. BEARING	CH. LENGTH
C1	0'43"07"	50.00"	0.63'	0.37'	S 87°44'08" W	0.63'
C2	1'01"06"	1399.50'	24.87'	12.44'	N 43°14'01" E	24.87'



BETHESDA AVENUE
(80' PUBLIC RIGHT OF WAY)
P.P. "B" P.37



EXHIBIT 'B'
REED STREET
ABANDONMENT AREA

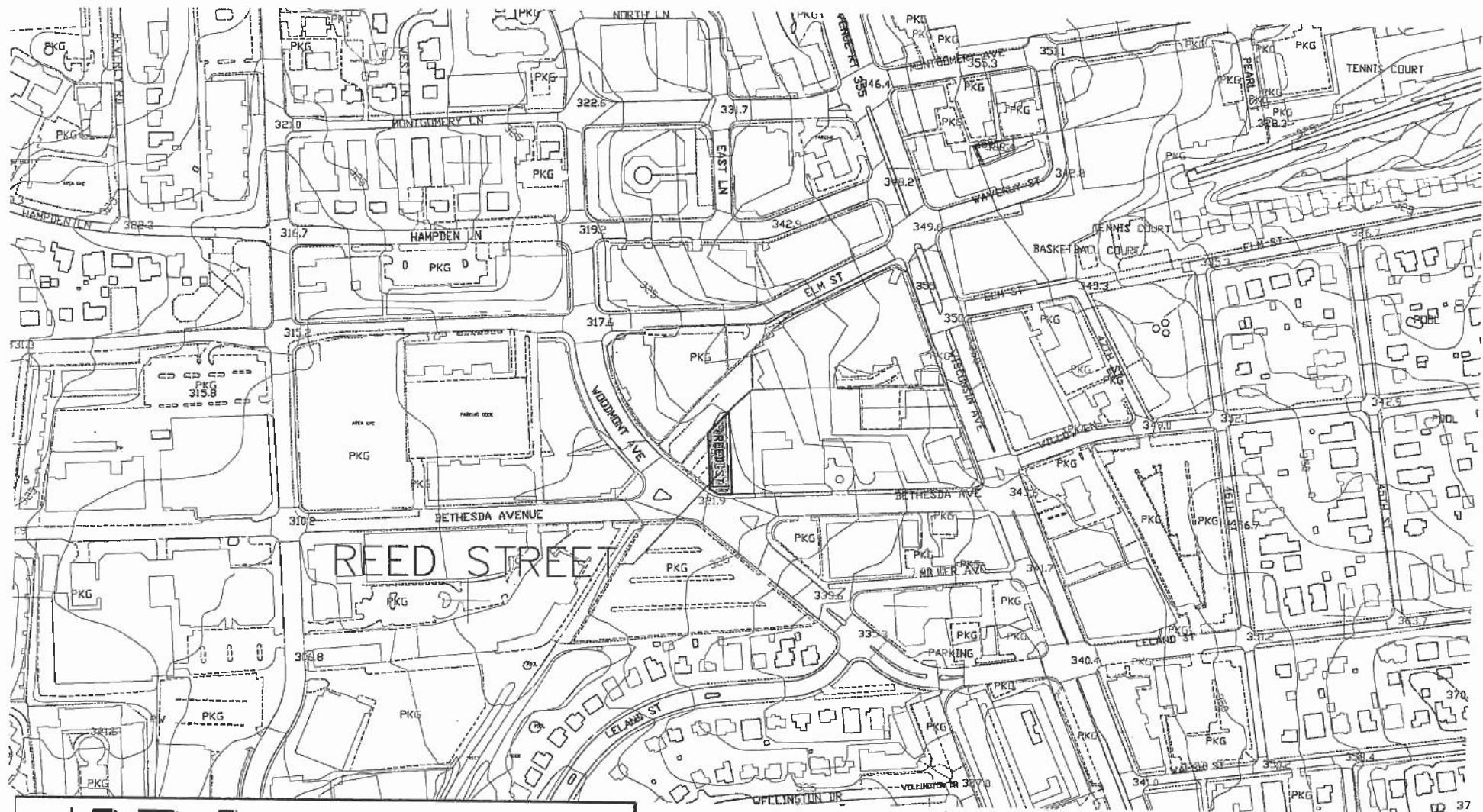
DATE: 1/4/18

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J · B · A

Johnson • Bernat • Associates, Inc.
Engineering • Surveying • Planning

205 N. Frederick Ave. Suite 100
Gaithersburg, MD 20877
Tel. (301) 963-1133
Fax: (301) 963-6306
www.iba-inc.net



J · B · A

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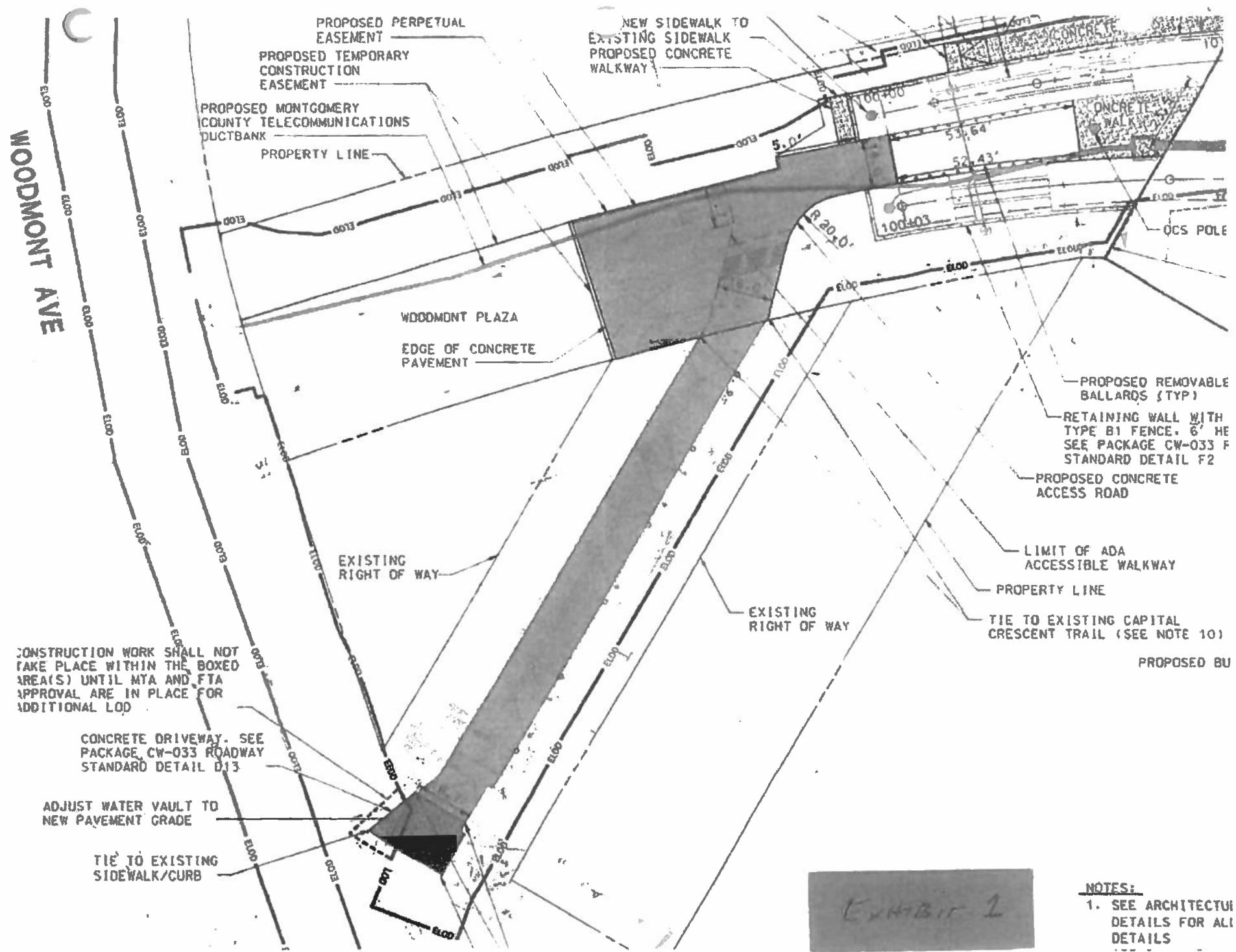
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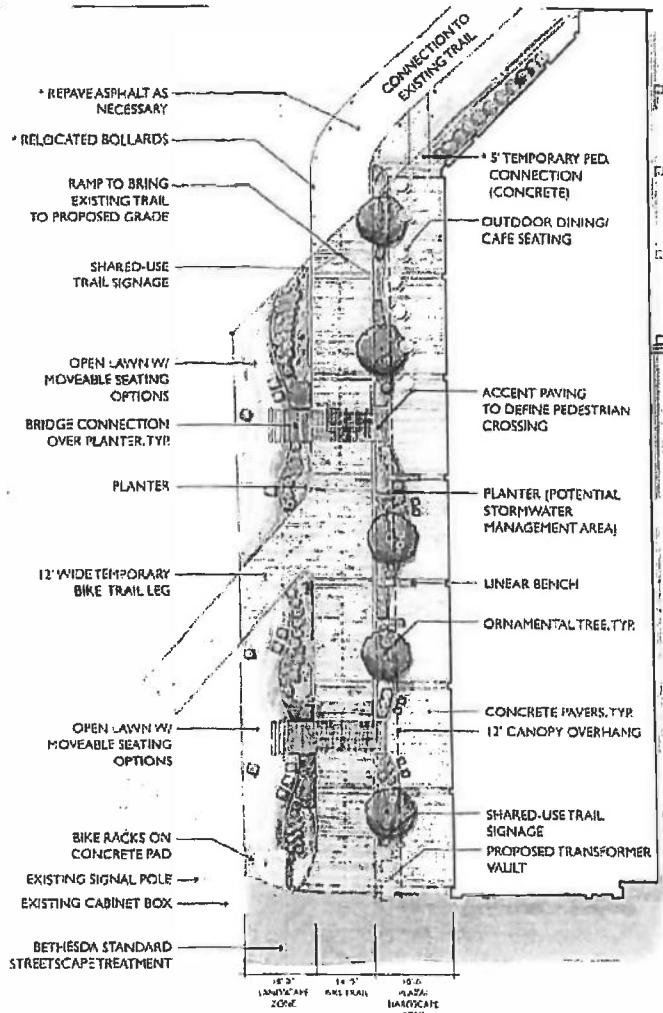
EXHIBIT 'C'
REED STREET
VICINITY MAP

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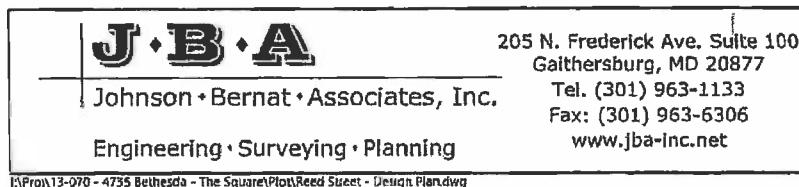
DATE: 1/4/18







BETHESDA AVENUE



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EXHIBIT 'I'
REED STREET
DESIGN PLAN

DATE: 12/27/16

377080

HTA

ACCOUNT Nos.

07-00421300, 4735 Bethesda Avenue
 07-00429373, 4801 Bethesda Avenue
 07-02608550, Woodmont Avenue

MONTGOMERY COUNTY, MD
 APPROVED BY 08

AUG 17 2016

DECLARATION OF COVENANTS

\$ NA RECORDATION TAX PAID
 \$ NA TRANSFER TAX PAID

This DECLARATION, made this 15th day of August, 2016, by and between JBG/WOODMONT II, LLC, and its successors and assigns (hereinafter called the Declarant); STREET RETAIL INC., and its successors and assigns (hereinafter SRI) and MONTGOMERY COUNTY, MARYLAND (hereinafter called the County). The Declarant, SRI and the County are hereafter sometimes referred to collectively as the Parties.

WITNESSETH:

WHEREAS, Declarant is the fee owner of Part of Lot 93, conveyed by Burke Reed Street Properties, LLC, a Maryland limited liability company; Jay M. Eisenberg, Robert B. Canter and Gail N. Kaufman, co-trustees of the Kaufman Marital Trust; and Jay M. Eisenberg, Robert B. Canter and Gail N. Kaufman, co-trustees of the Kaufman Bypass Trust to JBG/WOODMONT II, LLC by Special Warranty Deed dated December 12, 2013 and recorded among the Land Records of Montgomery County, Maryland at Liber 48099, Folio 455, and with a premise address of 4735 Bethesda Avenue (the "Property"), which is bordered on the west by the Reed Street Right-of-Way;

WHEREAS, SRI is the fee owner of Part of Lot 142, Parcel D, Miller's Subdivision, conveyed by Michele J. Jaffe and Rosea Jaffe, as trustees, and John M. Jaffe to Street Retail, Inc. by Deed dated October 27, 2000 and recorded among the Land Records of Montgomery County, Maryland at Liber 18506, Folio 658, and with a premise address of 4801 Bethesda Avenue, and

Exhibit 23

fee owner of a portion of the property shown on a plat of resubdivision entitled "Section 2, Metropolitan South, RR., Through the Miller Property," recorded among the Land Records of Montgomery County in Plat Book B at Plat No. 37, conveyed by Mate L.L.C., a Maryland limited liability company, to SRI by Deed dated May 29, 1998 and recorded at Liber 15895, Folio 356, and which is bordered on the east and north by the Reed Street right-of-way and its predecessor in title dedicated a portion of the Reed Street Right-of-Way for a public street pursuant to Liber JA33, Folio 143/Plat Book B, pages 36-37, and Liber 212, Folio 237/Plat No. 414, attached hereto as Exhibit "A";

WHEREAS, the Reed Street right-of-way, as shown on Plat No. 414 attached hereto as Exhibit "B" and recorded among the Land Records of Montgomery County (the "Right-of-Way"), is no longer used for motorized vehicular use;

WHEREAS, the County desires that a fourteen (14)-foot wide portion of the Right-of-Way extending from Bethesda Avenue north to Parcel N625 be used as a bicycle and pedestrian connection to serve the future Purple Line train station and to effectively function, at least on an interim basis, as part of the Capital Crescent Trail;

WHEREAS, Declarant desires to make certain improvements within the public Right-of-Way consisting of special sidewalk pavers, benches, bike racks, a public utility vault, signage, planters, stormwater management facilities, trash receptacle and landscaping and similar improvements (collectively, the "Park Improvements"), per Montgomery County Department of Permitting Services Revocable Agreement No. RA - 1348 (the "Improvement Agreement").

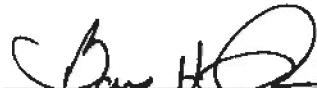
WHEREAS, Declarant desires to install a removable canopy that projects over the Reed Street Right-of-Way and a removable canopy that projects over the Bethesda Avenue Right-of-Way (the "Canopy Improvements") per the Improvement Agreement;

WHEREAS, Declarant also desires to make certain improvements within the public Right-of-Way consistent with the County's outdoor café seating guideline as more particularly described on Exhibit "C" (the "Café Improvements") per the Improvement Agreement; and

WHEREAS, the County shall agree to the Park Improvements, Canopy Improvements, and, Café Improvements (collectively referred to as the Improvements), provided that each of the Improvements meet all applicable codes as adopted and amended by the County, as well as the Americans with Disabilities Act, and promptly upon the execution and due recording of this DECLARATION among the Land Records of Montgomery County.

NOW, THEREFORE, in consideration of the foregoing recitals, each of which shall be deemed a part of this Declaration, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

1. Declarant shall be solely responsible for constructing and installing the Improvements.
2. Declarant agrees to indemnify and hold harmless the County against any and all actions, suits, claims, demands, liability, loss or damage arising out of or in connection with the installation, maintenance or use of the Improvements.
3. Declarant agrees, continually and at all times, to maintain in good and safe condition the Improvements in the public right-of-way.
4. Declarant agrees that should the County order any of the Improvements in whole or in part to be removed, such removal shall be at the sole expense of Declarant and that Declarant will save the County harmless for any expenses incurred therefrom. Should the County, in order to maintain its facilities within the said Right-of-Way, be required to remove any of the Improvements, the County will not be required to replace any of the Improvements



BORIS H. BECKER
ASST SECRETARY

STREET RETAIL, INC,
a Maryland corporation

By: 

Name: Dawn M. Becker

Title: Vice President -

Managing Director Mixed Use Operations

STATE OF MARYLAND *

COUNTY OF *

I HEREBY CERTIFY that on this 27th day of June, 2016, before me, a Notary Public in and for the State and County aforesaid, personally appeared Dawn M. Becker, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and he acknowledged that as the duly authorized VP & Managing Director of Street Retail Inc., he executed the same for the purposes therein contained.

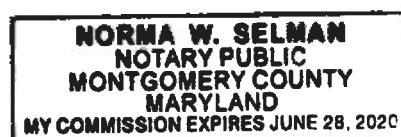
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public



My Commission Expires: June 28, 2020

[NOTARIAL SEAL]



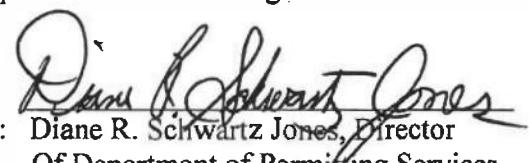
AGREED AND ACCEPTED BY
MONTGOMERY COUNTY, MARYLAND

Approved as to Form and Legality
By the Office of the County Attorney

By: Dawn Edwards


Witness

MONTGOMERY COUNTY, MARYLAND,
Department of Permitting Services


By: Diane R. Schwartz Jones, Director
Of Department of Permitting Services

STATE OF MARYLAND *

COUNTY OF *

I HEREBY CERTIFY that on this 16th day of August, 2016, before me, a Notary Public in and for the State and County aforesaid, personally appeared Diane R. Schwartz Jones, known to me or satisfactorily proven to be the Director of the Department of Permitting Services of Montgomery County, Maryland, and that such person, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said Association.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires: 1-7-2018

[NOTARIAL SEAL]

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY
BY: Charles J. Keele
DATE: 4 August 2016

2267451.3

MONTGOMERY COUNTY, MARYLAND DEPARTMENT OF PERMITTING SERVICES RIGHT-OF-WAY PERMITTING & PLAN REVIEW APPROVED FOR	
Declaration of Covenants for Reed Street Improvements	
By: <u>Chunqiang (Cathy) Xie</u> Date: <u>8/1/2016</u> 85150-078	

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing document was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.



Patricia A. Harris

INFORMATION FOR RECORDING:

Parcel I.D. No.: 07-00421300
Record Legal Description: Parcel 93, Block A, Miller's Subdivision
Street Address of Parcel: 4735 Bethesda Avenue, Bethesda MD 20814

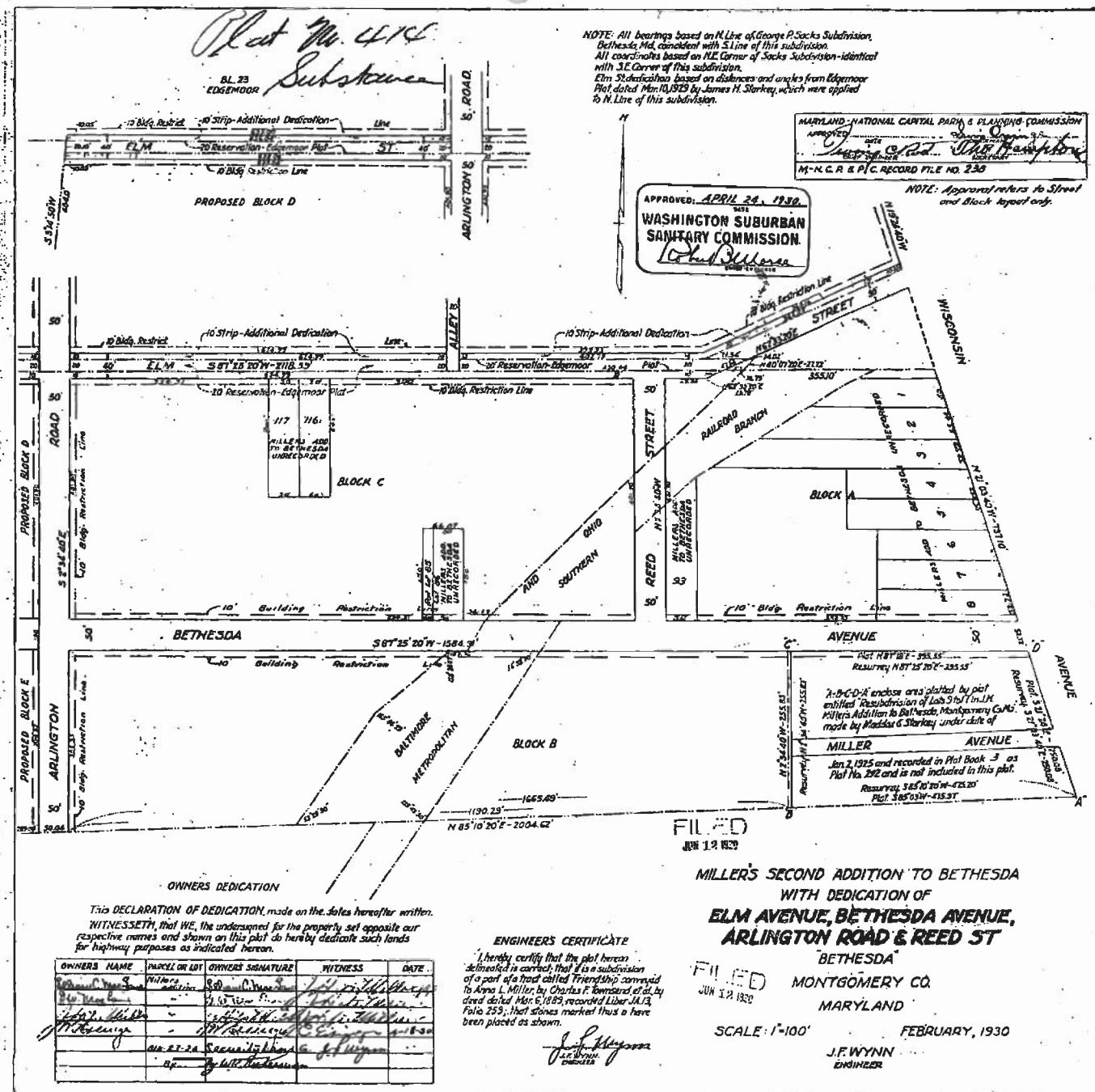
Parcel I.D. No.: 07-00429373
Record Legal Description: Parcel 142, Block A, Miller's Subdivision
Street Address of Parcel: 4801 Bethesda Avenue, Bethesda MD 20814

Parcel I.D. No.: 07-02608550
Record Legal Description: Parcel N625, Miller's Subdivision
Street Address of Parcel: Woodmont Avenue

AFTER RECORDATION, PLEASE RETURN TO:

Lerch, Early & Brewer, Chtd.
3 Bethesda Metro Center, Suite 460
Bethesda, Maryland 20814
Attn: Patricia A. Harris, Esq.

విశ్వాస రామా



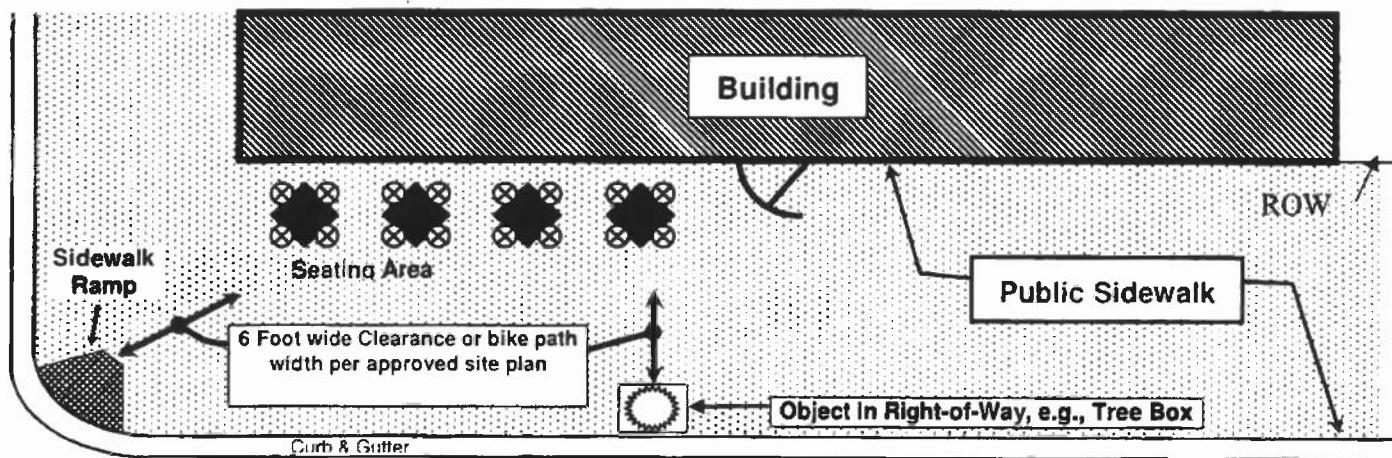


Department of Permitting Services
 Land Development Division
 255 Rockville Pike, 2nd Floor
 Rockville, MD 20850-4166
 Phone: 311 in Montgomery County or (240)-777-0311
 Fax (240)-777-6339
<http://www.montgomerycountymd.gov/permittingervices/>

DPS

OUTDOOR CAFÉ SEATING GUIDELINE

- When outdoor café seating is proposed in the public right of way (ROW), a Work in Public-Right-Of-Way Permit is required.
- The property owner of building where business is located is required to execute a Declaration of Covenants for improvements within the public right-of-way. After DPS' review and approval of the draft covenant, it is to be recorded at the County Land Records at the Judicial Center. ***A lessee may not be the party that executes the covenants.***
- Provide a copy of the Recorded Record Plat and the approved certified site plan, if applicable.
- A plan must show existing features in the right-of-way, such as bike path/trail, signs, trees, tree boxes, fire hydrants, utility poles, canopy supports, parking meters, bike racks and proposed tables with chairs, etc.
- DPS preference is to have seating next to the building.
- A minimum width six foot (6') sidewalk clearance without any obstruction from the back of curb must be provided for pedestrians, or a minimum width of bike path/trail as shown on the approved certified site plan, whichever is greater.
- A physical, removable, separation barrier is required between the seating area and the six foot (6') clear area. Servers must be able to service customers from within the seating area. Any waiver of the separation barrier shall be approved by ROW inspector.
- DPS approval does not negate any requirements for other permits and licenses from Dept. of Health and Human Services (DHHS) and/or Dept. of Liquor Control (DLC), etc.
- Should you have any questions regarding Outdoor Café Seating, please contact the Right-of-Way Permitting and Plan Review Section, 240-777-0311.



APPROVED:

DATE: September 23, 2012

ATIQ PANJSHIRI, MANAGER, RIGHT-OF-WAY PERMITTING & PLAN REVIEW SECTION



**Department of Liquor Control
Licensure, Regulation, and Education (LRE)**

Outdoor Café Requirements

- Landlord Approval Required
- Contiguous to the licensed premises, enclosed in a clearly delineated area, and surrounded by a continuous barrier at least 36 inches high at its lowest point of ingress and egress; and neither on any public property nor on a public right-of-way, without the express written approval of the appropriate State, County or local governmental authority.
- On the same side of the street and extends no more than a combined total of fifty (50) feet beyond the width of the store front of the licensed premises in either direction. "Store front" is defined as that part of the outer wall of any premises which is contiguous to a public sidewalk or right-of-way.
- If the café extends beyond the width of the store front of the licensed premises, the licensee must obtain written permission to operate the extended portion of the café, from all adjoining property owners within the extended café area.
- In addition, the distance between the store front of the licensed premises and the closest point of the café area must be no more than twenty-five (25) feet; and enclosed in a clearly delineated area, and surrounded by a continuous barrier at least 36 inches high at its lowest point with controlled point(s) of entrance and exit.
- All licensees who operate an outdoor café as part of the licensed premises will only do so with the express approval of the Board of License Commissioners. The Board may modify, suspend, or revoke the outdoor café privilege.
- Wait service must be available at Outdoor Cafés.
- Portable/permanent bars are permitted inside the outdoor café area.

Outside Advertising

- A restaurant or hotel holding a Class B, BWL, on sale license shall not allow any exterior advertisement on the building in which the licensed premises is located, which promotes the sale of alcoholic beverage. This excludes outdoor umbrellas.

**Montgomery County Department of Liquor Control
Division of Licensure, Regulation, and Education**

16650 Crabbs Branch Way • Rockville, MD 20855
240-777-1999 • www.montgomerycountymd.gov/dlc
311 • www.montgomerycountymd.gov/311

LR - Covenant
Recording Fee 75.00
Declarant Name: jbg/woodmont ii, ll
Reference/Control #:
LR - Covenant
Surcharge 40.00
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SubTotal: 115.00
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Total: 115.00
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Recording and Licensing
(240) 777-9470



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

**IN THE MATTER OF: AB757, ABANDONMENT OF A PORTION OF THE REED
STREET RIGHT-OF-WAY IN BETHESDA, MD**

**Proposed abandonment of a portion of the Reed Street right-of-way ("ROW")
encompassing a total 3,303 square feet, an 18-foot wide portion of the easternmost portion
of the Reed Street ROW.**

BEFORE: Michael L. Subin, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. BACKGROUND

Before turning to the instant abandonment application ("AB757"), it will be useful for the reader to understand the recent history concerning the Reed Street right of way. The Reed Street right of way was the subject of an earlier abandonment petition captioned as AB702.¹ AB702 resulted in the adoption of Resolution 16-1059 by the County Council on July 28, 2009 to abandon Reed Street, however, the conditions of Resolution 16-1059 were never satisfied. By operation of law, AB702 became a nullity pursuant to 49-65(d) on July 28, 2014.

Notwithstanding the failure to satisfy the conditions of the abandonment for Reed Street as set forth in Resolution 16-1059, JBG Woodmont II, LLC ("JBG"), Street Retail Inc., and Montgomery County, Maryland, executed a Declaration of Covenants dated August 15, 2016, that was recorded among the Land Records for Montgomery County, Maryland in Liber 52645 at folio 24 (the "Declaration"). *See Exhibit 23.*² The Declaration expressed the various parties' desires as it concerned the Reed Street right of way as well as agreements and permitted uses concerning Reed Street. *Id.* In the Declaration, the parties thereto agreed that Reed Street was no longer used for motorized vehicular use. *Id.* Furthermore, the County expressed its desire to reserve a 14-foot portion along the length of the Reed Street right of way for a bicycle and

¹ The applicants for the AB702 abandonment were Street Retail Inc., JBG Companies, Frederick S. Burke, and Carter S. Kaufman.

² All exhibits that are referred to herein may be found in the abandonment file for AB757.

pedestrian connection to serve the future Purple Line train station; said part of which would effectively function, at least on an interim basis, as part of the Capital Crescent Trail. *Id.* JBG expressed its desire to improve the Reed Street right of way with special sidewalk pavers, benches, bike racks, a public utility vault, signage, planters, stormwater management facilities, trash receptacles, landscaping, and other improvements pursuant to Montgomery County Permitting Services Revocable Agreement No. RA-1348. *Id.* In addition, JBG expressed a desire to make certain improvements within the Reed Street right of way consistent with the County's outdoor café seating guidelines. *Id.* The County agreed to JBG's contemplated improvements in the Reed Street right of way, provided that such improvements meet all applicable codes as well as the Americans with Disabilities Act. *Id.* Importantly, as it concerns this abandonment petition (AB757), the County and JBG agreed that the County could unilaterally terminate the Declaration at any time and require the removal of any of the improvements to the Reed Street right of way at JBG's sole cost, saving the County harmless for any damages. In addition, the County acknowledged that JBG (or its applicable subsidiaries or affiliates) intended to pursue the abandonment of all or a portion of Reed Street. *Id.*

With the foregoing recent history in mind, by letter dated March 22, 2017, Lerch Early Brewer, counsel for JBG Woodmont II, LLC³, an affiliate of JBG Smith (the "Applicant"), requested the abandonment of the entirety of the Reed Street right of way; a 50-foot right of way adjacent to and located immediately to the west 4749 Bethesda Ave., Bethesda, Maryland. *See* Exhibit 1. The request for abandonment was amended by letter dated January 9, 2018, wherein the Applicant reduced the scope of the abandonment request to that portion of Reed Street lying immediately adjacent to 4749 Bethesda Ave. at a distance of 18-feet. *See* Exhibit 1a⁴.

The reason for the amendment was because at the time of the Applicant's March 22, 2017 request, the County and the Maryland Transit Administration (the "MTA") were in the midst of negotiating a Franchise Agreement for the Purple Line (the "Franchise"), which was ultimately adopted by the County Council on July 25, 2017, pursuant to Council Resolution 18-883. The Franchise included various Montgomery County public rights of way for the operation of the anticipated Purple Line. Among the public rights of way included in the Franchise was the entirety of the Reed Street Right of Way, which was franchised to MTA for the purpose of track

³ The same entity who signed the Declaration.

⁴ AB757 concerns the March 22, 2017 Abandonment Petition and its amendment on January 9, 2018.

maintenance and vehicle access for the Purple Line. Subsequent to the County's grant of the Franchise to the entirety of Reed Street, MTA confirmed by letter agreement that it consented to Applicant's abandonment request for the easternmost 18-foot portion of the Reed Street Right of Way and agreed to relinquish its franchise rights to that portion of the Franchise. *See Exhibit 24.*

II. ABANDONMENT HEARING NOTICE AND SUMMARY OF DOCUMENTS RECEIVED CONSTITUTING EVIDENCE FOR THIS REPORT

The intent of §49-62, Procedures; Hearings, of the Montgomery County Code (2014), 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 ROW. Pursuant to §49-62(f), Executive Order 116-17, authorizing a hearing, was issued on June 28, 2017. *See Exhibit 2.* In accordance with §49-62(d), Notice of the Public Hearing was published in *Go Montgomery*, an electronic newsletter of the Montgomery County Department of Transportation ("MCDOT"), on February 28, 2018. *See Exhibit 3.* Pursuant to §49-62(e), public notice of the hearing also appeared in *The Montgomery Sentinel* for two consecutive weeks on March 15 and March 22, 2018. *See Exhibit 4.* A photograph of the subject area and vicinity was provided for public viewing. *See Exhibit 5.*

In accordance with §49-62(h)(1-8), comment was requested from appropriate governmental agencies, public utility companies, and the public. The following described exhibits constitute a summary of the written comments and documents that were received as evidence and considered for this Report and Recommendation:

Exhibit 1: Letter dated March 22, 2017, from Lerch Early and Brewer, counsel for JBG Woodmont II, LLC, an affiliate of JBG Smith (the "Applicant"), requesting the abandonment of the 50-foot ROW adjacent to 4749 Bethesda Ave., Bethesda, MD.

Exhibit 1a: Letter dated January 8, 2018 from the Applicant amending its original request to reduce the scope of the Abandonment to an 18-foot wide portion of Reed Street lying immediately adjacent to 4749 Bethesda Ave.

Exhibit 2: Executive Order 116-17, authorizing a Public Hearing, on August 30, 2017 (postponed to March 28, 2018).

Exhibit 3: Notice of the Public Hearing published in *Go Montgomery*, on February 28, 2018.

Exhibit 4: Notice of the Public Hearing in *The Montgomery Sentinel* for two consecutive weeks on March 15 and March 22, 2018.

Exhibit 5: A photograph of the subject area and vicinity was provided for public viewing.

Exhibit 6: Email, dated March 28, 2018, from the Fire Marshall expressing no objection to the abandonment.

Exhibit 7a: Memorandum dated March 28, 2018 from the Director of the Montgomery County Department of Transportation (“MCDOT”) recommending approval of the abandonment subject to the Applicant granting any necessary easements for County storm drains and public utility facilities, or, at the Applicant’s expense, relocating the facilities and granting easements and filing a new record plat incorporating the former ROWs.

Exhibit 7b: Staff Report dated March 12, 2018 from the Development Review Team of MCDOT that recommends the amended abandonment petition of the Applicant.

Exhibit 8: E-mail correspondence opposing the proposed Abandonment.

Exhibit 9: Letter from Pepco from an earlier abandonment request (AB702), dated January 16, 2008, objecting to the abandonment unless the Applicant is willing to grant, prepare and record easements to Pepco to provide the perpetual right of ingress to and egress from access to underground equipment for electrical service to 4735 Reed St.

Exhibit 10: Letter from WSSC from an earlier abandonment request (AB702), dated January 23, 2008, requiring easements where it has water and sewer lines.

Exhibit 11: Letter from Washington Gas from an earlier abandonment request (AB702), dated January 2, 2008, requiring an easement to protect its gas pipeline located in the ROW.

Exhibit 12: does not exist since Verizon did not respond within 60 days of notification and concurrence, therefore, is presumed.

Exhibit 13: does not exist since the Montgomery County Police Department did not respond within 60 days of notification and concurrence, therefore, is presumed.

Exhibit 14: placeholder for anticipated letter from the Montgomery County Planning Board that was introduced as Exhibit 15.

Exhibit 15: Letter from the Montgomery County Planning Board, dated March 13, 2018, recommending approval of Applicant’s amended abandonment request that is conditioned upon

the Applicant entering into a legally-binding, long-term agreement with Montgomery County in the form of a covenant or other appropriate legal instrument, to ensure that the subject abandonment area remain publicly accessible.

Exhibit 16: Applicant's power point chronology of events regarding the ROW.

Exhibit 17: Applicant's highlights from Exhibit 16.

Exhibit 18: Excerpt of transcription of the Montgomery County Planning Board hearing regarding the Applicant's request.

Exhibit 19: Applicant's Definition of Publicly Accessible.

Exhibit 20: CBAR Definition of Publicly Accessible.

Exhibit 21: Letter, dated April 4, 2018, from Hearing Examiner to Casey Anderson, Chair of the Montgomery County Planning Board, Requesting Clarification of Planning Board's Recommendation Regarding the Subject Abandonment.

Exhibit 22: Response of Casey Anderson, dated April 20, 2018, to Hearing Examiner's Request that reaffirms the Planning Board's support of the partial abandonment request as conditioned upon the Applicant entering into a legally-binding, long-term agreement with Montgomery County in the form of a covenant or other appropriate legal instrument, to ensure that the subject abandonment area remain publicly accessible.

Exhibit 23: Declaration of Covenants between JBG/Woodmont II, LLC, Street Retail, Inc., and Montgomery County, MD.

Exhibit 24: MCDOT Letter, dated April 11, 2019, to MTA re Consent to partial abandonment of Reed St. Right of Way. (MTA consented to the partial abandonment of the easternmost 18-foot wide section of the Reed Street ROW with an undated signature by the Director).

Exhibit 25: Staff Report of the Montgomery County Planning Department dated March 1, 2019 recommending that the Montgomery County Planning Board support the abandonment petition.

A public hearing was held in the Lobby Auditorium, Executive Office Building, 101 Monroe St., Rockville, MD 20850 on March 28, 2018, commencing at 7:01 pm, March 28, 2018.

III. SUMMARY OF STATEMENTS MADE AT THE HEARING HELD ON MARCH 28, 2018 CONSTITUTING EVIDENCE FOR THIS REPORT

A. Statements made at the hearing in support of the request for abandonment.

1. Mr. Michael Cassedy, Montgomery County Department of Transportation (“MCDOT”)

Mr. Michael Cassedy, MCDOT, spoke on behalf of the Department. Mr. Cassedy laid out the procedural history concerning the abandonment request and read into the record MCDOT's support for the abandonment as well as summarized all comments MCDOT received concerning the abandonment request. Mr. Cassedy explained that the original March 22, 2017 application for the abandonment had been amended on January 9, 2018 because the County granted the Franchise to the Maryland Transit Administration (“MTA”)⁵ to use multiple rights of way related to the construction of the Purple Line, including the Reed St. ROW. Mr. Cassedy further stated that the Applicant subsequently met with MTA and MCDOT which resulted in the amended request for an 18-foot wide portion of the 50-foot ROW to be abandoned rather than in its entirety. In addition, Mr. Cassedy stated the easternmost 18-foot wide portion of Reed Street adjoining the property owned by the Applicant that is requested for abandonment consists of 3,303 square feet of ROW, and that it was MCDOT's position that such portion was deemed not to be necessary for present or anticipated public use.

In support of that position, Mr. Cassedy advised that prior to the Franchise with MTA, the Applicant and the County had entered into the Declaration⁶ concerning the Reed Street right of way.

2. Patricia Harris, Esq., on behalf of the Applicant

Patricia Harris, Esq., of the Law Firm of Lerch, Early & Brewer, counsel for the Applicant spoke on behalf of the Applicant. In presenting the history of the property, Ms. Harris stated that a project plan was approved in 2009, which provided for and accommodated a Purple

⁵ The Franchise granted MTA the right to build, operate, and maintain the Purple Line in the County Right-of-Way.

⁶ Mr. Cassedy referred to it as a maintenance and liability agreement that allows for tables and chairs, special pavers, improved landscaping, and hardscaping elements associated with the Applicant's building. This was also confirmed in Ms. Pat Harris's statements with a citation to the liber and folio number of the Declaration.

Line station and the abandonment of Reed Street, which the Council approved in July, 2009. However, the abandonment was not effectuated within five (5) years and, in accordance with the law, was terminated in the Spring of 2014.

Ms. Harris noted that while the Applicant has a fee interest in 25 feet of the 50-foot right of way, that the Applicant was only requesting that 18 of the 25 feet be abandoned.⁷ She noted that it is the Applicant's intent to activate the area and to ensure the outdoor café seating areas would be permitted immediately adjacent to the existing building. Ms. Harris explained that the right of way is currently subject to the Declaration recorded among the land records which provides for improvements to the entire Reed Street right of way, including the 18-foot dining area. *See Exhibit 23.*

Ms. Harris detailed the efforts that the Applicant made to coordinate the abandonment request with MCDOT, MTA and Planning Department Staff to support the contention that the easternmost 18-foot portion of the Reed Street right of way is neither currently needed for public use, nor anticipated to be needed for public use in the foreseeable future. Ms. Harris noted that action on the request for abandonment was postponed twice until the relevant government agencies were comfortable with the abandonment request, and that those very agencies which had previously requested postponement now support the request to abandon the easternmost 18-foot portion of the Reed Street right of way. Ms. Harris contended that the Purple Line alignment, the Capital Crescent Trail tunnel alignment, the surface trail along Bethesda Avenue, and the buildout that is anticipated under the Bethesda sector plan are all known, and argued that there is no reason to further delay the abandonment that is supported by the relevant government agencies since those agencies have determined that there will be no adverse consequences stemming from the abandonment.

3. Mr. George Hayward, Development Manager for the Applicant

Ms. Harris presented Mr. George Hayward, the Development Manager for the Applicant's development. Mr. Hayward stated that the Applicant believes that the abandonment would help jump start the improvement of the area by providing an activating use in outdoor

⁷ In reality, the 18-feet are all that is available to the Applicant because MTA requires a 14-foot path in the middle of the ROW to perform maintenance on the Purple Line facilities.

dining. He also noted that the Applicant would assume responsibility for the maintenance of the area. Mr. Hayward intimated that the abandonment was necessary to attract a restaurant tenant with the assurance that the area would be available for continued outdoor restaurant use.

4. Mr. Kevin Johnson, Civil Engineer for the Applicant

Mr. Kevin Johnson, civil engineer for the project, was then questioned by Ms. Harris. Mr. Johnson provided the historical overview of Reed Street from inception to the present. Mr. Johnson presented evidence that revealed that Reed street no longer functions as a road for highway purposes as originally contemplated by its original dedication. It was Mr. Johnson's contention that Reed Street was a continuous and through street that originally connected Bethesda Avenue with Elm Street. However, at some point, Reed Street became a stub of a road, dead ending at the railroad track right of way which essentially bisected Reed Street. In addition to the bisecting of the Reed Street right of way by railroad tracks, Mr. Johnson stated that a building had been constructed upon the northern section of the bisected Reed Street right of way. Thus, the southern portion of the bisected Reed Street was a remnant of a road that went nowhere. Mr. Johnson demonstrated that the 1994 sector plan did not include Reed Street in the street or highway plan, and contended that Reed Street has not functioned for its highway purposes for the last 40 or 50 years.

Mr. Johnson stated that the Applicant has made improvements to the Reed Street right of way pursuant to a DPS permit and a maintenance and liability agreement (the Declaration). Specifically, he contended that the Applicant installed specialty pavers in the Reed Street right of way to accommodate pedestrian and bicycle traffic for the Capital Crescent Trail, and that all of this was done with the objective of creating a lively space in the adjacent easternmost 18-feet of Reed Street that is sought for abandonment for the purpose of placing an outside dining area located between the Capital Crescent Trail and the Applicant's building. Mr. Johnson explained that Park and Planning owns the property on the west side of the Reed Street right of way, and that it was his understanding that the land to the west of the Reed Street right of way would be turned into a park. Mr. Johnson stated that in his professional opinion, there is not now a public purpose for the easternmost 18-feet of right of way sought for abandonment, and that there is no anticipated public use for the 18-feet in the foreseeable future. Mr. Johnson provided

demonstrative evidence to show that bikers and pedestrians will have multiple options available to them to get to their desired destination without the need for the 18-foot right of way sought for abandonment.

Following Mr. Johnson's examination and statements made by the Honorable Mary Flynn, *infra*, Ms. Harris offered concluding remarks on behalf of her client by summarizing why the Applicant feels the 18-feet sought to be abandoned is no longer necessary for present or foreseeable use. Ms. Harris's points were as follows: the Purple Line alignment is known; the surface route for the Capital Crescent Trail is known; and, the maximum development under the Bethesda sector plan is known. In her estimation, the proposed abandonment would not negatively impact any of those issues. In addition, Ms. Harris reiterated the support of the abandonment request from MCDOT, the Planning Board and the Planning Department.

B. Statements made at the hearing in opposition to the request for abandonment.

1. Honorable Mary Flynn, Mayor of the Town of Chevy Chase

The Hon. Mary Flynn, representing the Town of Chevy Chase and the Coalition for Bethesda Area Residents ("CBAR")⁸ expressed her opposition to the timing of the abandonment. Mayor Flynn contended that the site is very constrained and that there are three (3) things that merit additional consideration and delay of the abandonment:

1. In the next 5-10 years, the community is expected to gain about 17,000 people and they will need more parkland;
2. There is no facilities plan to accommodate more parks;
3. That the Applicant be required to enter into a legally binding, long-term agreement with the County in the form of a covenant or other appropriate

⁸ CBAR is comprised of members appointed by their municipality or their civic organization from East Bethesda, the Town of Chevy Chase, Chevy Chase West, the Sacks neighborhood, Edgemoor, and Battery Park.

legal instrument to ensure the subject abandonment area remains publicly accessible, a condition listed by the Montgomery County Planning Board.⁹

Mayor Flynn argued that the 18-foot area that is the subject of the abandonment request should not be “privatized” before there was certainty as to what would be needed in the area, contending that abandoning the easternmost 18 feet of Reed Street was premature. Mayor Flynn desired to see what would be occurring over the next six (6) years in the area before making any decisions with respect to abandoning the right of way.¹⁰

IV. CONCLUSIONS AND RECOMMENDATIONS

The abandonment of road rights of way is governed by the provisions of sections 49-62 et seq., Montgomery County Code (2014) as amended. Section 49-62 permits application for abandonment of a right of way (the “ROW”) 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 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

⁹ The Hearing Officer asked Mayor Flynn, on behalf of the CBAR communities, and Ms. Harris, on behalf of the Applicant, to provide a definition as to what was meant by the Montgomery County Planning Board when it recommended that the area requested for abandoned remain “publicly accessible.” Both Mayor Flynn and Ms. Harris provided definitions. *See* Exhibits 19 and 20. Mayor Flynn contended that the term “publicly accessible” meant open to common use and belonging to the people at large so as not to be limited or restricted to any particular class of the community. Ms. Harris contended that it was her impression that what the Montgomery County Planning Board meant by the term “publicly accessible” was that there would be no development of a structure in the 18-foot strip and that it would remain outdoor dining for restaurant patrons. *See* Exhibit 19. The Planning Board was also asked to clarify what it meant by the term “publicly accessible,” but the Chair of the Planning Board advised that it could not provide a definition without holding a new hearing. *See* Exhibit 22.

¹⁰ Ms. Harris and Mayor Flynn had an extended debate regarding whether the western side of the ROW, reserved for parkland, would actually be parkland or used to diffuse the use of the CCT as the population becomes denser. While Ms. Harris believes, given the Applicant’s request, that the eastern section could further diffuse any increased traffic from the CCT, Mayor Flynn believes the area should be used as a “civic green” for the anticipated increase in population. At this time, the Hearing Officer believes that the use is speculative as no monies have been budgeted for park facilities; however, there are several options for CCT users to take other than the ROW under consideration.

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 evaluating the evidence, I find the statements made by Ms. Harris, Mr. Hayward, and Mr. Johnson to be highly credible. That is to say, I find Reed Street to be a remnant stub of what once was a continuous street that linked Bethesda Avenue and Elm Street. I find that Reed Street no longer functions as a continuous street between Bethesda Avenue and Elm Street that supports motorized vehicular traffic as originally contemplated. This is because of railroad tracks that were later installed that resulted in the bisection of the street, together with the erection of a building on the northern portion of the bisected street. Thus, there have been significant changes in facts and circumstances since the original dedication of the Reed Street right of way. Moreover, it has been many decades since Reed Street was utilized for its originally contemplated purpose.

Notwithstanding, Reed Street is currently used by pedestrians and bicyclists to access the Capital Crescent Trail. Thus, it cannot be ignored that the Reed Street right of way is currently being used by the public. However, the Applicant's Amended Petition for Abandonment does not seek the abandonment of the entire width of the Reed Street right of way; rather, the Applicant only seeks the abandonment of the easternmost 18 feet of the Reed Street right of way. The evidence shows that the Reed Street right of way is 50 feet wide along its length. This means that if the abandonment were approved by the Council, that 32 feet of the Reed Street right of way would continue to be available for public use. In considering the evidence, it is clear that the vast majority of the Capital Crescent Trail is only 10 feet wide. In addition, it is clear from the evidence that the Applicant built a 14-foot wide path with specialty pavers and other improvements that feeds into the (slightly narrower) trail network. Thus, I find that users of the 10-foot trail are more than adequately served by the 14-foot path constructed by the Applicant. And, moreover, there will remain an additional 18 feet of right of way remaining in the Reed Street right of way that is located to the west of the existing 14-foot path if it is needed by pedestrians and bicyclists in the future.

I find the comments and recommendations of the Montgomery County Planning Board, the Montgomery County Planning Department Staff, and the Montgomery County Department of Transportation and its Development Review Team to be highly persuasive. *See Exhibits 7a, 7b, 15, 22, and 25.* The relevant agencies that are vested with the responsibility of development planning, ensuring that there are adequate public facilities in place for public use, and ensuring that there is a robust network of roads and paths that support safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives, in the immediate neighborhood for local and through traffic, have recommended the abandonment of the easternmost 18 feet of the Reed Street right of way adjacent to the Applicant's property. The Planning Department Staff found that the 18 feet identified for abandonment was not needed for access to the trail or the future Purple Line station being built to the west of the Reed Street right of way. Rather, the Planning Department Staff found that the abandonment was compatible with the 2017 Bethesda Downtown Sector Plan and fit into the larger Sector Plan goal for the Bethesda Row District. These findings are consistent with the Applicant's desire to activate what is currently underutilized open space in the Reed Street right of way.

Notwithstanding the agencies' support for the abandonment, it should be noted that the relevant agencies' recommendation for abandonment was not unconditional. The Planning Board recommended that the Applicant be required to "... enter into a legally-binding, long term agreement with Montgomery County in the form of a covenant or other appropriate legal instrument, to ensure that the subject abandonment area remain *publicly accessible.*" *See Exhibits 15 and 22.* While the term "*publicly accessible*" that is used by the Planning Board is somewhat nebulous, I find the Applicant's contention as to what was meant to be more persuasive. In particular, I am relying upon that portion of the Montgomery Planning Board Hearing that was transcribed. *See Exhibit 18.* The Chair of the Planning Board stated in relevant part to Mayor Flynn:

My suggestion would be, since nobody seems really to object to what is there now [the outdoor dining] and the concern is what you might do in the future, that perhaps our recommendation to the County Council would be that any abandonment of this would be conditioned on entry into some kind of covenant which would run with the land on your [JBG Smith] property, **to not build anything else there without the agreement of the County.** So, effectively, if you want to come in and tear down your building

and do something else, then we'll have another discussion about what you can build and access.

See Exhibit 18 (emphasis added in bold). Moreover, if one were to construe “publicly accessible” in the manner desired by CBAR, then the Planning Board’s recommendation for the abandonment would be logically inconsistent since it would mean that the area requested for abandonment was still needed for public use by the County – if this were the case, the Planning Board could not have recommended the abandonment. I do not find CBAR’s definition of “publicly accessible” to be consistent with the Planning Board’s recommendation for abandonment. Rather, I find that the Planning Board was concerned about future structural development in the area. *See Exhibit 18.*

In reviewing the evidence, I find that the Montgomery County Department of Transportation recommends the abandonment subject to the Applicant granting any necessary easements for County storm drains and public utility facilities, or, at the Applicant’s expense, relocating the facilities and granting easements. *See Exhibit 7a and 7b.*

In reviewing the evidence, I find that MTA has no need for that portion of the Reed Street right of way that is the subject of this abandonment petition. While MTA was granted a franchise for Reed Street, MTA has expressly consented to this abandonment request for the easternmost 18 feet of Reed Street and agreed to relinquish and release its franchise rights in the easternmost 18 feet. *See Exhibit 24.*

In reviewing the evidence, I find that the Pepco, WSSC, and Washington Gas do not oppose the abandonment request so long as each is granted necessary easements for any utilities or facilities that are currently located within the area that is proposed to be abandoned. *See Exhibits 9, 10, and 11.*

In reviewing the evidence, I find that Verizon, the Montgomery County Police Department, and the Montgomery County Fire and Rescue Service do not oppose the abandonment. *See Exhibits 6, 12, and 13.*

I have carefully considered the concerns that Mayor Flynn expressed on behalf of CBAR, as well as the e-mailed objections to the abandonment request. *See Exhibit 8.* While it is impossible to predict the future, I believe that the relevant agencies that have recommended abandonment (and who happen to be stewards of our public spaces) have the requisite expertise to determine if the abandonment of Reed Street is not compatible with projected growth in the

area and the need for adequate public facilities. The Planning Board, Planning Department Staff, Montgomery County, and the Applicant's civil engineer have sufficiently demonstrated that the 18-foot abandonment area will not adversely affect pedestrian or vehicular flow, and that the proposed abandonment is not inconsistent with the various sector plans for the area. In this regard, I find that expertise by the relevant agencies to be compelling. Thus, I do not find sufficient evidence in the record to support generalized concerns about future growth in the area that will cause this area to become a "chokepoint." Moreover, as Ms. Flynn and Mr. Johnson noted during the hearing, the record shows that MNCPPC purchased the land immediately adjacent to the western boundary of the Reed Street right of way for \$8.5 million. Thus, in addition to the 32 feet of right of way that is not being abandoned, there may at some point be additional land available for public use.

Thus, I find that the 18 feet is not presently needed for public use and will not be needed for public use in the foreseeable future. Furthermore, I find that the abandonment is necessary to promote the public health, safety and welfare of the community because it will help promote street-life to what is now an underutilized space that does not generate revenue. In summary, I find that the area sought to be abandoned has no bearing upon pedestrian or vehicular flow, and that its abandonment will serve the health, safety, and welfare of the community. Thus, upon a thorough review of the statements, exhibits, and evidence of record, I recommend that the January 9, 2018 amended petition to abandon the easternmost 18 feet of the Reed Street right of way as shown on Exhibit 1a¹¹, which consists of 3,303 square feet, more or less, be granted, subject to the following requirements that are conditions precedent to abandonment:

1. That the Applicant be required to grant, to the satisfaction of the County, any necessary easements for County storm drains and public utility facilities, or, at the Applicant's expense, relocating the facilities and granting easements to the satisfaction of the County;
2. That the Applicant be required to grant, prepare and record easements to Pepco to provide the perpetual right of ingress to and egress from access to underground equipment for electrical service to 4735 Reed St.

¹¹ As shown on the Exhibit A thereto.

3. That the Applicant be required to grant easements to WSSC where it has water and sewer lines;
4. That the Applicant be required to grant easements to Washington Gas to protect its gas pipeline located in the ROW;
5. That the Applicant be required to record a covenant acceptable to the County which covenants that the area to be abandoned will not be developed with a structure, and shall be available for either outdoor restaurant dining use or to support pedestrian activity in the area, including pedestrian access to the adjacent ground floor building uses; and,
6. That the Applicant must at its sole cost prepare and record a new record plat incorporating the abandoned area into its adjacent subdivision.

SIGNATURE PAGE FOLLOWS

Respectfully submitted,



Michael L. Subin

Date: Feb. 29, 2020

The Public Hearing Officer's Recommendations regarding the APPROVAL of AB 757, the abandonment of a portion of a right-of-way on Reed Street in Bethesda, MD adjacent to the rear of 4749 Bethesda Ave., Bethesda, MD, is APPROVED.



Marc Elrich, County Executive

fdr
Date: Nov. 18, 2020



AB 757
Exhibit 7a.

DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Al R. Roshdieh
Director

M E M O R A N D U M

March 28, 2018

TO: Michael Subin, Hearing Officer
Offices of the County Executive

FROM: Al R. Roshdieh, Director
Department of Transportation

SUBJECT: AB757 Reed Street
Miller's Second Addition to Bethesda Subdivision
Department Recommendation on Proposed Abandonment

The purpose of this memorandum is to express the recommendation of the Montgomery County Department of Transportation (MCDOT) on the referenced closure case.

MCDOT recommends approval of this abandonment case subject to Applicant granting any necessary easements for County storm drains and public utility facilities or at Applicant's expense relocating these facilities and granting easements and filing a new record plat incorporating the former rights-of-way (see attached staff report).

Thank you for the opportunity to comment.

ARR/mc

Office of the Director

101 Monroe Street, 10th Floor • Rockville, Maryland 20850 • 240-777-7170 • 240-777-7178 FAX
www.montgomerycountymd.gov/dot
Located one block west of the Rockville Metro Station



AB 757
Exhibit 7b. attachment

DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Al R. Roshdiah
Director

M E M O R A N D U M

March 12, 2018

TO: Michael Cassedy, Property Acquisition Specialist
Property Acquisition Section
Division of Transportation Engineering

FROM: Rebecca Torma, Acting Manager *et*
Development Review Team
Office of Transportation Policy

SUBJECT: AB 757, Abandonment of Portion of Reed Street at Bethesda Avenue
Miller's Second Addition to Bethesda, Bethesda

We have completed our review of the revised abandonment request from Lerch Early & Brewer as representatives for JBG/Woodmont II, LLC, the Applicant. The revised abandonment petition proposes to abandon an 18-foot wide portion of Reed Street right-of-way. This area consists of 3,303 square feet of right-of-way that is adjoining property owned by the Applicant.

The applicant previously requested to abandon the full 50-foot right-of-way of Reed Street. However, the County has a franchise agreement with Maryland Transit Administration's (MTA) concessionaire for building, operating and maintaining the Purple Line within the County's right-of-way, including Reed Street. As Reed Street is needed for constructing and maintaining the Purple Line, the applicant withdrew their request for abandonment.

Subsequently, the Department of Transportation (DOT) and Planning staff met with applicant to discuss Reed Street. Previous to the franchise agreement with MTA, the applicant had already entered into a Maintenance and Liability agreement with DOT. This agreement allows tables and chairs, special pavers, improved landscaping and hardscaping elements associated with 4749 Bethesda Avenue building. Based on the meeting with staff, the applicant submitted a revised petition request dated January 9, 2018, to abandon the eastern 18-feet of right-of-way of Reed Street. This portion of the Reed Street right-of-way was deemed not to be necessary for present or anticipated public use. Therefore, we recommend approval of the abandonment petition.

Thank you for the opportunity to review and comment on this abandonment petition. If you have any questions regarding this memorandum please call myself at 240-777-2118.

Office of the Director

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DEPARTMENT OF TRANSPORTATION

Marc Elrich
County Executive

Al R. Roshdiah
Director

April 11, 2019

Charles E. Lattuca
MDOT, Maryland Transit Administration
Director of Transit Development and Delivery
100 S. Charles Street, Tower Two, Suite 1001
Baltimore, MD 21201

Re: Consent to partial abandonment of Reed Street Right of Way

Dear Mr. Lattuca,

I am writing this letter to set forth our mutual understanding with respect to the use of the Reed Street Right of Way (ROW) as contemplated in the Franchise Agreement between the County and MTA that was adopted on July 25, 2017 by Council Resolution No. 18-883 (the "Franchise Agreement").

Exhibit A-1 of the Franchise Agreement limits MTA's use of the Reed Street ROW to "track maintenance vehicle access" to the future Purple Line tracks.

Exhibit A-2 of the Franchise Agreement shows a graphic depiction of Reed Street and a caption that reads "Reed Street Franchise Area extends to Bethesda Ave."

As you know, the Reed Street ROW is a 50' wide ROW that runs from Bethesda Avenue and terminates near the entrance to the tunnel under Air Rights Building. However, MTA has confirmed that it only needs a 14' wide section of the overall Reed Street ROW, widened to 16.7' at the southern terminus, for the limited purposes contemplated by the Franchise Agreement. The area which needs to be retained within the Reed Street ROW to serve MTA's purposes is shown on Exhibit 1.

The JBG Smith company has submitted an application to abandon the easternmost 18' wide section of the Reed Street ROW so that that area can be utilized by their tenants for outdoor dining purposes. Given the size of the Reed Street ROW, the proposed abandonment does not interfere with MTA's ability to use the ROW for access to the Purple Line tracks and other facilities. A drawing depicting the section of the right of way being sought for abandonment by JBG is attached as Exhibit 2.

Montgomery County has coordinated with MTA during our review of the proposed abandonment and MTA has represented verbally and in e-mail that the proposed abandonment is acceptable to MTA provided that a 14' wide section of ROW, widened to 16.7' at the southern terminus, remains for the future access as contemplated under the Franchise Agreement, which is in fact the case. Based on the coordination between the Montgomery County and MTA, MCDOT has no opposition to the proposed abandonment.

Office of the Director

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www.montgomerycountymd.gov/mcdot

311
montgomerycountymd.gov/311 Maryland Relay 711

25
E. 21

Charles E. Lattuca
April 11, 2019
Page 2 of 2

The purpose of this letter is to obtain written confirmation that MTA consents to the abandonment of the easternmost 18' wide section of the Reed Street ROW. In so doing, MTA relinquishes and releases its franchise rights to the easternmost 18' wide section of the Reed Street ROW being abandoned as depicted on Exhibit 2. Please indicate your consent to the proposed partial abandonment by countersigning this letter in the space provided below. Thank you for your attention to this matter.

Sincerely,



Emil J. Wolanin, Deputy Director
MCDOT

MTA hereby consents to the partial abandonment of the easternmost 18' wide section of the Reed Street Right of Way (AB757) as depicted on Exhibit 2, and agrees to relinquish and release its franchise rights to the abandoned portion as depicted on Exhibit 2.

MARYLAND TRANSIT ADMINISTRATION



for
Charles E. Lattuca

Director of Transit Development and Delivery



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

March 13, 2018

Mr. Michael S. Cassedy
Montgomery County Department of Transportation
101 Monroe Street, 10th Floor
Rockville, Maryland 20850-4168

RE: Abandonment Request No. AB-757
Request to abandon the eastern 18-foot wide section of Reed Street Right-of-Way
Bethesda Downtown Sector Plan

Dear Mr. Cassedy:

At its regularly scheduled meeting of March 1, 2018, the Montgomery County Planning Board reviewed the Abandonment Request No. AB-757 for partial abandonment of the Reed Street public right-of-way in downtown Bethesda. After a briefing and presentation by Planning staff, the Planning Board voted 4-0, with Commissioner Natali Fani-González absent, in favor of recommending the abandonment and transmitting comments to the Montgomery County Department of Transportation.

The Planning Board heard testimony from the Petitioner and a representative from the Coalition of Bethesda Area Residents. Based on this testimony, the Board is recommending one important condition to the abandonment. Please consider this letter and the following comment as the Planning Board's testimony for the official record.

- The Petitioner must enter into a legally-binding, long-term agreement with Montgomery County in the form of a covenant or other appropriate legal instrument, to ensure that the subject abandonment area remain publicly accessible.

Thank you for the opportunity to provide comments and a recommendation concerning this petition. Please contact me directly or contact Katie Mencarini with Area 1 Team of the Planning Department at 301-495-4549 if you have any questions regarding this letter.

Sincerely,

A handwritten signature of 'Casey Anderson' in black ink, with a stylized 'C' and 'A'.
Casey Anderson
Chair

cc: Gwen Wright
Katie Mencarini
Elza Hisel-McCoy
Robert Kronenberg
Christina Sorrento
Rebecca Torma, MCDOT

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

EXHIBIT 15



Right-of-Way Abandonment, AB757, Reed Street

Katie Mencarini, Senior Planner, Area 1, Katherine.Mencarini@montgomeryplanning.org, 301.495.4549

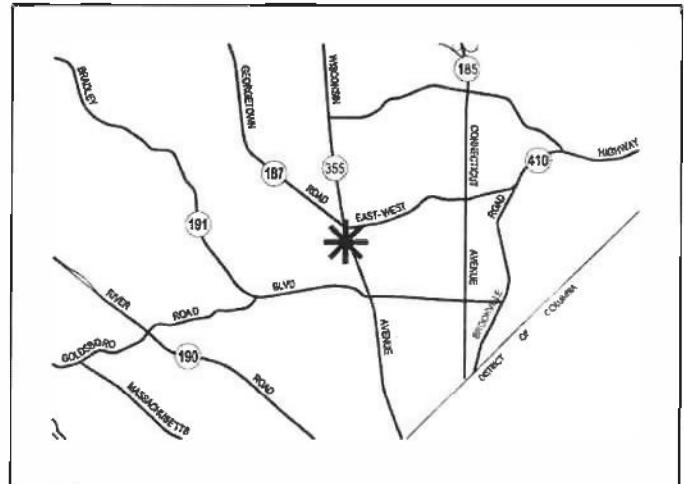
Elza Hisel-McCoy, Supervisor, Area 1, Elza.Hisel-McCoy@montgomeryplanning.org, 301.495.2115

Robert Kronenberg, Chief, Area 1, Robert.Kronenberg@montgomeryplanning.org, 301.495.2187

Description

Completed: 2.9.18

- Request to abandon partial-width of Reed Street right-of-way within downtown Bethesda.
- Total Right-of-way area: 8,320 square feet or 0.1910 Acres.
- Petitioner is seeking abandonment of 18 feet of width for a total of 3,303 square feet.
- Zoned CR-5.0 C-5.0 R-5.0 H-145
- Located adjacent to 5332 Woodmont Avenue.
- 2017 Bethesda Downtown Sector Plan.
- Petitioner: JBG/Woodmont II, LLC.
- Chapter 49 Streets and Roads.



Summary

- Staff recommends approval of the petition.
- Transmit comments to the Montgomery County Executive recommending approval of the request to abandon a portion of the subject right-of-way (Reed Street) because the abandonment will not hinder public use, including construction and maintenance access to the Purple Line.
- The Petitioner previously requested full abandonment of the Reed Street right-of-way but withdrew their request and revised the application for partial abandonment.
- The Reed Street right-of-way is subject to a franchise agreement for the purpose of building, operating, and maintaining access and maintenance of the Purple Line.
- The Reed Street right-of-way is adjacent to a recent acquisition by the Parks Department dated December 28, 2017, and includes open space exclusive of adjacent buildings.
- The Reed Street right-of-way was previously abandoned; however, a plat was not recorded within the validity period. As a result, the previous abandonment action was revoked pursuant to County Code Section 49-65(d).

REQUEST FOR COMMENTS BY THE MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION

On January 9, 2018 the Maryland - National Capital Park and Planning Commission (M-NCPPC) received a revised Abandonment Petition AB757, in accordance with Section 49-62(g) of the County Code (Attachment A). The subject petition requested abandonment of the eastern 18 feet of right-of-way of Reed Street, located between Bethesda Avenue and Elm Street in downtown Bethesda. JBG/Woodmont II, LLC ("Petitioner") owns the adjacent property to the east (4749 Bethesda Avenue) and M-NCPPC owns the triangular property, west of the Reed Street right-of-way (4801 Bethesda Avenue) as a result of a recent park acquisition. The surrounding properties are zoned CR-5.0 C-5.0 R-5.0 H-145.

A public hearing has not yet been scheduled however MCDOT staff is coordinating with the Hearing Examiner to set a spring 2018 public hearing in accordance with Section 49-62(f) of the County Code. This memorandum summarizes comments from M-NCPPC for consideration by the County Council.

SITE DESCRIPTION AND BACKGROUND

Reed Street is an improved public right-of-way measuring 50-feet in width (20-feet of paving) that carries the Capital Crescent Trail between Bethesda Avenue and the former Apex Building site/Capital Crescent Trail (7272 Wisconsin Avenue). The right-of-way is accessed by a curb cut on Woodmont Avenue. This access point is restricted to authorized vehicles only, and is intended primarily for pedestrian and bicycle access, as it aligns with a crosswalk across the northern leg of the intersection of Woodmont Avenue and Bethesda Avenue. The northern end of the right-of-way terminates at the tunnel entrance to the Capital Crescent Trail. Given its close proximity to the intersection of Woodmont Avenue and Bethesda Avenue, it is unlikely that the Reed Street right-of-way will ever be needed for vehicular access.

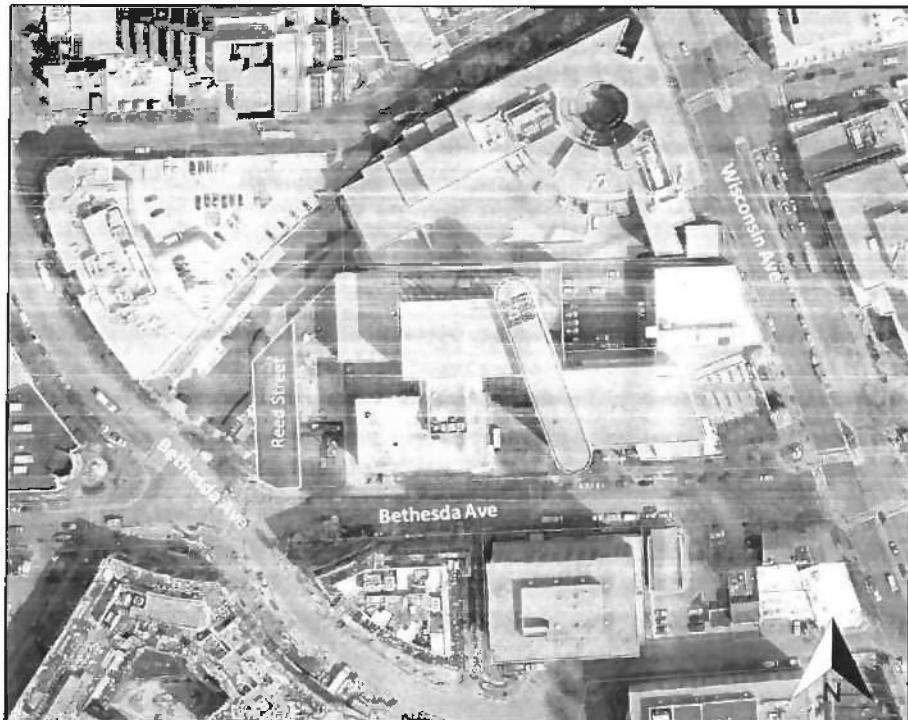


Figure 1: Site Vicinity



*Figure 2: Site Photo
(Looking north toward Reed Street right-of-way from Bethesda Avenue)*



Figure 3: Photo of Reed Street Right-of-Way from Woodmont Avenue (looking east)

Land underlying rights-of-way is considered to carry the zoning of the adjacent property (Sec. 59-2.2.4.A.1). If the eastern portion of the right-of-way is abandoned as requested by the petitioner, the western portion of Reed Street encompassing 5,017 square feet (abutting Lot 142 and N625) would remain as public right-of-way and the eastern portion of Reed Street encompassing 3,303 square feet (abutting Part of Lot 93) would revert to the Petitioner. An illustrative image showing these portions of Reed Street is provided in Attachment B, "the Abandonment Allocation Plan."

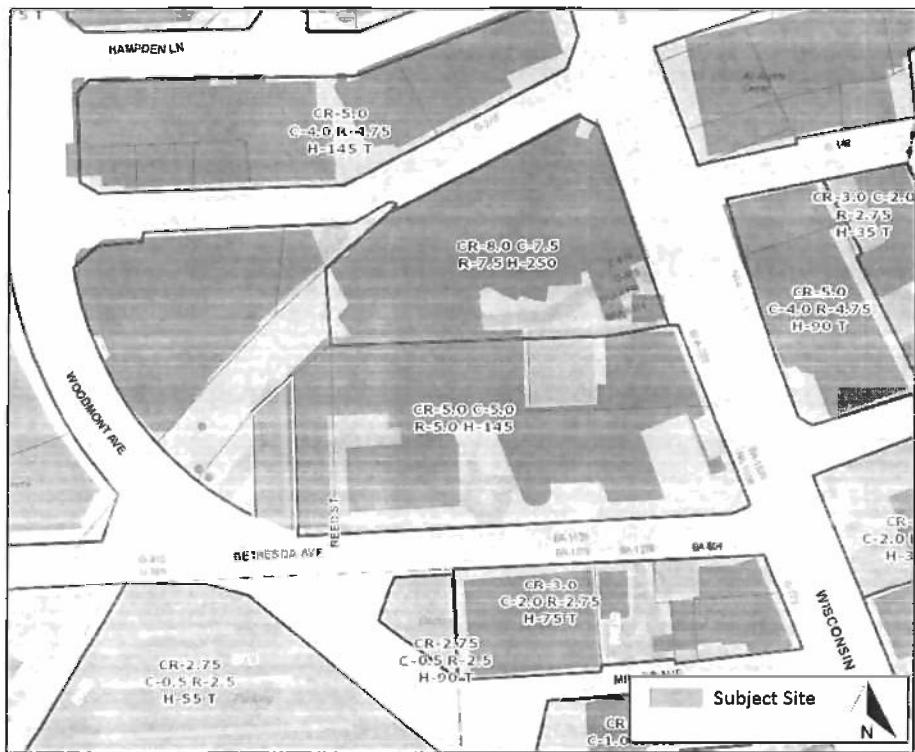


Figure 4: Zoning Map

Maintenance and Liability Agreement

Prior to submitting the subject abandonment petition, the Petitioner entered into a Maintenance and Liability Agreement with the County Department of Transportation to permit non-standard elements within the right-of-way. This agreement allows tables and chairs, special pavers, improved landscaping and hardscape elements associated with the 4749 Bethesda Avenue building. In addition, the interim Capital Crescent Trail is accommodated within the Reed Street improvements. These improvements were completed at the end of last year by the Petitioner. A landscape plan, approved by MCDOT, is included in Attachment C. This agreement is recorded in the Montgomery County land records in Book 52645 Page 24 (Attachment D).

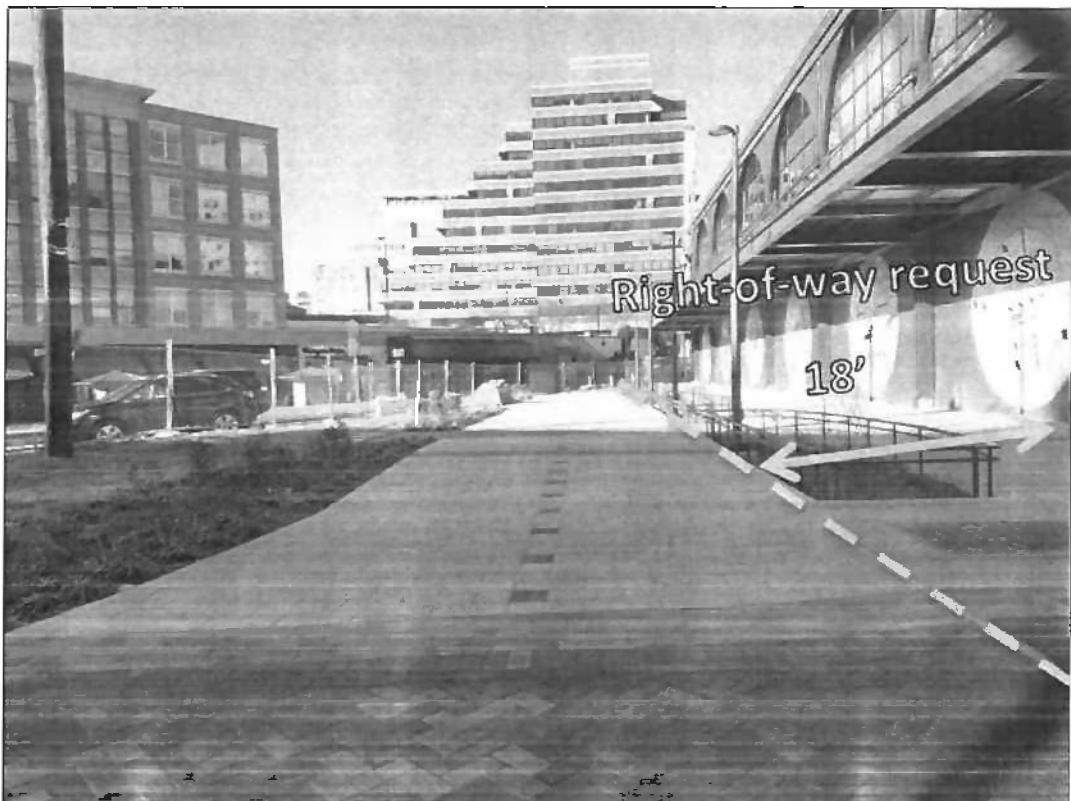


Figure 5: Looking north along Reed Street Right-of-way (The petition for abandonment includes the hardscape and fenced tree pits to the right; the trail is the paved portion straight ahead)

Previous Abandonment Petitions

In April 2007, JBG and FRIT successfully petitioned the Council for abandonment of Reed Street (AB 702); however, the abandonment was not recorded within the five-year time period established by Sec. 49-65(d) and was thereby revoked. Since that time, the 2017 Bethesda Downtown Sector Plan was approved, setting forth a vision for a public gathering space and continued public use for the Capital Crescent Trail adjacent to the subject abandonment petition.

On March 22, 2017 the Petitioner filed a petition, designated AB757, for Abandonment of the entire 50-foot width of the Reed Street right-of-way, encompassing a total of 8,320 square feet. As proposed in that petition, half the width of the 50-foot wide right-of-way would have reverted to the Petitioner and the remainder would have reverted to the property owner to the west (Lot 142 and ND625)¹. The Petition was withdrawn and subsequently refiled to request abandonment of only 18 feet of the right-of-way.

The 18-foot wide portion petitioned for abandonment is the same portion of the right-of-way that was approved by the County for non-standard improvements including tables and chairs, special pavers, and improved landscaping and hardscaping as part of the Maintenance and Liability Agreement. If approved, the ownership of part of the right-of-way would change but the appearance and function of the space would be unnoticeable.

¹ This property has been acquired from Street Retail by the Montgomery County Parks Department

Purple Line Franchise Agreement

The Council approved a franchise agreement with the Maryland Transit Administration (MTA) to build, operate, and maintain the Purple Line within specific County-owned rights-of-way, of which Reed Street is listed, on July 25, 2017. This agreement is not affected by the subject petition; if the abandonment is approved as proposed, the remaining width is sufficient for construction and maintenance access for the Purple Line.

Park Property Acquisition Status of Lot 142

The M-NCPPC, through the Parks Department, successfully negotiated a Land Purchase Agreement to acquire Parcels P142 and N625, along the west side of the Reed Street right-of-way. (Liber 55551, Folio 371) on December 28, 2017 (See Figure 6). Negotiations are currently underway between MTA & M-NCPPC to sell certain perpetual and temporary easements on said properties for the purpose of construction, operation, and maintenance of the Bethesda Purple Line Station.

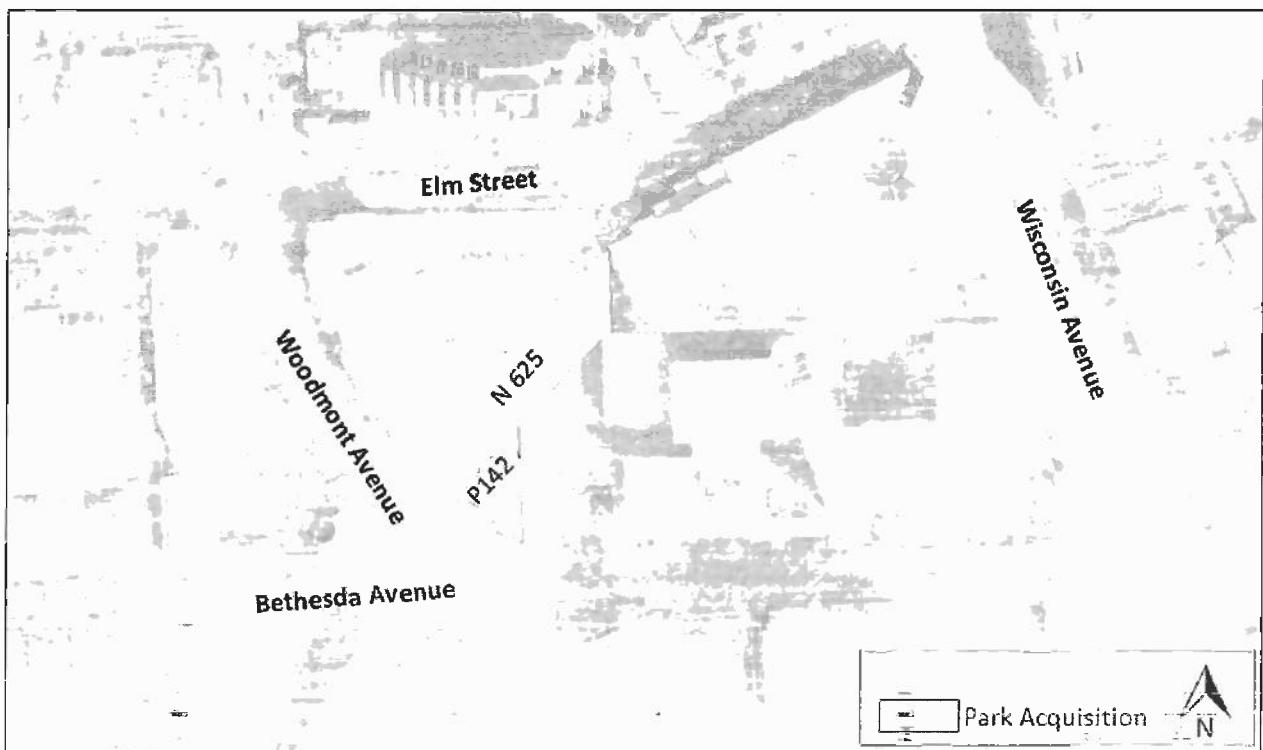


Figure 6: Park Acquisition Site

ANALYSIS AND FINDINGS

Conformance to the Master Plan

The 2017 Bethesda Downtown Sector Plan envisions the subject vicinity as a civic gathering space at the entrance to the future Purple Line Station and Capital Crescent Trail tunnel (Figure 3.04, page 105). This recommendation fits into the larger Sector Plan goal for the Bethesda Row District, which is to, "create a major central gathering space that can be a hub of activity and connect Bethesda Row to regional transit, trails and surrounding districts".

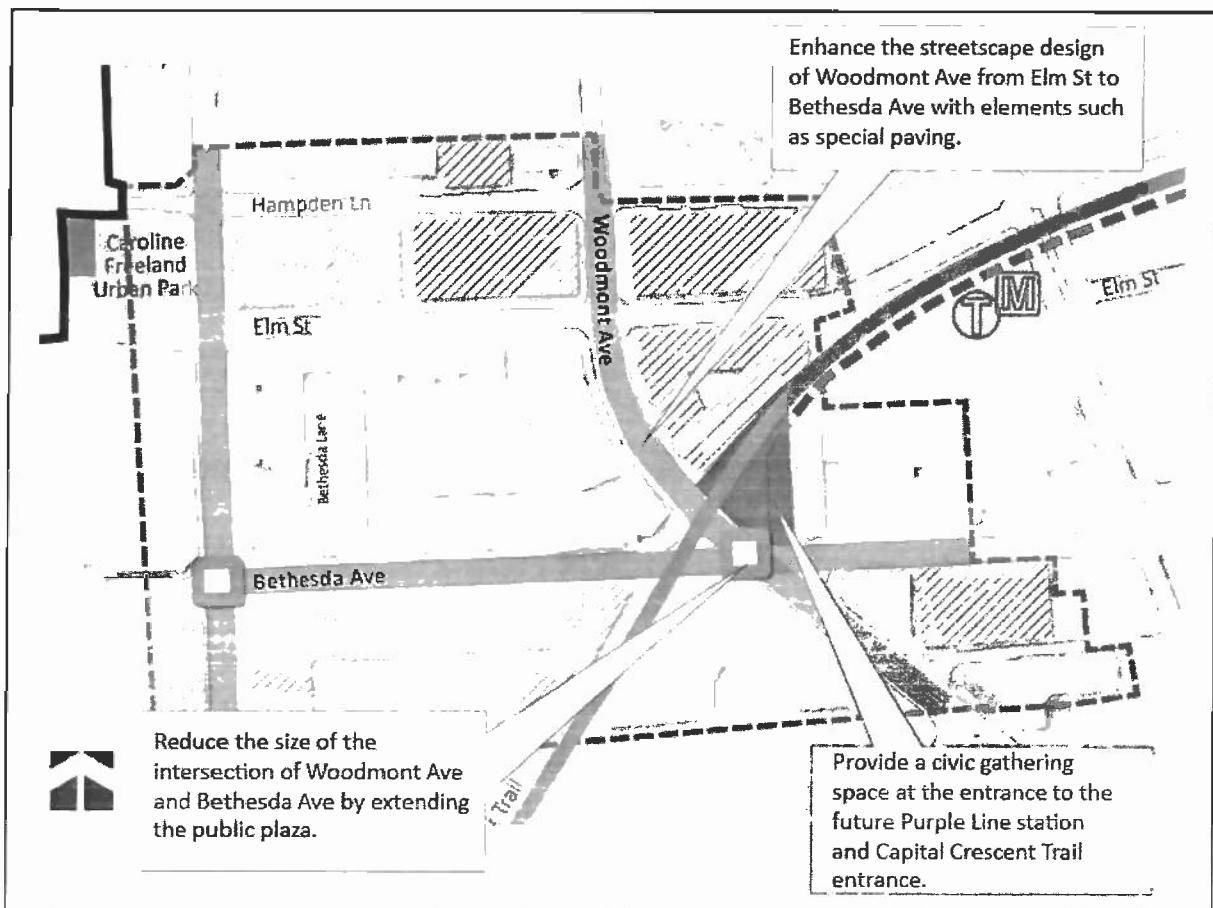


Figure 7: Figure from Bethesda Downtown Sector Plan, Bethesda Row District Public Realm Improvements

Chapter 49 Findings

Section 49-63(c)(1) -(2) of the Montgomery County Code (the “Code”) authorizes the County Council to abandon a right-of-way, including a public road, upon a finding that:

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 or closing is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned or closed.

Furthermore, Section 49-62(a) of the Code defines right-of-way, as the following:

any road, street, alley, crosswalk, pedestrian walkway, shared use path, water main, sanitary sewer, storm sewer, or storm drainage right-of-way used at any time by the public, including use by pedestrians and bicyclists.

A portion of the Reed Street right-of-way is currently improved with the Capital Crescent Trail, a regional pedestrian and bicycle pathway connecting Georgetown in Washington, D.C. to Silver Spring in Montgomery County. Although the Reed Street right-of-way is not part of the roadway network and is not used by motor vehicles, it currently carries high volumes of pedestrians and bicyclists traveling on the Capital Crescent Trail. In

2016, permanent counters on the trail near the site recorded 854,945 users¹. Furthermore, several area master plans and functional master plans include the Capital Crescent trail as a feature of the long-term vision of the County's non-motorized network.

As proposed in the petition, the Petitioner is seeking abandonment of the portion that is not currently occupied by the Capital Crescent Trail. As part of the Maintenance and Liability Agreement, the Petitioner has already improved the portion of the Reed Street right-of-way directly east of the trail connection (i.e. the 18-feet identified for abandonment). The portion that is included in the abandonment request is not needed for access to the trail or the Purple Line and has already been improved with hardscape and plantings to support outdoor café space, as permitted through the MCDOT Maintenance and Liability Agreement. The request for abandonment therefore proposes an outcome that is compatible for the Bethesda Downtown Plan, MTA construction and maintenance access, and Chapter 49 of the Code.

Citizen Correspondence and Issues

The Petitioner has complied with all submittal and noticing requirements. As of the date of this staff report, Staff has not received any substantive correspondence regarding the petition.

CONCLUSION

Staff recommends the Planning Board support the Petition and transmit comments, recommending approval of the Right-of-Way Abandonment Petition AB757, Reed Street, to the Montgomery County Department of Transportation. As stated in the staff report, this portion of Reed Street is not necessary for public use.

Attachments

Attachment A – Petition for Abandonment of a Portion of Reed Street

Attachment B - Reed Street Proposed Abandonment Allocation Plan

Attachment C - Reed Street Design Plan

Attachment D – Maintenance and Liability Agreement Declaration of Covenants (Book 52645 Page 24)

¹ The year total captured by the permanent counters on the Capital Crescent Trail near Bethesda Avenue for November 2015 through October 2016 was 854,945, 60% pedestrians, and 40% cyclists. This equates to roughly 2,342 users per day.

Re: Comments on AB-757: Reed Street abandonment

Mary Flynn - CBAR <mary@cbar.info>

Mon 3/26/2018 9:07 AM

To: Cassedy, Michael <Michael.Cassedby@montgomerycountymd.gov>;

Great, thank you. I will make comments in my capacity as mayor of the Town of Chevy Chase and as president of CBAR.

See you Wednesday.

Mary

On Mon, Mar 26, 2018, 8:37 AM Cassedy, Michael <Michael.Cassedby@montgomerycountymd.gov> wrote:

Thank you for your comments which I will include among the case records. You are welcome to attend and speak at the public hearing.

Sincerely yours,

Mike Cassedy

Department of Transportation

Division of Transportation Engineering

100 Edison Park Drive - 4th Floor

Gaithersburg, MD 20878

Phone: 240-777-7254

From: Mary Flynn - CBAR <mary@cbar.info>
Sent: Sunday, March 25, 2018 1:11:43 PM
To: Cassedy, Michael
Cc: Casey Anderson; Wright, Gwen; Harris, Patricia A.; Amanda Farber
Subject: Comments on AB-757: Reed Street abandonment

Dear Mr. Cassedy,

Thank you for the opportunity to comment on AB-757, Abandonment of Portion of Reed Street at Bethesda Avenue.

On Thursday, March 1, I raised concerns with the Planning Board on behalf of the Coalition of Bethesda Area Residents (CBAR). Since that time, we have worked with attorney Pat Harris to learn more about the nature of the abandonment request and the privileges that JBG currently enjoys under the Liability and Maintenance agreement between it and the County (dated August 15, 2016).

Our position is now clear that consideration of the abandonment request is premature and should not be considered until:

1. The Purple Line rail tracks are built and the Purple Line is operational

Reed Street Abandonment

Dedun Ingram <idedun@gmail.com>

Mon 3/26/2018 10:40 PM

To:Cassedby, Michael <Michael.Cassedby@montgomerycountymd.gov>;

Dear Mr. Cassedy,

I am submitting the following testimony regarding the proposed Reed Street abandonment. Would you please share this with the County Council.

Dear County Council members,

I urge you to vote against abandonment of Reed Street. There is no credible reason for abandoning this street at this time and many reasons for not doing so.

The County should not give up any options for the use of this land until:

- 1) the Purple Line's construction is finished so this right -of-way is no longer needed for any construction activities;
- 2) the Purple Line's construction is completed and it is known where the tail tracks will be and what maintenance access will be required;
- 3) the Capital Crescent Civic Green (the top priority new park space in the Bethesda Downtown Plan) has been designed;
- 4) the location of the replacement Capital Crescent Trail and the space needed for it have been determined.

Abandonment of Reed street at this time does not conform to the new Bethesda Downtown Plan. Its abandonment would limit potential designs

for the Plan's top priority Bethesda Civic Green and potentially cramp the replacement Capital Crescent Trail (or even result in placement of Purple Line maintenance access on top of the Trail which would be dangerous and inconvenient for Trail users.

Abandonment of Reed street is not consistent with Section 49. At this time, it cannot be determined that this right-of -way will not be "necessary for present public use or anticipated public use in the foreseeable future". It also is not the case that abandonment "is necessary to protect the health, safety and welfare of the residents". The argument that it should be abandoned because there is a crosswalk near it, is not a credible reason for abandonment given the many mid-block driveways in Bethesda, , some of which also are adjacent to crosswalks. Thus, there are no grounds for abandonment.

There is no pressing need to abandon Reed Street now. JBG already has an agreement with the County to use the right-of-way for café seating. Presumably, if the right-of-way is abandoned to JBG, they would continue to use the right-of-way in accordance with the existing agreement. That being the case, there is no reason to abandon this public right-of-way now.

Indeed, another reason for not abandoning Reed Street is that now JBG's use is controlled by the agreement, but if Reed Street is abandoned, the County loses that control and it is not certain that, the appearance and function of the space would not change.

Until the design of this critically important space in the heart of Downtown Bethesda has been fully mapped out and all of the demands for this space worked out, no portion of Reed Street should be abandoned. It is not in the County's or the public's best interest to limit options for this area at this time. Nor is there any good reason to do so.

I urge you to keep all of the options open for this space and to uphold the tenants of Section 49 by voting against abandonment of any portion of Reed Street.

Thank you for your consideration

Deborah Ingram
4411 Elm St.
Chevy Chase, MD, 20815

Abandonment of a Portion of Reed Street - AB-757

Jenny Sue Dailey <jennysuedailey@aol.com>

Tue 3/27/2018 10:30 PM

To:Cassedby, Michael <Michael.Cassedby@montgomerycountymd.gov>;
Cc:Casey.Anderson@mncppc-mc.org <Casey.Anderson@mncppc-mc.org>; gwen.wright@montgomeryplanning.org
<gwen.wright@montgomeryplanning.org>; Riemer's Office, Councilmember <Councilmember.Riemer@montgomerycountymd.gov>;

Mr. Cassedy,

I am sorry that I am unable to attend the public hearing on Wednesday the 28th on the abandonment of a portion of Reed Street.

I am writing to you as an individual Board member of the Capital Crescent Trail Board and want to express my concern over a premature decision at this time.

The Trail is within the 18 foot width abandonment that is being considered and should be protected from any unforeseen circumstances.

I urge you to delay this decision until the tail tracks are in place and the Purple Line is operational and factual information relevant to such circumstances is available to all the stakeholders.

Thank you for your consideration.

Jenny Sue Dunner
5315 Dorset Avenue

Chevy Chase, Md. 20815

Re: Comments on AB-757: Reed Street abandonment

Morris Klein <morrisklein@morrisklein.com>

Wed 3/28/2018 10:59 AM

To: Cassedy, Michael <Michael.Cassedby@montgomerycountymd.gov>;
Cc: ron.tripp@yahoo.com <ron.tripp@yahoo.com>; lynnrb2k@aol.com <lynnrb2k@aol.com>; edwardhcomer@gmail.com <edwardhcomer@gmail.com>; morrisklein@morrisklein.com <morrisklein@morrisklein.com>; tmarra@peacecorps.gov <tmarra@peacecorps.gov>;

From: **Edward Comer** <comer.ed@gmail.com>

Date: Wed, Mar 28, 2018 at 10:19 AM

Subject: Comments on AB-757: Reed Street abandonment

To: michael.cassedby@montgomerycountrymd.gov

Cc: casey.anderson@mncppc-mc.org, gwen.wright@montgomeryplanning.org, paharris@lercheally.com, CCTrailBoard@yahooogroups.com

Dear Mr. Cassedy:

I am submitting the attached comments on behalf of the Coalition for the Capital Crescent Trail (CCCT) about the proposal to abandon a portion of Reed Street in Bethesda next to the entrance to the tunnel used by the Purple Line and the Capital Crescent Trails. CCCT urges that consideration of this request be delayed until the rights-of-way for the Purple Line and the Trail have been resolved, so that the planning for this important section of Bethesda can be coordinated.

Ed Comer, member of the CCCT Board.

ACCOUNT NOS.

07-00421300, 4735 Bethesda Avenue
07-03805730, 7229 Woodmont Avenue

OPTION AGREEMENT

This OPTION AGREEMENT, made this 31st day of March, 2021, by and between JBG/WOODMONT II, LLC, a Delaware limited liability company, and its successors and assigns (hereinafter called "**JBG**"); and the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public body corporate and an agency of State of Maryland (hereinafter called "**MNCPPC**"). JBG and MNCPPC are hereafter sometimes referred to collectively as the "**Parties**".

WITNESSETH:

WHEREAS, JBG is the fee owner of a portion of Part of Lot 1, Block A, Miller's Subdivision, in Montgomery County, Maryland, which has a premise address of 4749 Bethesda Avenue (the "**JBG Property**") and is bordered on the west by the Reed Street Right-of-Way (defined below);

WHEREAS, MNCPPC is the fee owner of Parcel N625, Bethesda Outside, which has a premise address of 7229 Woodmont Avenue and is bordered on the east and north by the Reed Street Right-of-Way, and which property is to be used and operated as a public park (the "**MNCPPC Property**");

WHEREAS, JBG has made application to Montgomery County for formal abandonment and release of a certain eighteen feet (18') portion of the Reed Street Right-of-Way located adjacent to the JBG Property, which portion is no longer needed for right-of-way purposes and is more particularly described in Exhibit "A" attached hereto and made part hereof (the "**Option Property**");

WHEREAS, if Montgomery County formally abandons and releases the Option Property pursuant to JBG's application for such abandonment and release, JBG desires to grant to MNCPPC, and MNCPPC desires to receive from JBG, an option to acquire the Option Property for public use in conjunction with the MNCPPC Property;

NOW, THEREFORE, in consideration of the foregoing recitals, each of which shall be deemed a part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

1. This Agreement and the effectiveness hereof shall be contingent upon the Option Property being formally abandoned by Montgomery County and released of record from the Reed Street Right-of-Way (the "**Abandonment Approval**") by recordation of an appropriate subdivision plat as required by Section 49-65(b) of the Montgomery County Code (the "**Subdivision Recordation**"). If the Abandonment Approval is not granted by Montgomery County within five (5) years of the Execution Date, this Agreement may be terminated by either of the Parties by written notice to the other, in which event this Agreement and the Option shall be and become null and void without the requirement of any further action by the parties hereto.

2. Upon Montgomery County granting the Abandonment Approval, JBG shall promptly and diligently pursue and complete the Subdivision Recordation.

3. Subject to the terms and conditions set forth in Section 1 above, JBG hereby grants to MNCPPC the option to acquire the Option Property from JBG (the "**Option**"), in consideration of the sum of One Dollar (\$1.00) and MNCPPC's affirmative covenant to use the Option Property solely for public park trail purposes only, such option to be exercised by MNCPPC by written notice given to JBG (the "**Option Notice**") not earlier than the thirtieth (30th) anniversary of the Effective Date. The Option is personal to MNCPPC, may not be

assigned or transferred by MNCPPC except as permitted by Section 6 of this Agreement, and shall be and become permanently and irrevocably null and void if, at any time, MNCCPC, or a permitted assignee of MNCPPC pursuant to Section 6 of this Agreement, is not the fee simple owner of the MNCPPC Property. The Option Notice must be given by MNCPPC, if at all, and received by JBG, within ninety (90) days prior to the thirtieth (30th) anniversary of the Effective Date (the “**First Exercise Window**”), failing which MNCPPC shall not have the right to exercise the Option until after the thirty-fifth (35th) anniversary of the Effective Date. If, after failing to exercise the Option during the First Exercise Window, MNCPPC fails to exercise the Option, which requires receipt of the Option Notice by JBG, within ninety (90) days after the thirty-fifth (35th) anniversary of the Effective Date (the “**Second/Final Exercise Window**”), the Option shall automatically lapse and expire, in which event this Agreement shall terminate and be and become null and void without the requirement of any further action by the parties hereto. Time is of the essence of the provisions set forth in this Section 3.

4. For the purposes of this Agreement, the “**Effective Date**” is the date the Subdivision Recordation occurs, and the “**Execution Date**” is the date of the last signature of this Agreement.

5. Any notice required under this Agreement shall be sent via U. S. Postal Service with return receipt requested, commercial messenger service or overnight carrier to the following addresses:

MNCPPC: 2425 Reedie Drive, 11th Floor
Wheaton, MD 20902
Attn: Real Property Management

with a copy to: Office of General Counsel
6611 Kenilworth Avenue, Suite 200
Riverdale, MD 20737

JGB: JBG/Woodmont II, LLC
 4747 Bethesda Avenue, Suite 200
 Bethesda, MD 20814
 Attn: Kristi Smith, Executive Vice President

 JBG/Woodmont II, LLC
 4747 Bethesda Avenue, Suite 200
 Bethesda, MD 20814
 Attn: Legal Department

with a copy to: Lerch, Early & Brewer, Chtd.
 7600 Wisconsin Avenue, Suite 700
 Bethesda, MD 20814
 Attn: Patricia A. Harris, Esquire

6. If MNCPPC timely and properly exercises the Option during either the First Exercise Window or the Second/Final Exercise Window, the following provisions shall be applicable:

a. Promptly after MNCPPC's exercise of the Option, JBG shall convey legal title to the Option Property to MNCPPC by special warranty deed for the sum of One Dollar (\$1.00). The special warranty deed shall include the following:

 (i) an affirmative covenant that the Option Property will be used by MNCPPC solely for public park and trail purposes;

 (ii) as an appurtenance to the JBG Property, a permanent non-exclusive easement in favor of the JBG Property across and upon the Option Property for pedestrian access to and from then existing and future doorway entrances and exits to and from the building improvements on the JBG Property adjacent to the Option Property, the area for which non-exclusive easement shall be five feet (5') in width located adjacent to and along the JBG Property;

(iii) a restrictive covenant against any above-grade or below-grade building or other structural improvements, other than public park amenities that support the adjacent trail and urban park that do not adversely affect access to and from the JBG Property as per the permanent non-exclusive easement use described above, being constructed upon the Option Property;

(iv) as an appurtenance to the JBG Property, a permanent projection easement for the outdoor building canopy existing on the Execution Date and currently projecting into a portion of the air space of the Option Property, including any replacement of such building canopy with substantially similar size; and

(v) as an appurtenance to the JBG Property, a temporary non-exclusive easement for the benefit of JBG, its agents, employees and contractors, to enter the Option Property, from time to time, to perform repair and maintenance work on the exterior façade of the building improvements on the JBG Property adjacent to the Option Property, including, without limitation, the aforementioned building canopy. Despite anything to the contrary and subject to Section 6.b. below, JBG shall not close, except temporarily not exceeding fourteen (14) consecutive days (or such longer period of time as MNCPPC may approve in advance) provided JBG is diligently performing such repair or maintenance work, or otherwise unreasonably interfere with the public's or MNCPPC's use of the Option Property at any time.

b. JBG must give a minimum of fifteen (15) days advance notice in writing to MNCPPC before undertaking any major work pursuant to Section 6.a(v). For the purposes of this Agreement the term "**major work**" means any repair and/or maintenance work except for (i) routine sweeping and other similar general cleaning of the pedestrian area or (ii) clearing snow

or ice on the JBG Property. JBG must first obtain MNCPPC's Park Construction Permit for any major work. In performing its repair or maintenance work, including routine general cleaning, except for the temporary closure allowed under Section 6.a(v) above, JBG must not block or otherwise leave debris and other material, including snow and ice, on any part of the Option Property. If it is unavoidable for JBG to prevent depositing debris and other material on the Option Property to perform any non-major work, then JBG may do so on a temporary basis to make the subject repair and/or perform the subject maintenance, *provided always*, that JBG places safeguards sufficient to keep the Option Property safe for the public's use thereon and promptly restores the Option Property to its prior condition upon completion of JBG's subject work.

c. JBG shall maintain, repair, and keep any building canopy or other structure projecting into the air space of the Option Property in sound and safe conditions at all times.

d. Except to the extent caused by the negligence or willful misconduct of MNCPPC or its agents, contractors, servants or employees, JBG shall indemnify and hold MNCPPC harmless from all suits, actions, liability, or claims of liability (including reasonable attorneys' fees) arising out of (i) its use or work under the permitted easements; (ii) any negligent, intentionally tortious, or other act or omission of JBG or any of its agents, contractors, servants, employees, tenants, subtenants, licensees, or invitees in connection with the use under the permitted easements; and any injury to or death of any person or damage to any property occurring in, on, or as a direct result of the use of or any of JBG's activities in connection with the permitted easements hereunder.

e. MNCPPC shall be responsible for recording the special warranty deed and for any and all recording costs, including, without limitation, any and all recordation and transfer taxes, if any, imposed on the recordation of the special warranty deed.

f. MNCPPC represents that the Option Property shall be maintained by it in the similar manner and standard as other MNCPPC public trails of similar nature. To the extent JBG desires to repair, maintain, and/or improve the sidewalk improvements within the permanent non-exclusive easement area to a greater standard or condition than those of MNCPPC, then JBG may do so at its expenses upon first obtaining MNCPPC's written consent, whose consent will not be unreasonably withheld.

g. MNCPPC shall accept the Option Property in its then existing "as is where is" condition, without any representation, warranty or recourse, and shall accept title to the Option Property subject to any and all matters of record and the rights of any tenants and occupants under then existing leases, occupancy agreements or similar instruments with respect to the JBG Property to access and use the improvements on the Option Property pursuant to such then existing leases, occupancy agreements or similar instruments, and subject to this Agreement; it being expressly understood and agreed, however, that JBG will not otherwise burden the Option Property in any manner that would materially and adversely affect MNCPPC's ability to use the Option Property for public park trail purposes.

7. Upon execution and recording, this Agreement shall run with the land and shall be binding upon and inure to the benefit of JBG and MNCPPC, and except as expressly provided herein their respective transferees and assigns. Except as otherwise provided in this Agreement, this Agreement cannot be terminated without MNCPPC's approval.

8. This Agreement shall remain in full force and effect until such time as the Option becomes null and void and/or is terminated as provided in Section 3 hereof. Release of this Agreement may not otherwise occur without written approval from MNCPPC. MNCPPC may, in its own discretion, unilaterally terminate this Agreement at any time.

9. For the purposes of this Agreement, (a) any reference to MNCPPC shall include any governmental or quasi-governmental assigns by virtue of the acts of Maryland General Assembly; and (b) any written notice required hereunder shall be deemed received three (3) days from the date of posting, if sent via U.S. Postal Service, return receipt requested, or one (1) day from the date of posting, if sent via overnight carrier. For the avoidance of doubt, the Option granted herein may not be assigned or transferred to, or exercisable by, any private sector entity or any person or entity that is not a governmental or quasi-governmental entity or agency.

[Signature Pages Follow]

In TESTIMONY WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

JBG:

JBG/WOODMONT II LLC,
a Delaware limited liability company

By: JBGS/Company Manager, IV, L.L.C.
its Managing Member

DocuSigned by:
By: Kevin Reynolds
Name: Kevin Reynolds
Title: Authorized Signatory

STATE OF MARYLAND *
COUNTY OF Montgomery *

I HEREBY CERTIFY that on this 21st day of April, 2021, before me, a Notary Public in and for the State and County aforesaid, personally appeared Kevin Reynolds, known to me or satisfactorily proven to be the Authorized Signatory of JBG/Woodmont II LLC, and that such person, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said Association.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: 9/18/23

[NOTARIAL SEAL]



Approved as to Form and Legality

MARYLAND NATIONAL CAPITAL PARK
AND PLANNING COMMISSION

By: msc
Megan Chung (Mar 30, 2021 13:14 EDT)

Megan S. Chung
Senior Counsel

30-Mar-2021

By: Asuntha Chiang-Smith
Asuntha Chiang-Smith
Executive Director

ATTEST:

By: _____
Joseph C. Zimmerman
Secretary-Treasurer

STATE OF MARYLAND * *

COUNTY OF Montgomery *

I HEREBY CERTIFY that on this 31st day of March, 2021, before me, a Notary Public in and for the State and County aforesaid, personally appeared Asuntha Chiang-Smith known to me or satisfactorily proven to be the Executive Director of Maryland National Capital Park and Planning Commission, and that such person, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of Maryland National Capital Park and Planning Commission.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Stephanie M. Kelly
Notary Public



ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing document was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.



Vernon S. Lynch III

INFORMATION FOR RECORDING:

Parcel I.D. No.:	07-00421300
Record Legal Description:	Parcel 93, Block A, Miller's Subdivision
Street Address of Parcel:	4735 Bethesda Avenue, Bethesda MD 20814
Parcel I.D. No.:	07-03805730
Record Legal Description:	Parcel N625, Bethesda Outside
Street Address of Parcel:	7229 Woodmont Avenue, Bethesda MD 20814

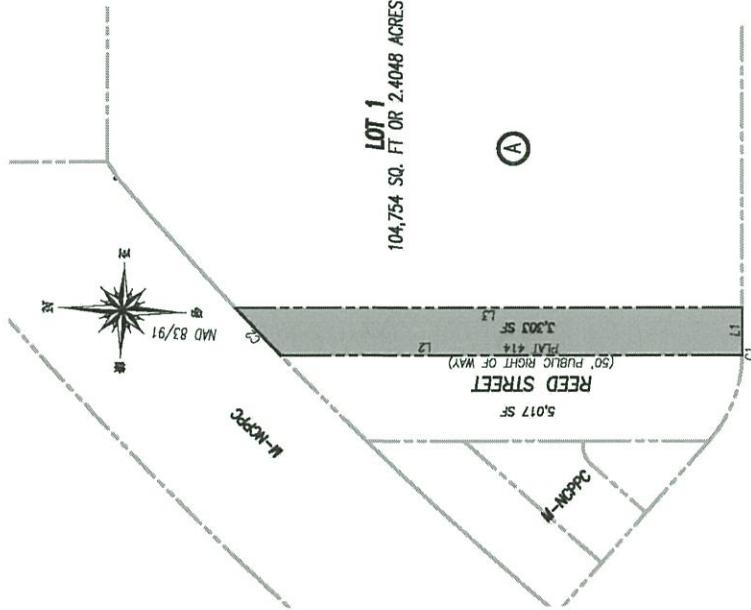
AFTER RECORDATION, PLEASE RETURN TO:

Lerch, Early & Brewer, Chtd.
7600 Wisconsin Avenue, Suite 700
Bethesda, Maryland 20814
Attn: Patricia A. Harris, Esq.

EXHIBIT "A"

(Legal Description of Option Property, i.e.,
The 18' To Be Abandoned Portion of the Reed Street R-O-W)

PROPOSED STREET ABANDONMENT
REED STREET
SECTION 2 METROPOLITAN SOUTHERN RAILROAD
PLAT BOOK B PLAT NO. - 37



BEING PART OF A PARCEL OF LAND, LYING IN THE 7TH ELECTION DISTRICT IN MONTGOMERY COUNTY, MARYLAND, AND BEING PART OF REED STREET (50' R/W) AS SHOWN ON A PLAT ENTITLED "SECTION 2 METROPOLITAN SOUTHERN RR" AS RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN PLAT BOOK B AS PLAT NO. 37 AND BEING MORE PARTICULARLY DESCRIBED IN MARYLAND STATE PLANE MERIDIAN (NAD83/91) AS FOLLOWS:

BEGINNING FOR THE SAME AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WOODMONT AVENUE (50' R/W), SAID POINT ALSO BEING AT THE SOUTHWESTERN CORNER OF LOT 1, AS SHOWN ON A PLAT ENTITLED "J. H. MILLER'S ADDITION TO BETHESDA" AS RECORDED AMONG THE AGREEMENTED LAND RECORDS AS PLAT 25277, ALSO BEING ON THE EASTERNLY RIGHT-OF-WAY LINE OF SAID REED STREET AS SHOWN ON A RIGHT-OF-WAY PLAT ENTITLED AS "RIGHT-OF-WAY PLAT WOODMONT AVENUE EXTENSION MONTGOMERY LANE TO LEAND STREET" AS RECORDED AMONG THE AGREEMENTED LAND RECORDS AS RIGHT-OF-WAY PLAT 103; THENCE ALONG THE NORTHERN RIGHT-OF-WAY OF BETHESDA AVENUE

1. SOUTH 87°22'38" WEST, 17.37 FEET TO A POINT AT THE BEGINNING OF CIRCULAR CURVE TO THE RIGHT; THENCE

2. 0.63 FEET ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 50.00 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 87°44'08" WEST, 0.63 FEET TO THE POINT; THENCE DEPARTING SAID BETHESDA AVENUE RIGHT-OF-WAY AS TO CROSS AND INCLUDE PORTION OF SAID REED STREET

3. NORTH 02°37'25" WEST, 174.87 FEET TO A POINT, SAID POINT BEING AT THE NORTHEASTERLY LIMITS OF SAID REED STREET; THENCE BINDING ON SAID LIMITS

4. 24.87 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 1,399.50 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 43°44'01" EAST, 24.87 FEET TO A POINT, SAID POINT BEING THE NORTHEASTERLY CORNER OF THE AFOREMENTIONED LOT 1; THENCE DEPARTING THE NORTHEASTERLY LIMITS OF SAID REED STREET AND BINDING WITH SAID LOT 1

5. SOUTH 02°37'25" EAST, 192.04 FEET TO THE POINT OF BEGINNING, CONTAINING 3,303 SQUARE FEET OR 0.0768 ACRES OF LAND

LINE BEARING	DISTANCE
L1	S 87°22'35" W 17.37'
L2	N 02°37'25" W 174.87'
L3	S 02°37'25" E 192.04'

CURVE DEFL.	CURVE RADIUS	CH. LENGTH	CH. BEARING	CH. LENGTH
C1	045.00'	0.63'	S 01°44'00" W	0.63'
C2	101.06'	1399.50'	124.87'	124.87'

BETHESDA AVENUE
(50' PUBLIC RIGHT OF WAY)
P.B. "B" P.37

REED STREET
ABANDONMENT AREA

DATE: 6/7/19

EXHIBIT 'A'
REED STREET
ABANDONMENT AREA

205 N. Frederick Ave. Suite 100
Gaithersburg, MD 20877
Tel. (301) 963-1133
Fax: (301) 963-6306
www.jba-inc.net

J • B • A
Johnson • Bernat • Associates, Inc.
Engineering • Surveying • Planning



85150.078

3305148.16

State of Maryland Land Instrument Intake Sheet

Baltimore City **County: Montgomery**
Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.
 (Type or Print in Black Ink Only—All Copies Must Be Legible)

1 Type(s) of Instruments		<input type="checkbox"/> Check Box if addendum Intake Form is Attached. <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td>Deed</td> <td>Mortgage</td> <td><input checked="" type="checkbox"/> Other _____</td> <td>Other _____</td> </tr> <tr> <td>Deed of Trust</td> <td>Lease</td> <td colspan="2"><input checked="" type="checkbox"/> Agreement</td> </tr> <tr> <td>Improved Sale Arms-Length [1]</td> <td>Unimproved Sale Arms-Length [2]</td> <td>Multiple Accounts Arms-Length [3]</td> <td>Not an Arms-Length Sale [9]</td> </tr> </table>				Deed	Mortgage	<input checked="" type="checkbox"/> Other _____	Other _____	Deed of Trust	Lease	<input checked="" type="checkbox"/> Agreement		Improved Sale Arms-Length [1]	Unimproved Sale Arms-Length [2]	Multiple Accounts Arms-Length [3]	Not an Arms-Length Sale [9]																														
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3 Tax Exemptions (if applicable) Cite or Explain Authority																																															
4 Consideration and Tax Calculations		Consideration Amount		Finance Office Use Only Transfer and Recordation Tax Consideration																																											
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6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">District</td> <td style="width: 45%;">Property Tax ID No. (1)</td> <td style="width: 40%;">Grantor Liber/Folio</td> </tr> <tr> <td>07</td> <td>00421300 & 03805730</td> <td></td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Map</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Parcel No.</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Var. LOG</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">(5)</td> </tr> </table>		District	Property Tax ID No. (1)	Grantor Liber/Folio	07	00421300 & 03805730				Map			Parcel No.			Var. LOG			(5)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Subdivision Name</td> <td style="width: 15%;">Lot (3a)</td> <td style="width: 15%;">Block (3b)</td> <td style="width: 15%;">Sect/AR (3c)</td> <td style="width: 15%;">Plat Ref.</td> <td style="width: 15%;">SqFt/Acreage (4)</td> </tr> <tr> <td colspan="6"></td> </tr> </table>		Subdivision Name	Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)																		
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		If Partial Conveyance, List Improvements Conveyed: N/A																																													
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8 Transferred To		Doc. 1 – Grantee(s) Name(s)		Doc. 2 – Grantee(s) Name(s)																																											
		New Owner's (Grantee) Mailing Address																																													
9 Other Names to Be Indexed		Doc. 1 – Additional Names to be Indexed (Optional)		Doc. 2 – Additional Names to be Indexed (Optional)																																											
		JBG/Woodmont II, LLC																																													
		Maryland-National Capital Park & Planning Commission																																													
10 Contact/Mail Information		Instrument Submitted By or Contact Person		<input type="checkbox"/> Return to Contact Person <input type="checkbox"/> Hold for Pickup <input checked="" type="checkbox"/> Return Address Provided																																											
		Name: Sheila A. Beza, Paralegal																																													
		Firm: Lerch, Early & Brewer, Chartered																																													
		Address: 7600 Wisconsin Avenue, #700																																													
		Bethesda, Maryland 20814		Phone: (301) 986-1300																																											
11 Assessment Information		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></td> <td style="width: 15%;">Will the property being conveyed be the grantee's principal residence?</td> </tr> <tr> <td>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></td> <td>Does transfer include personal property? If yes, identify: _____</td> </tr> <tr> <td>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></td> <td>Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).</td> </tr> </table>				Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Will the property being conveyed be the grantee's principal residence?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Does transfer include personal property? If yes, identify: _____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).																																				
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		Assessment Use Only – Do Not Write Below This Line																																													
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="width: 25%;">Terminal Verification</td> <td colspan="2" style="width: 25%;">Agricultural Verification</td> <td colspan="2" style="width: 50%;">Whole Part Tran. Process Verification</td> </tr> <tr> <td colspan="2">Transfer Number</td> <td colspan="2">Date Received:</td> <td colspan="2">Deed Reference: Assigned Property No.:</td> </tr> <tr> <td>Year</td> <td>20</td> <td>20</td> <td>Geo.</td> <td>Map</td> <td>Sub</td> </tr> <tr> <td>Land</td> <td></td> <td></td> <td>Zoning</td> <td>Grid</td> <td>Block</td> </tr> <tr> <td>Buildings</td> <td></td> <td></td> <td>Use</td> <td>Parcel</td> <td>Lot</td> </tr> <tr> <td>Total</td> <td></td> <td></td> <td>Town Cd.</td> <td>Ex. St.</td> <td>Section</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td>Occ. Cd.</td> </tr> </table>				Terminal Verification		Agricultural Verification		Whole Part Tran. Process Verification		Transfer Number		Date Received:		Deed Reference: Assigned Property No.:		Year	20	20	Geo.	Map	Sub	Land			Zoning	Grid	Block	Buildings			Use	Parcel	Lot	Total			Town Cd.	Ex. St.	Section						Occ. Cd.
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		REMARKS:																																													

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AOC-CC-300 (5/2007)

09001.313

LR - Agreement	
Recording Fee	75.00
Name: JBG/WOODMONT II	
LLC	
Ref:	
LR - Agreement	
Surcharge	40.00
<hr/>	
SubTotal:	115.00
<hr/>	
Total:	115.00
04/28/2021 01:02	
CC15-CP	
#14853908 CC0602 -	
Montgomery	
County/CC06.02.04 -	
Register 04	



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