



Committee: T&E
Committee Review: Completed
Staff: Carlos Camacho, Legislative Analyst
Purpose: Final action – vote expected
Keywords: #Abandonment

AGENDA ITEM #5H
July 13, 2021
Action

SUBJECT

DOT Docket No. AB769 - Abandonment of a Public Alley in Block 5 of the West, Chevy Chase Heights Subdivision near Wisconsin Avenue in Bethesda

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 public alley in Block 5 of the West Chevy Chase Heights Subdivision in Bethesda.

The Committee unanimously recommended that the Council approve the resolution abandoning the public alley subject to the specific conditions outlined in the County Executive's proposed resolution as the alley is "no longer necessary for present public use or anticipated public use in the foreseeable future" and "is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned" pursuant to Section 49-63(c) of the Montgomery County Code.

DESCRIPTION/ISSUE

The County Council will take action on a resolution that would grant conditional approval to abandon an improved right-of-way constituting a 10- to 15-foot-wide public alley, approximately 2,475 square feet, located in Block 5 of the West Chevy Chase Heights Subdivision in Bethesda. The public alley runs north/south and bifurcates Block 5, which is framed by Wisconsin Avenue to the west, Tilbury Street to the east, West Virginia Avenue to the south, and Highland Avenue to the north.

The public alley was originally created and intended for public use by the West Chevy Chase Heights Subdivision plat in 1916. The purpose of the public alley is to provide service and loading access to the rear of the retail stores fronting Wisconsin Avenue and thus reducing curb cuts and unnecessary traffic from service vehicles along Wisconsin Avenue.

SUMMARY OF KEY DISCUSSION POINTS

- The applicant, 8001 Wisconsin, LLC, submitted an abandonment petition on October 30, 2019. The applicant, in conjunction with Bredice, LLC, own all of the properties abutting the public alley and the applicant represented that it was authorized to petition for abandonment on behalf of the property owners located in Block 5 ("the assembled block").

- The applicant intends to redevelop the assembled block into a mixed-use residential and retail property that will integrate service and loading on-site, thus rendering the original intent of the public alley useless. Furthermore, the applicant's proposed redevelopment plan is expected to implement land use recommendations contained in the 2017 Bethesda Downtown Sector Plan.
- MCDOT recommended approval of the abandonment contingent upon all existing utilities along the proposed abandonment be abandoned, relocated, or remain in place within a proposed public utility easement at the applicant's expense and if an existing utility is relocated, it should be within the public right-of-way or a proposed utility easement.
- The Montgomery County Planning Department also recommended approval contingent upon approval of a preliminary plan by the Montgomery County Planning Board for the entire assembled block and the recordation of a subdivision plat for the assembled block. The Department reasoned that: 1) the public alley is no longer necessary for current or anticipated future public use; 2) there are no specific recommendations in either the 2018 Bicycle Master Plan or 2017 Bethesda Downtown Sector Plan that include or are relevant to the public alley; and 3) by assembling and abandoning the public alley, the applicant will be able to implement land use and building heights recommendations proposed in the Bethesda Downton Sector Plan.
- 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 did not receive any opposition from community members regarding the proposed abandonment.

This report contains:

June 28, 2021 T&E Committee Staff Report

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T&E COMMITTEE #2
June 28, 2021
Worksession

MEMORANDUM

June 23, 2021

TO: Transportation & Environment Committee

FROM: Carlos Camacho, Legislative Analyst

SUBJECT: DOT Docket No. AB769 - Abandonment of a Public Alley in Block 5 of the West Chevy Chase Heights Subdivision near Wisconsin Avenue in Bethesda

PURPOSE: Discuss and make recommendation for Council consideration

Expected Attendees:

- Eric Willis – Chief, Property Acquisition Section, Montgomery County Department of Transportation (MCDOT)
- Michael Paylor – Chief, Division of Traffic Engineering and Operations, MCDOT and Public Hearing Officer for DOT Docket No. AB769

Today, the Transportation & Environment (T&E) Committee will review the petition and proposed resolution from the County Executive recommending conditional approval to abandon a public alley in Block 5 of the West Chevy Chase Heights Subdivision in Bethesda consisting of approximately 2,475 square feet.

Executive Summary

The County Executive's proposed resolution finds the public alley, the subject of this abandonment, "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 (see ©1-2). The Public Hearing Officer, in his recommendation, also cites Section 49-63(c)(2) stating that the abandonment of the public alley "is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned" when considering that the abandonment of the public alley will facilitate the implementation of recommendations contained in the adopted 2017 Bethesda Downtown Sector Plan.

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. The Montgomery County Planning Board approves a Preliminary Plan of Subdivision for the Assembled Block as defined in the Executive's report, including the Public Alley being abandoned.

2. The Applicant must at its sole cost prepare and record a new subdivision plat for the Assembled Block that creates a single lot of record for the Assembled Block which incorporates the Public Alley into the newly created lot.
3. The Applicant must grant, prepare, and record any necessary easements for County storm drains and public utility facilities, including but not limited to gas lines, electric facilities, and water and sewer facilities to the satisfaction of the County or the public utility, as applicable, allowing such facilities to remain at their current location or relocated locations, and providing perpetual right of ingress and egress from the easement area at any time (which rights must not be subordinate to other interests).
4. The Applicant must complete the aforementioned conditions required for the abandonment of the Public Alley within seven (“7”) years.

Furthermore, the County Attorney must record among the Land Records of Montgomery County a copy of the resolution approving the abandonment of the subject area.

Description of the Property

The subject of the abandonment application is an improved right-of-way constituting a 10- to 15-foot-wide public alley, approximately 2,475 square feet, located in Block 5 of the West Chevy Chase Heights Subdivision in Bethesda. The public alley runs north/south and bifurcates Block 5, which is framed by Wisconsin Avenue to the west, Tilbury Street to the east, West Virginia Avenue to the south, and Highland Avenue to the north (see ©14).

The public alley was originally created and intended for public use by the West Chevy Chase Heights Subdivision plat in 1916. The purpose of the public alley is to provide service and loading access to the rear of the retail stores fronting Wisconsin Avenue and thus reducing curb cuts and unnecessary traffic from service vehicles along Wisconsin Avenue.

Applicant and Background

On October 30, 2019, the applicant, 8001 Wisconsin, LLC, submitted an application to MCDOT requesting the closure and abandonment of the public alley (see ©5-13). 8001 Wisconsin, LLC is a derivative of the B.F. Saul Company, a private real estate company located in Bethesda, MD. The applicant, in conjunction with Bredice, LLC, own all of the properties abutting the public alley and the applicant represented that it was authorized to petition for abandonment on behalf of the property owners located in Block 5 (“the assembled block”).

The applicant intends to redevelop the assembled block into a mixed-use residential and retail property that will integrate service and loading on-site, thus rendering the original intent of the public alley useless. Furthermore, the applicant’s proposed redevelopment plan is expected to implement land use recommendations contained in the 2017 Bethesda Downtown Sector Plan (see ©31-45) and also achieve the sector plan’s recommended building heights of 90 feet for the area abutting the public alley.

Public Hearing Testimony

Mr. Josh Tracey, MCDOT. Mr. Tracey spoke on behalf of MCDOT to describe the general process and procedures taken by MCDOT to consider the abandonment application, including receipt of the abandonment application, receipt of the exhibits/evidence entered into the record, notice given for the public hearing, notice given to the property owners abutting the public alley, and receipt of comments from government agencies and public utilities are prescribed by Section 49-62(h) of County Code.

Mr. C. Robert Dalrymple, Esq., Selzer Gurvitch Abin Wertheimer & Polott, P.C.

Mr. Dalrymple spoke on behalf of the applicant, representing the applicant in the abandonment petition. Mr. Dalrymple stated that the abandonment is appropriate as the public alley is no longer needed now or in the foreseeable future for any public use or benefit.

Mr. Dalrymple asserted that the redevelopment being proposed by the applicant is in accordance with the approved Bethesda Downtown Sector Plan and that the abandonment is necessary in order to carry out the tenants of the sector plan and to create a new circulation pattern via the redevelopment process. Mr. Dalrymple also noted that to the best of his knowledge, there has been no opposition to the proposed abandonment.

Mr. Dalrymple requested that the validity period for the abandonment resolution be extended to seven years instead of five due to potential delays, due to the COIVD-19 pandemic, in preparing and recording a new subdivision plat.

Mr. Vincent Burke, B.F. Saul Company. Mr. Burke also spoke on behalf of the applicant. Mr. Burke worked with his colleagues at B.F. Saul to gain control of the entirety of the block from 2005 to 2019 and is now responsible in carrying out the redevelopment process of the assembled block.

Mr. Burke described the current use of the public alley and how the alley will be rendered useless with the mix-used development concept proposed by the applicant as all of the service and loading will take place internally via an underground garage and an ingress/egress along Wisconsin Avenue (see ©46).

Mr. Burke detailed the concept plan as being “mixed-use with ground floor retail fronting Wisconsin Avenue...and residential above that with a height of 90 feet...on the western portion of the block tapering down to 70 feet where it confronts what's known as Eastern Greenway. Eastern Greenway is a network of public open space that will face Tilbury Street and help to serve, in addition to that tapering of the height...serve as a buffer to the single-family residential neighborhood that sits east of Tilbury Street. In that configuration, the public alley serves no purpose. All of the service and loading will be internal to the block.”

The redevelopment also envisions a port share on Highland Avenue that will give residents pick-up and drop-off access. Mr. Burke also emphasized that the proposed redevelopment is consistent with the adopted Bethesda Downtown Sector Plan as the applicant worked closely with Planning Board staff to ensure consistency with the sector plan. Mr. Burke did state that while the public

alley is currently necessary to service the retail establishments fronting Wisconsin Avenue, that it will no longer be necessary once those properties are demolished and the applicant moves forward with the proposed redevelopment.

Mr. Josh Sloan, Vika Maryland LLC. Mr. Sloan spoke on behalf of the applicant as an expert witness in land planning and landscape architecture. Mr. Sloan stated his familiarity with the property, its current zoning regulations, the entitlement process that will be required for the redevelopment of the assembled block, his involvement in offering recommendations and testimony during the sector plan process, and finally his oversight role with regards to the applicant's concept plan and design.

Mr. Sloan explained that the current alley only provides vehicular access and is not recommended for pedestrian use. Mr. Sloan reiterated that once the properties are consolidated, the service functions once assumed by the public alley will be continued via internal access for loading, servicing, and parking and will not be needed for any public purpose including pedestrian traffic, through traffic, or circulation.

Ms. Nancy Randall, Wells Associates. Ms. Randall spoke on behalf of the applicant as an expert witness in transportation planning. Ms. Randall stated that she prepared the traffic impact study for the assembled block, which included an analysis of how the public alley generally serves the public.

Ms. Randall reiterated the current use of the public alley - parking and trash pick-up for the retail properties along Wisconsin - and the fact that it "does not serve as a public access way for the general public and [more] specifically for pedestrians since the alleys are so narrow and don't have proper accommodations."

Ms. Randall also stated that the public alley serves no function on the proposed redevelopment plan, is not necessary for circulation for the general public, is not necessary for present public use or anticipated public use, and is consistent with the Bethesda Downtown Sector Plan, which is in the public interest.

Agency Input and Recommendations

MCDOT. On January 27, 2020, MCDOT recommended conditional approval of the abandonment contingent upon all existing utilities along the proposed abandonment be abandoned, relocated, or remain in place within a proposed public utility easement at the applicant's expense. Furthermore, MCDOT recommended that if an existing utility is relocated, it should be within the public right-of-way or a proposed utility easement (see ©30).

Montgomery Planning Department. On February 20, 2020, the Montgomery County Planning Department recommended approval of the abandonment of the public alley contingent upon: 1) approval of a preliminary plan by the Montgomery County Planning Board for the entire assembled block and 2) the recordation of a subdivision plat for the assembled block, incorporating the abandonment of the existing public alley to create a single lot of record.

The Planning Department's recommendation is based on the following facts:

- 1) The public alley is no longer necessary for current or anticipated future public use;
- 2) There are no specific recommendations in either the 2018 Bicycle Master Plan or 2017 Bethesda Downtown Sector Plan that include or are relevant to the public alley; and
- 3) By assembling and abandoning the public alley the applicant will be able to implement land use and building heights recommendations proposed in the Bethesda Downtown Sector Plan.

The Planning Department recommendation can be seen at ©28-29.

The Department of Permitting Services (DPS). MCDOT also reached out to DPS staff who stated they had no issue with the proposed abandonment as there were no existing storm drainage structures or utilities within the public alley.

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:

- **Washington Suburban Sanitary Commission (WSSC)** – Consented to the abandonment as it has no facilities within the proposed abandonment area.
- **Washington Gas** – Consented to the abandonment as they were informed of the applicant's intention to disconnect and abandon the gas facilities within the public alley as part of the block's redevelopment process.
- **Pepco** – Did not have any issue with the proposed abandonment as the proposed development will include all existing building and services in that block and thus not impact service to properties not owned by the applicant.
- **Montgomery County Police Department (MCPD)** – Was contacted on November 25, 2019 but did not respond and thus it is assumed that MCPD has no issue with the proposed abandonment.
- **Montgomery County Fire and Rescue** – The Office of the Fire Marshall was contacted by MCDOT but had no comment with regards to the abandonment.

Public Hearing Officer. After review of all evidence in the public record, the Public Hearing Officer recommends approval for the abandonment subject to the conditions listed in the County Executive's proposed Resolution (see ©15-27).

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 provide comments. No public agency, utility, or member of the public opposed the abandonment request.

The Public Hearing Officer cited witness statements asserting that the only utility the alley may currently have to the public is in the removal of trash and in the facilitation of delivery services to

the retail properties fronting Wisconsin Avenue. However, the public alley will be rendered “unnecessary [to] the future development as contemplated in the Concept Plan.” Furthermore, the Montgomery County Planning Department advised that “land use recommendations contained in the Bethesda Downtown Plan can be accomplished through the redevelopment of the Assembled Block and abandonment of the Public Alley,” thus promoting the public interest through the implementation of sector plan recommendations.

Also, the Public Hearing Officer found no evidence that the public alley is necessary for traffic movement or circulation in the general vicinity of the ROW.

Council Staff Recommendation

Council Staff recommends conditional approval of the abandonment as stated in the County Executive’s proposed resolution.

This Packet Contains:

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OFFICE OF THE COUNTY EXECUTIVE

MEMORANDUM

April 13, 2021

TO: Tom Hucker, President

FROM: Marc Elrich, County Executive



SUBJECT: DOT Docket No. AB769 Abandonment of a Public Alley in Block 5 of the West Chevy Chase Heights near Wisconsin Avenue in Bethesda

I am attaching for your consideration a proposed Resolution by which the County Council might approve the abandonment of a public alley right-of-way near Wisconsin Avenue in Bethesda. A brief summary of this proposed abandonment request follows:

By letter dated October 30, 2019, the Applicant, 8001 Wisconsin, LLC, requested the abandonment of a public alley adjacent to a portion of Wisconsin Avenue in Bethesda that divides a larger parcel of individual lots owned by the Applicant.

The public alley is approximately 10-15 feet wide and bifurcates in a north/south direction the entire block framed by Wisconsin Avenue to the west, Tilbury street to the east, West Virginia Avenue to the south, and Highland Avenue to the north. All of the properties in this entire block have been assembled by the Applicant and related entities. The requested closure and abandonment of the public alley is a necessary component of the Applicant's proposed mixed-use residential and retail development of the assembled block as envisioned in the Downtown Bethesda Sector Plan. A drawing depicting the area being sought for abandonment is included in the record as Exhibit E.

A public hearing on the abandonment request was held on July 28, 2020.

The following supporting materials are transmitted with this memorandum:

1. Proposed County Council Resolution

2. Public Hearing Officer's Report and Recommendation dated January 6, 2021, recommending approval of the abandonment request, including exhibits referenced and a transcript of the proceedings.

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

<https://montgomerycountymd.gov/dot-dte/projects/ROWAB/AB769/PublicHearingRecord.html>

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

Attachments

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DOT Docket Nos. AB769
Abandonment – Public Alley Right of Way in Block 5 of the West Chevy Chase Heights Subdivision near 8001 Wisconsin Avenue
Bethesda, 7th Election District

Background

1. By letter dated October 30, 2019, 8001 Wisconsin, LLC (the “Applicant”), requested the abandonment of a public alley in Block 5 of the West Chevy Chase Heights Subdivision in Bethesda.
2. A Public Hearing to consider the abandonment proposal was held on July 28, 2020 by the designee of the County Executive.
3. The County Executive forwarded to the County Council the application for abandonment, a report based on the record of the proceedings, together with exhibits relied upon and a transcription of the hearing, and recommended approval of the proposed abandonment request subject to conditions contained in the Executive’s report.

Action

The County Council for Montgomery County, Maryland, finds that the public alley in Block 5 of the West Chevy Chase Heights Subdivision consisting of 2,475 square feet, more or less, that is proposed for abandonment (the “Public Alley”) is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment subject to the following conditions which must be satisfied at Applicant’s sole cost and expense prior to the abandonment becoming effective:

1. The Montgomery County Planning Board approve a Preliminary Plan of Subdivision for the Assembled Block as defined in the Executive’s report, including the Public Alley being abandoned;
2. The Applicant must at its sole cost prepare and record a new subdivision plat for the Assembled Block that creates a single lot of record for the Assembled Block which incorporates the Public Alley into the newly created lot.

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

4. The Applicant must complete the aforementioned conditions required for the abandonment of the Public Alley within seven ("7") years.

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

Any person aggrieved by the action of the Council for the abandonments may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.

Selena Mendy Singleton, Esq.
Clerk of the Council

October 30, 2019

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com
Matthew Gordon
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mgordon@linowes-law.com

VIA Hand Delivery

Montgomery County Department of Transportation
Mr. Chris Conklin, Director
101 Monroe Street, 10th Floor
Rockville, Maryland 20850

Re: 8001 Block of Wisconsin Avenue, Bethesda – Application for Closure and Abandonment of Public Alley Running North/South in Block 5 of the West Chevy Chase Heights Subdivision (the “Public Alley”)

Dear Mr. Conklin:

On behalf of 8001 Wisconsin LLC (the “Applicant”), collective owner representative of properties located in the 8001 block of Wisconsin Avenue in Bethesda (the “Assembled Site”), the Applicant is submitting this request for closure and abandonment of the Public Alley pursuant to Section 49-62(b) of the Montgomery County Code (the “Application”). Please find copies of the following Application materials:

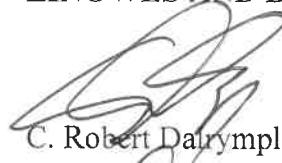
1. Check in the amount of \$2,500.00 made payable to Montgomery County, MD;
2. Narrative and Justification Statement in support of the Application;
3. Tax Map Excerpt of the Assembled Site with the Public Alley highlighted in blue (Exhibit “A”);
4. Metes and Bounds legal description of Public Alley (Exhibit “B”);
5. Civil sketch plan of the Public Alley (Exhibit “C”);
6. Original Subdivision Plat for West Chevy Chase Heights Recorded as Plat No. 186 in the Land Records of Montgomery County on March 31, 1916 (Exhibit “D”);
7. Petition for Abandonment and Circuit Court Order in Equity Case No. 33819 (Exhibit “E”);
8. Existing Conditions Images and Key Map for the Assembled Site and adjacent blocks (Exhibit “F”).

As described in the Narrative and Justification Statement referenced above, the Applicant requests that the Montgomery County Department of Transportation take all necessary actions to allow the soonest possible hearing by the County Executive or the County Executive’s designee to permit the County Executive to expeditiously forward to the County Council a recommendation for approval of this closure and abandonment. We thank you for your time and consideration processing this Application.

Mr. Chris Conklin
October 30, 2019
Page 2

Very truly yours,

LINOWES AND BLOCHER LLP



C. Robert Darymple



Matthew Gordon

cc: Eric Willis, Property Acquisition Section Chief, MCDOT
Mr. Brian Downie, B.F. Saul Company
Mr. Vince Burke, B.F. Saul Company

**L&B 8153353v2/05709.0030

APPLICATION TO CLOSE AND ABANDON RIGHT-OF-WAY

Pursuant to the provisions of Section 49-62 et seq. of the Montgomery County Code, 8001 Wisconsin, LLC (the “Applicant”) requests the closure and abandonment of the improved right-of-way constituting a ten (10’) to fifteen (15’) foot wide public alley that bifurcates in a north/south direction the entire block framed by Wisconsin Avenue to the west, Tilbury Street to the east, West Virginia Avenue to the south and Highland Avenue to the north in the Downtown Bethesda Sector Plan (the “Sector Plan”) policy area (the “Public Alley”). All of the properties in this entire block (the “Assembled Block”) have been assembled by the Applicant and related entities.¹ In this application, the Applicant represents the owners of the properties that abut the Public Alley.² The requested closure and abandonment of the Public Alley is a necessary component of the Applicant’s proposed mixed-use residential and retail redevelopment of the Assembled Block (the “Proposed Project”) as envisioned in the Sector Plan. The Public Alley is shown on the tax map excerpt attached hereto as Exhibit “A”, described in the metes and bounds description attached hereto as Exhibit “B”, and shown in plan view on Exhibit “C” attached hereto. As further described herein, the closure and abandonment of the Public Alley is appropriate as it will no longer be necessary for present public use or anticipated public use in the foreseeable future.

¹ The Assembled Block includes 8001 to 8023 Wisconsin Avenue, 4700 to 4706 Highland Avenue, and 4701 to 4705 West Virginia Avenue, as outlined in yellow on Exhibit “A”.

² 8001 Wisconsin, LLC serves as the Applicant in this matter on behalf of the following property owners that own land abutting the Public Alley: (1) 8001 Wisconsin LLC; (2) Tilbury LLC; (3) West Virginia Holdings LLC; and (4) Bredice LLC (collectively, the “Property Owners”).

By successfully assembling the Assembled Block (a result that was several years in the making) and gaining the ability to redevelop the entire block, the Applicant can implement the Sector Plan land use recommendations for an urban mixed-use redevelopment that will include an integrated and updated service and loading system. The Public Alley was created to provide a narrow rear alley for servicing single-loaded low-rise buildings on Wisconsin Avenue. The Sector Plan now recommends building heights of up to 90 feet on all properties in the western portion of the Assembled Block, including all of the properties that abut the Public Alley. In this respect, the Sector Plan's land use recommendations for the Assembled Block effectively acknowledge that the Public Alley is outdated and obsolete. Therefore, in order to implement the Sector Plan's land use vision for the Assembled Block, it is essential that the Public Alley that bisects the Assembled Block between Highland Avenue and West Virginia Avenue be formally closed and abandoned and replaced by a more efficient and safer service and loading system as contemplated in the Sector Plan for the Wisconsin Avenue Corridor and Eastern Greenway District of Downtown Bethesda. Further, the Sector Plan recommends implementation of an urban park (the "Eastern Greenway") through physical improvements and through appropriate legal instruments ensuring public access along the eastern portion of the Assembled Block. The Sector Plan also recommends dedication of additional public rights-of-way and provision of streetscape improvements along Wisconsin Avenue, Highland Avenue, West Virginia Avenue, and Tilbury Street. To complete abandonment of the Public Alley and to fulfill the contemplated land use vision for the Assembled Block, the Applicant will create a single lot of record for the Assembled Block, inclusive of the abandoned right-of-way and the provision of the dedications and public access recommended in the Sector Plan.

The Public Alley was originally created by the West Chevy Chase Heights Subdivision, recorded at Plat No. 186 in the Land Records of Montgomery County (the “Land Records”) on March 31, 1916 (a copy of the original subdivision plat is attached hereto as Exhibit “D”). Subsequently, an additional five feet (5') of right-of-way along the southeastern portion of the Public Alley was dedicated by the West Chevy Chase Heights Subdivision Plat for Lot 27 – Block 5, recorded at Plat No. 23437 in the Land Records on July 6, 2007. All of the right-of-way constituting the Public Alley (and now being abandoned) was dedicated to public use for no consideration, and the Property Owners own and control all of the properties adjoining the Public Alley. The adjacent blocks to the north and south of the Assembled Block also include 10' public alleys that were presumably intended for the neighborhood trash and servicing needs of the small lots fronting on Wisconsin Avenue in those adjacent blocks. Additionally, the original record plat (Plat No. 186) for the West Chevy Chase Heights Subdivision created a ten foot (10') public alley running east to west through the Assembled Block and intersecting with the Public Alley. This 10'-wide east/west public alley has already been abandoned³ and closed (eliminating another outdated and obsolete element in the original residential neighborhood trash and servicing plan for this area that is now being updated and improved through the implementation of the Sector Plan). As illustrated on the subdivision plat, these east to west ten foot (10') public alleys were created on the blocks to the north and south as well as on the blocks further to the east in the single-family residential neighborhood. While these ten foot (10') public alleys were presumably intended to accommodate the trash and servicing needs of these single-family

³ This ten foot (10') public alley running east to west through the Assembled Block was abandoned pursuant to Equity Case No. 33819, which was approved by the Circuit Court for Montgomery County on October 26, 1967 (a copy of the Petition for Abandonment and Circuit Court Order is attached as Exhibit “E”).

residential dwellings through their respective rear yards, the Public Alley that bifurcates the Assembled Block is no longer necessary to accommodate the loading and servicing needs of the Applicant's Proposed Project because those operations will be more effectively managed through updated internal design features.

As further illustrated by the existing conditions images and key map of the Assembled Block and adjacent blocks to the north and south attached hereto as Exhibit "F", the public alleys running north/south were created in 1916 to provide rear-yard service and loading for small lots fronting on Wisconsin Avenue. Vehicular access through the ten foot (10') public alley on the block to the north of the Assembled Block is no longer available. Simply stated, this system of residential neighborhood and single-loaded commercial service alleys that were provided for the area through the original platting of properties over 100 years ago will no longer serve this public purpose adequately at the Assembled Block, and the new internal servicing and loading systems that will be implemented by the Proposed Project will better serve the public than this outdated and functionally obsolete Public Alley.

Consistent with the above, the Applicant is requesting that the road closure and right-of-way abandonment of the Public Alley be approved by resolution of the County Council conditioned upon the following:

1. Approval by the Montgomery County Planning Board of a preliminary plan of subdivision for the Property (including the existing right-of-way being abandoned); and

2. Recordation of a subdivision plat for the Assembled Block to create a single lot of record for the Proposed Project and incorporating the abandonment of the existing Public Alley.

Pursuant to Section 49-63(c)(1) of the Montgomery County Code, the requested closure and abandonment of the Public Alley is appropriate in that the existing public alley is no longer necessary for present public use or anticipated public use in the foreseeable future. More specifically, this existing Public Alley creates a narrow, single-loaded servicing condition for low-rise commercial buildings and does not function in a manner that: (a) is viable for the Proposed Project's servicing and loading operations; or (b) is consistent with the urban, mixed-use redevelopment vision contemplated for the Assembled Block such that the Public Alley is obsolete and unnecessary. The abandonment and formal closure of this public alley, once replaced with cohesive improvements including the Proposed Project that accommodates enhanced vehicular access and servicing for an urban-mixed use redevelopment (all as envisioned and recommended by the Sector Plan), will better facilitate anticipated public use in the foreseeable future.

In addition to this Public Alley being no longer necessary for present public use or anticipated future use in the foreseeable future, the abandonment and closure is in the public interest as it will allow for the transit-oriented Proposed Project that helps to accomplish several of the Sector Plan's transportation goals, including enhanced roadway accommodation for all users, implementation of new transit alternatives, and improved pedestrian infrastructure. (Sector Plan, p. 35). Significantly, the abandonment and closure of this existing Public Alley will allow for efficient and code compliant driveway access points to the Assembled Block. The various

right-of-way dedications and streetscape improvements provided along Wisconsin Avenue, West Virginia Avenue, Highland Avenue, and Tilbury Street will encourage more accommodating roadway conditions for all users. The Proposed Project will also facilitate additional dedication on Wisconsin Avenue for the planned Bus Rapid Transit (BRT) system and dedication on Tilbury Street to allow for the shared roadway recommended by the Sector Plan. (Sector Plan, pp. 47-48). The abandonment and closure of the Public Alley and creation of one subdivision lot for the Assembled Block also facilitates the Proposed Project's ability to contribute to the Sector Plan's vision for an "Eastern Greenway" along Tilbury Street. Finally, the Sector Plan implicitly acknowledges that the abandonment and closure of the Public Alley is appropriate by recommending building heights to the east and west of the Public Alley that make this outdated service-oriented alley functionally obsolete.

For all of the reasons stated herein, the Applicant requests that the County Council adopt a resolution closing to public use and abandoning the public's right to use the described section of the Public Alley in Downtown Bethesda, subject to the conditions identified above. The Applicant further requests that the Montgomery County Department of Transportation take all necessary actions to allow the soonest possible hearing by the County Executive or the County Executive's designee to permit the County Executive to expeditiously forward to the County Council a recommendation for approval of this closure and abandonment. The proposed closure/abandonment and consolidation of the Assembled Block into one record lot as part of the Proposed Project, all as described herein, is in the overwhelming public interest to permit a safer and more efficient road and pedestrian network in Downtown Bethesda, as envisioned by the Sector Plan.

Respectfully submitted,

LINOWES AND BLOCHER LLP
On behalf of 8001 Wisconsin, LLC

By:



C. Robert Dalrymple

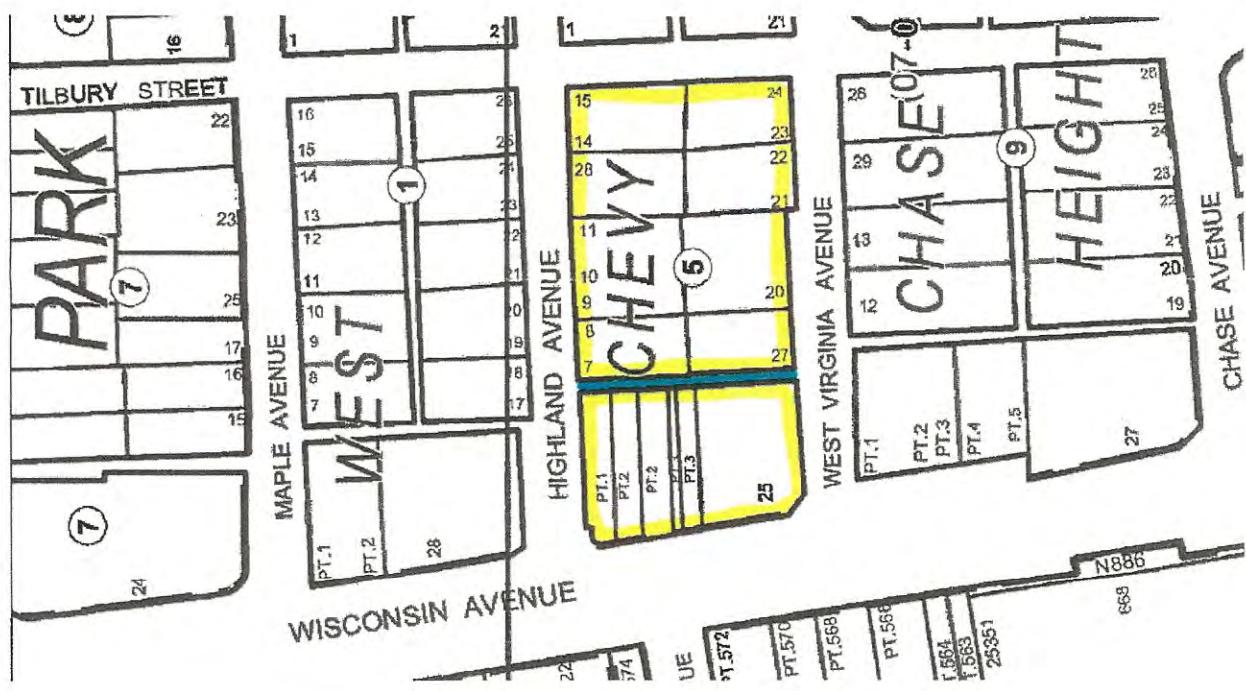
By:



Matthew M. Gordon

**L&B 8133771v5/05709.0030

EXHIBIT E



OFFICE OF THE COUNTY EXECUTIVE
EXECUTIVE OFFICE BUILDING
ROCKVILLE, MARYLAND

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background and Procedural Status

On October 30, 2019, 8001 Wisconsin, LLC (the “Applicant”), by and through its attorneys, petitioned for the closure and abandonment of a public alley containing 2,475, square feet, more or less, located in Block 5 of the West Chevy Chase Heights Subdivision in Bethesda, Maryland (the “Public Alley”). *See Exhibits A, E, F, G, H, J and Y.* The Public Alley runs in a North/South direction, and bifurcates an entire block that is bounded by Wisconsin Avenue to the west, Tillsbury Street to the east, Highland Avenue to the north and West Virginia Avenue to the south (the “Assembled Block”). *Id.* The Applicant represented that it was authorized to prosecute the petition for abandonment on behalf of all of the property owners abutting the Public Alley (Exhibit S). At the time of the hearing, the Applicant and Bredice, LLC owned all of the abutting properties (Exhibit S).

Executive Order No. 024-20, dated February 26, 2020, authorized a public hearing to consider the Applicant's petition for the abandonment of the Public Alley on Monday, April 6,

2020, beginning at 8:00 p.m., in the Lobby Auditorium of the Executive Office Building, 101 Monroe Street, Rockville, Maryland (Exhibit B); however, due to the COVID-19 pandemic, the public hearing was rescheduled and held virtually on July 28, 2020 at 11:00 a.m. As required by Section 49-62 of the Montgomery County Code, notice of the public hearing was provided by way of newspaper publication (Exhibit D), sign posting in the right-of-way (Exhibit K), and by mail to the property owners abutting the Public Alley, and the County solicited responses concerning the abandonment request from required government agencies and utility companies (Tr. 18-25; Ex. L through R). The public hearing was convened according to the rescheduled date of July 28, 2020, and statements were made and documents were received into evidence. At the conclusion of the public hearing, the record was held open until 5:00 p.m. on August 11, 2020 to provide an opportunity for anybody desiring to submit additional comments for the record in writing.

II. SUMMARY OF DOCUMENTS RECEIVED CONSTITUTING EVIDENCE FOR THIS REPORT

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 A: Applicant's letter dated October 30, 2019 requesting abandonment of the Public Alley.

Exhibit B: Executive Order No. 024-20, issued on February 26, 2020, authorizing a hearing on April 6, 2020.

Exhibit C: Montgomery County notice issued on July 15, 2020 that the authorized hearing would be held virtually July 28, 2020 from 11am to 12pm.

Exhibit D: Proof of notice of the rescheduled Public Hearing that was advertised in *The Washington Times*.

Exhibit E: SDAT Tax Map of the West Chevy Chase Heights subdivision, with Block 5

highlighted.

Exhibit F: Surveyor's description of the subject Public Alley proposed to be abandoned.

Exhibit G: Sketch generated by VIKA of the subject Public Alley proposed for abandonment.

Exhibit H: Subdivision Plat No. 186 depicting West Chevy Chase Heights, recorded on March 31, 1916.

Exhibit I: Prior petition for abandonment and Circuit Court order in equity case number 33819 resulting in the prior abandonment of a different public alley that ran between lots 7 through 15 and lots 16 through 24 in Block 5 in the West Chevy Chase Heights subdivision as depicted on Plat No 186.

Exhibit J: Existing condition images of the subject property.

Exhibit K: Sign announcing the rescheduled public hearing date posted on the ROW that provides notice to the public of this virtual hearing to consider the abandonment of the Public Alley.

Exhibit L: Letter from WSSC dated December 23, 2019, indicating that it has no facilities in the Public Alley and consenting to the Petition for Abandonment.

Exhibit M: Email dated January 3, 2020 from Washington Gas indicating the presence of gas lines in the Public Alley and e-mail dated January 23, 2020, indicating its consent to the abandonment request that will require the gas facilities to be disconnected and abandoned during redevelopment .

Exhibit N: Memorandum dated January 27, 2029 from Rebecca Torma and William Whelen of the MCDOT Development Review Team recommending conditional approval of the requested abandonment.

Exhibit O: Email from PEPCO dated February 7, 2020 consenting to the abandonment request of the Public Alley .

Exhibit P: Email dated February 28, 2020 from Atiq Panjshiri, Manager, Right of Way Plan Review for the Montgomery County Department of Permitting Services ("MCDPS") indicating that there are no storm-drainage structures in the Public Alley, and consequently, consenting to the proposed abandonment.

Exhibit Q: Email dated March 20, 2020 from Patsy Warnick, Manager, Fire Code Compliance for the Montgomery County Department of Permitting Services ("MCDPS")

indicating no comments on the proposed abandonment.

Exhibit R: Memorandum dated February 20, 2020 from staff at the Montgomery County Planning Department of the Maryland National Capital Park and Planning Commission (“MNCPPC”) indicating that the Public Alley is no longer needed for public use or anticipated future public use and recommending that the Public Alley be abandoned after (1) preliminary plan approval for the development is received and (2) a Subdivision Plat is recorded that incorporates the Public Alley into the adjacent Assembled Block.

Exhibit S: Statement updating the ownership interests of the lots adjacent to the Public Alley constituting the Assembled Block.

Exhibit T: Proposed Preliminary Plan reflecting consolidation of the lots making up the Assembled Block bounded by Wisconsin Avenue, Highland Avenue, Tilbury Street, and West Virginia Avenue.

Exhibit U: Duplicate copy of the Memorandum dated February 20, 2020 from staff at the Montgomery County Planning Department of the Maryland National Capital Park and Planning Commission (“MNCPPC”) reflected in Exhibit R.

Exhibit V: Resume for Mr. Joshua Sloan, Vika Director of Planning and Landscape Architecture.

Exhibit W: Resume for Ms. Nancy Randall of Wells and Associates.

Exhibit X: Relevant excerpts of the Bethesda Downtown Plan, dated May 2017.

Exhibit Y: Proposed Concept Plan for the Assembled Block.

Exhibit Z: Relevant excerpts of the Bethesda Downtown Plan Design Guidelines, dated July 2017.

III. SUMMARY OF STATEMENTS MADE AT THE HEARING HELD ON JULY 28, 2019 CONSTITUTING EVIDENCE FOR THIS REPORT

1. Mr. Josh Tracy, Real Estate Specialist, Montgomery County Department of Transportation Property Acquisition Section.

Mr. Tracy spoke on behalf of the Montgomery County Department of Transportation

("MCDOT"). Mr. Tracy explained that his Office is charged with the administration of requests to abandon County rights of way. In so doing, Mr. Tracy laid out the procedural history concerning the abandonment request, and he summarized the documents MCDOT received pertaining to this request for abandonment that have been received as evidence for this record and summarized in the above described exhibits. Mr. Tracy represented that his Office notified the public of this hearing, provided notice to those property owners with property abutting the Public Alley, and solicited comments from government agencies and public utility companies as required by law.

Mr. Tracy explained that the Public Alley was dedicated to public use via a subdivision plat entitled "West Chevy Chase Heights Subdivision," which was recorded in Plat Book 2 at Plat No. 186 among the Land Records for Montgomery County, Maryland ("Land Records") on March 31, 1916 (Exhibit H). He noted that the Public Alley is approximately 10 to 15 feet wide and that the Applicant, through Abandonment Case No. AB 769, seeks to cause the abandonment of the Public Alley that bifurcates the Assembled Block.

2. Mr. C. Robert Dalrymple, Esq., on behalf of the Applicant.

Mr. Dalrymple of the law firm Selzer and Gurvitch, spoke on behalf of the Applicant and asserted that the abandonment of the Public Alley is appropriate because it is no longer needed for public use -- currently or in the foreseeable future. Mr. Dalrymple stated that the assertions made in support of abandonment of the Public Alley is demonstrated by the above documents that were received into evidence and through the statements made by the Applicant's witnesses at the hearing. In summary, Mr. Dalrymple argued that the abandonment of the Public Alley is a necessary component to furthering the intents and purposes of the Bethesda Downtown Sector

Plan through the redevelopment of the Assembled Block. Mr. Dalrymple stated the redevelopment of the Assembled Block would result in a new circulation pattern that cannot be accomplished without the abandonment of the Public Alley.

Finally, Mr. Dalrymple asserted that there has been no public opposition to the proposed abandonment of the Public Alley, and that the Montgomery County Planning Department, by and through Gwen Wright, its Director, recommended that the Applicant's Petition for Abandonment be approved. *See Exhibits R and U.*

In addition to the assertions concerning why the Public Alley ought to be abandoned, Mr. Dalrymple requested, due to the COVID-19 pandemic, that the County Executive recommend in its Report and Recommendation that the Applicant be provided with seven (7) years to fulfill such obligations as may be imposed by law and by the County Council as conditions precedent to abandonment approval for the Public Alley.

3. Mr. Vincent Burke, Vice President of B.F. Saul Company, on behalf of the Applicant.

Mr. Burke is a Vice President for the B.F Saul Company¹ and has been with the company for 17 years performing transactional, planning and development work. Mr. Burke stated that he is responsible for the redevelopment of the Assembled Block, having gained control of the properties making up the Assembled Block between 2005 and 2019.

Mr. Burke described the Assembled Block and the Public Alley located within it. Mr. Burke stated that the purpose of the Public Alley is to provide service and loading access to the rear of the retail stores fronting Wisconsin Avenue. Mr. Burke asserted that the approval of the 2017 Bethesda Downtown Plan (Exhibit X) and the planned improvements for the Assembled

¹ The Applicant is a derivative of the B.F. Saul Company.

Block (Exhibit Y) renders the Public Alley functionally obsolete and unnecessary for future public use. In support thereof, Mr. Burke used Exhibit Y to demonstrate the concept plan's consistency with the Bethesda Downtown Plan and how access to the Assembled Block will be modified and render the Public Alley unnecessary. This is because all necessary service and vehicular flow have been integrated into the future development plans for the Assembled Block and space is left open on the eastern end of the Assembled block for a public greenway (the "Greenway"). Notwithstanding, Mr. Burke stated that while the Public Alley would no longer be necessary for future use with the redevelopment of the Assembled Block, that it was presently necessary to serve the existing retail properties with rear loading access until they are demolished.

In addition, Mr. Burke responded to a comment and questions submitted by Jason Yang suggesting that the Public Alley serve as an "exchange transfer" to the Greenway. While the comment was not entirely clear, Mr. Burke responded that the Public Alley was much smaller than the Greenway, with the Greenway being about 70 feet in width and the Public Alley ranging from 10 to 15 feet. Furthermore, Mr. Burke stated that in conjunction with the proposed abandonment, the "assemblage of the entire block" would sufficiently accomplish Sector Plan recommendations as they pertain to the Greenway. While Mr. Yang asserted that he disagreed with the statement that the Greenway is "a replacement for the alley right of way",² Mr. Yang conceded that the explanations were satisfactory, that his questions were addressed, and that

² It's not clear from the record that this assertion was made by the Applicant – that the Greenway serves as an in-kind replacement for the Public Alley. The purposes served by the Public Alley and to be served by a future Greenway are not necessarily the same or equivalent. Rather, the necessity for the Greenway as contemplated by the Bethesda Downtown Plan likely reflects an entirely new circulation pattern for the area and increased usage by the public, as opposed to uses of the Public Alley that are primarily for service and loading access to the rear of those retail stores fronting Wisconsin Avenue. Indeed, statements made by Mr. Sloan, *infra*, indicate that the intent of the Public Alley is for vehicular access and that pedestrian access is not recommended. In contrast, the Greenway provides green space and pedestrian access.

Applicant's planned project was overall fantastic.

4. Mr. Josh Sloan, Vice-President and Director of Planning and Architecture for VIKA Maryland, LLC, on behalf of the Applicant.

Mr. Sloan was qualified as an expert witness in the field of landscape architecture for the purposes of this hearing. Mr. Sloan stated that he was very familiar with the Assembled Block, the Public Alley, the Bethesda area, and that he participated in and made recommendations for the sector plan process that ultimately led to the adoption of the 2017 Bethesda Downtown Plan. Mr. Sloan described the Public Alley as substandard under Chapters 49 and 59 of the Montgomery County Code and further stated that the purpose of the Public Alley at the time of its dedication in 1916 was to reduce curb cuts and unnecessary traffic along Wisconsin Avenue, particularly from service vehicles and parking. Further, Mr. Sloan commented that the redevelopment of the Assembled Block and its included traffic flow patterns would internally accommodate the original functions of the Public Alley. Finally, Mr. Sloan reiterated that abandonment of the Public Alley is consistent with the adopted plans of development for Bethesda, and stated that the Public Alley is not needed for any public purpose because it is not intended for through traffic and circulation, and only serves the existing lots fronting Wisconsin Avenue.

5. Ms. Nancy Randall, Transportation Planner for Wells and Associates, on behalf of the Applicant.

Ms. Randall was qualified as an expert in transportation planning for the purposes of this hearing. Ms. Randall stated that she was familiar with the Assembled Block, the Public Alley, and the transportation recommendations contained in the Bethesda Downtown Sector Plan that

are relevant to the area of the Assembled Block. She noted that she was responsible for completing a traffic impact study for the Assembled Block and for determining the functionality of the Public Alley.

Ms. Randall stated that the Public Alley serves the retail developments fronting Wisconsin Avenue by accommodating trash removal, delivery and parking services; however, she added that the Public Alley use does not serve as a public access way for the public generally and, pedestrians in particular, due to its narrow width that does not properly accommodate for pedestrian usage (in addition to service vehicles). Furthermore, Ms. Randall opined that the Public Alley does not serve the circulation patterns of the general public in any way, and only serves the existing lots fronting Wisconsin Avenue. Finally, Ms. Randall opined that abandonment of the Public Alley is consistent with the Bethesda Downtown Plan and would be in the public interest.

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 by any person or government agency, provides for public agency and utility company review, and requires a public hearing with notice. In evaluating the evidence, I find that the hearing and notice procedures have been satisfied, and that the public, public agencies, and utility companies have been given an opportunity to review the petition for abandonment and closure as described above and provide comment. *See Exhibits A through D, K through S, and the transcript of proceedings.*

Section 49-63 allows the County Council to abandon or close a right of way if the

Council finds by Resolution that: (1) the right of way is no longer needed for present public use or anticipated public use in the foreseeable future, or (2) the abandonment or closing is necessary to protect the health, safety and welfare of the residents in the neighborhood. In assessing health, safety and welfare issues, the Council may consider: 1) any adopted land use plan applicable to the neighborhood; 2) the safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives in the immediate neighborhood for local and through traffic; or 3) changes in fact and circumstances since the original dedication of the ROW.

In evaluating the evidence, I find that the Public Alley is a County right of way that was dedicated to public use via Subdivision Plat No. 186 in March, 1916, and via Subdivision Plat No. 23437 in September 2005. *See* Exhibits F, G and H. The legal description and survey of the Public Alley reflect that it contains 2,475 square feet of land, more or less, that is approximately 10-15 feet in width and 200 feet in length, running between West Virginia Avenue and Highland Avenue and bifurcating the Assembled Block. *See* Exhibits E through H.

The record reflects that the Public Alley was established long-ago to principally serve the small lots fronting Wisconsin Avenue. Various witnesses asserted that the Public Alley is functionally obsolete and has limited utility for the public use generally. The only utility that the Public Alley *may* have had to the general-public use was in the removal of trash and delivery services from off of Wisconsin Avenue and into the Public Alley. However, there is no evidence that the Public Alley improved (or continues to improve) or is necessary for the circulation and movement of traffic in the general vicinity in any way, and to assume otherwise would be speculative. No public agencies vested with the responsibility for ensuring traffic movement or safety opposed the abandonment request or asserted that the Public Alley continued to be *needed* for present public use or was anticipated to be *needed* for public use in the foreseeable future.

Furthermore, no opposition or other evidence was introduced into the record to contravene the statements made by the Applicant's witnesses concerning whether the Public Alley continues to be *needed* for present public use – not even by those businesses who may be using the Public Alley.

Moreover, the record clearly demonstrates that the Applicant has control over all of the properties abutting the Public Alley and intends to redevelop the Assembled Block. The Public Alley is unnecessary to a future development as contemplated by the Concept Plan. *See Exhibit Y.* The current functions of the Public Alley will be fully integrated into the new development. Furthermore, it is clear from the statements made at the hearing and documents submitted that redevelopment of the Assembled Block is consistent with the Bethesda Downtown Plan and, that abandonment of the Public Alley is a necessary component to furthering the intent of that plan. *See Exhibit X.* I find the statements made at the hearing that bear upon how the abandonment of the Public Alley promotes the public interest by helping to facilitate sector plan recommendations to be quite compelling.

Importantly, staff from the Montgomery County Planning Department of the Maryland National Capital Park and Planning Commission recommended the abandonment of the Public Alley and advised that land use recommendations contained in the Bethesda Downtown Plan can be accomplished through the redevelopment of the Assembled Block and abandonment of the Public Alley, thereby confirming the Applicant's representations. *See Exhibits R and U.* I find the recommendations of the staff at the Montgomery County Planning Department of the MNCPPC to be highly persuasive. MNCPPC has the technical expertise to determine, and is 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.

Finally, with respect to the comments solicited from other public agencies and utilities for this abandonment hearing, I find that each agency and utility has consented to the request for abandonment, subject to any conditions of abandonment set forth in said response, if any. I further find that any public agency that failed to respond to the solicitation for comment is presumed to have consented to the abandonment request. *See Section 49-62(g) of the County Code.*

For all of the foregoing reasons, I find that abandonment of the Public Alley is permitted both under Section 49-63(c)(1) and (2) of the County Code and based upon a thorough review of the testimony, exhibits, and the evidence of record, I recommend that the petition to abandon the Public Alley be granted, subject to the following requirements that are conditions precedent to abandonment:

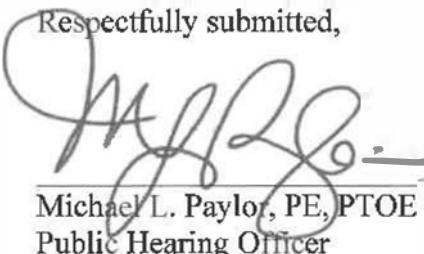
- 1) That the Montgomery County Planning Board approve a Preliminary Plan of Subdivision for the Assembled Block, including the Public Alley being abandoned;
- 2) That the Applicant must at its sole cost prepare and record a new subdivision plat for the Assembled Block that creates a single lot of record for the Assembled Block which incorporates the Public Alley into the newly created lot.
- 3) The Applicant must grant, prepare, and record any necessary easements for County storm drains and public utility facilities, including but not limited to gas lines, electric facilities, and water and sewer facilities to the satisfaction of the County or the public utility, as applicable, allowing such facilities to remain at their current location or relocated locations, and providing perpetual right of ingress and egress from the

easement area at any time (which rights must not be subordinate to other interests); Additionally, because of disruptions in private entity and public agency transactions related to the COVID-19 pandemic, I recommend that the County Council approve the Applicant's request to extend the validity period from five years to seven years to complete the abandonment of the Public Alley. The denial of the recommendation to extend the validity period to seven years does not in any way affect my recommendation to grant the Applicant's Petition for Abandonment, subject to those aforementioned conditions precedent and requirements of law.

January 6, 2021

Date

Respectfully submitted,



Michael L. Paylor, PE, PTOE
Public Hearing Officer

The Public Hearing Officer's Recommendations in Petition AB 769 have been reviewed and are approved.

04/13/2021

Date



Marc Elrich, County Executive



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

February 20, 2020

MEMORANDUM

TO: Gwen Wright, Director *OK*
Montgomery County Planning Department

VIA: Elza Hisel-McCoy, Chief *CH*
Area 1 Planning Division

FROM: Katie Mencarini, Planner Coordinator *YMM*
Area 1 Planning Division

SUBJECT: Right-of-Way Abandonment Case No. AB-769
Public Alley, 8001 Block of Wisconsin Avenue
Bethesda CBD Policy Area

EXHIBIT U

RECOMMENDATION

Staff supports the Subject Abandonment Application with the following recommendations:

1. Approval of a preliminary plan by the Montgomery County Planning Board for the entire block bounded by Wisconsin Avenue to the west, Tilbury Street to the east, West Virginia Avenue to the south and Highland Avenue to the north (including the existing right-of-way being abandoned), the "Assembled Block"; and
2. Recordation of a subdivision plat for the Assembled Block, incorporating the abandonment of the existing Public Alley, to create a single lot of record.

Staff hereby transmits comments to the Montgomery County Department of Transportation (MCDOT) in accordance with Montgomery County Code Chapter 49-62, "Abandonment and Closing Rights-of-Way: Abandonment Authority; Scope of Article; Procedures." This item has not been heard by the Montgomery County Planning Board.

This staff report serves as the official response on behalf of the Maryland-National Capital Park and Planning Commission to be transmitted to the County Executive. In accordance with Montgomery County Code Chapter 49-62, "Abandonment and Closing Rights-of-Way: Abandonment Authority; Scope of Article; Procedures" will hold a hearing on the application and forward to the County Council the application, a report based on the record

8787 Georgia Avenue, Silver Spring, Maryland 20910
www.MontgomeryPlanning.org

of the proceedings and the Executive's recommendation on the proposed abandonment or closing.

DISCUSSION

The Subject Abandonment Application, requested by 8001 Wisconsin Avenue, LLC (Applicant) in conjunction with forthcoming Sketch and Preliminary Plan applications, is for a 2,475 square foot area of improved public right-of-way that constitutes a 10- to 15-foot-wide public alley that bifurcates the block bounded by Wisconsin Avenue to the west, Tilbury Street to the east, West Virginia Avenue to the south and Highland Avenue to the north, hereafter referred to as the "Assembled Block" (Attachment A). All of the properties of the entire block of have been assembled by the Applicant.

The right-of-way subject to the Abandonment Application was originally dedicated in 1916 as part of the West Chevy Chase Heights Subdivision, recorded at Plat No. 186 in the Land Records of Montgomery County. Subsequently, an additional five feet of right-of-way was dedicated by the West Chevy Chase Heights Subdivision Plat along the southeastern portion of the Public Alley through Plat No. 23437 in the Land Records on July 6, 2007. The adjacent blocks to the north and south of the assembled block also include 10-foot-wide public alleys.

By assembling properties within the 8001 block of Wisconsin Avenue, the Applicant can implement land use recommendations contained in the 2017 *Bethesda Downtown Sector Plan*. The forthcoming development applications are anticipated to propose an urban mixed-use redevelopment that will fully integrate service and loading on the site and will therefore no longer need the public alley for loading and trash collection. Closure and abandonment of the public alley will also allow the Applicant to achieve the building heights recommended in the Sector Plan¹.

There are no specific recommendations in either the 2018 *Bicycle Master Plan* or 2017 *Bethesda Downtown Sector Plan* relevant to the the right-of-way subject to the application.

As stated above, the public alley within the 8001 block of Wisconsin Avenue is no longer necessary for public use or anticipated future public use. Staff recommends approval of the subject abandonment application.

Attachments

- A. Vicinity Map and Photo Exhibit
- B. Abandonment Petition

¹ The Bethesda Downtown Sector Plan identifies the portion of the block west of the subject right-of-way as Site #92 within the Wisconsin Avenue District, with a maximum height of 90 feet. The portion of the block east of the Subject right-of-way as Sites #208-210 within the Eastern Greenway District. Site #208, along the eastern boundary of the subject right-of-way, has a maximum height of 90 feet while Sites #209 and 210 have a maximum height of 70 feet.



DEPARTMENT OF TRANSPORTATION

Marc Elrich
County Executive

Christopher R. Conklin
Director

MEMORANDUM

January 27, 2020

TO: Joshua Tracy, Real Estate Specialist
Property Acquisition Section
Division of Transportation Engineering

VIA: Rebecca Torma, Manager *RT*
Development Review Team
Office of Transportation Policy

FROM: William Whelan, Engineer III *WW*
Development Review Team
Office of Transportation Policy

SUBJECT: AB769 - Abandonment of Public Alley – 8001 Block Wisconsin Ave

Thank you for the opportunity to review the proposed Abandonment of the public alley as shown highlighted in blue in Exhibit "A" of the letter dated October 30, 2019 by Linowes and Blocher, LLP. This abandonment was requested by Linowes and Blocher on behalf of its client, 8001 Wisconsin, LLC.

We recommend approval of the requested Abandonment of the existing Public Alley subject to the following conditions:

- All existing utilities along the proposed abandoned portions of the public alley shall be abandoned at the applicant's expense, relocated at the applicant's expense, or remain in place within a proposed public utility easement. If the existing utility is relocated, it should be within the public right-of-way or a proposed public utility easement.

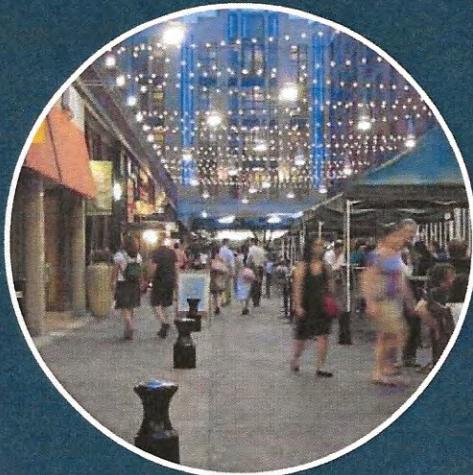
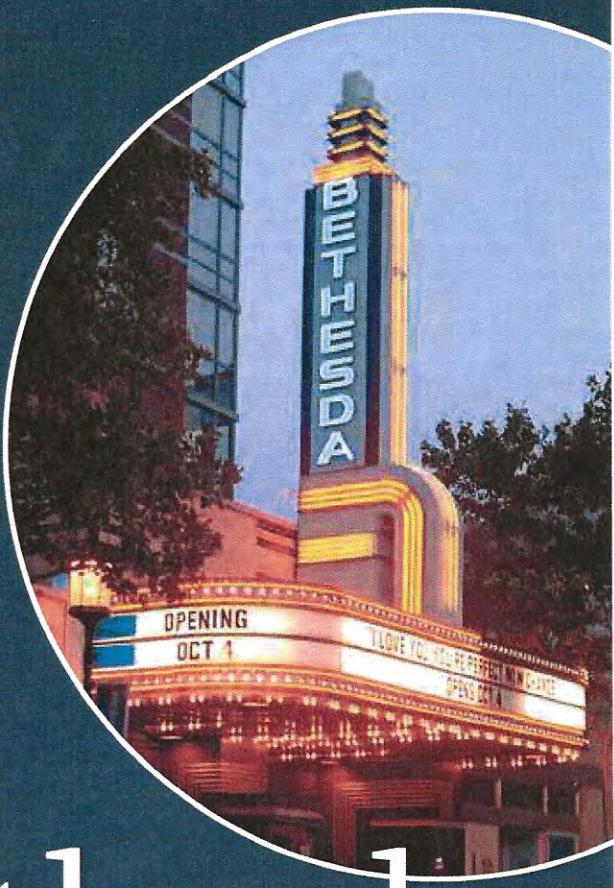
Attachment (1): Exhibit "A"

Thank you for cooperation and assistance. If you have any questions regarding this memo, please contact me at your earliest convenience.

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Office of the Director

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



Bethesda Downtown Plan

community
identity

equity

habitat +
health

access +
mobility

water

energy



Approved and Adopted May 2017

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION



Transportation Recommendations

by reducing reliance on single-occupancy vehicles during the most congested periods. TDM strategies will become increasingly important through the horizon year of this Plan and will both manage traffic congestion and reinforce the Sector Plan area as a transit-oriented area. All optional method projects should participate in the Bethesda Transportation Management Organization.

This Plan recommends continuing the 1994 Bethesda CBD Sector Plan's recommendation of maintaining a constrained long-term parking supply strategy, which has been in effect since the 1994 Bethesda CBD Sector Plan. A constrained parking strategy helps to mitigate traffic congestion by encouraging other modes of transportation and discouraging single-occupancy vehicle trips. All optional method projects should participate in the constrained parking policy.

In addition, this Plan recommends that public-private partnerships and co-location of public facilities be considered as part of future parking facility development. These strategies have been implemented with success in recent years within the Bethesda, Silver Spring and Wheaton Parking Lot Districts.

2.3.1 Goals

- **Enhance roadway accommodation of all users.**
- Increase the use of non-auto driver travel.
- **Implement new transit alternatives.**
- **Improve bicycle and pedestrian infrastructure.**
- Expand the constrained parking policy.



Crosswalk at Bethesda Avenue and Woodmont Avenue



Capital Crescent Trail



View of Old Georgetown Road

Figure 2.10: Bikeway Classification

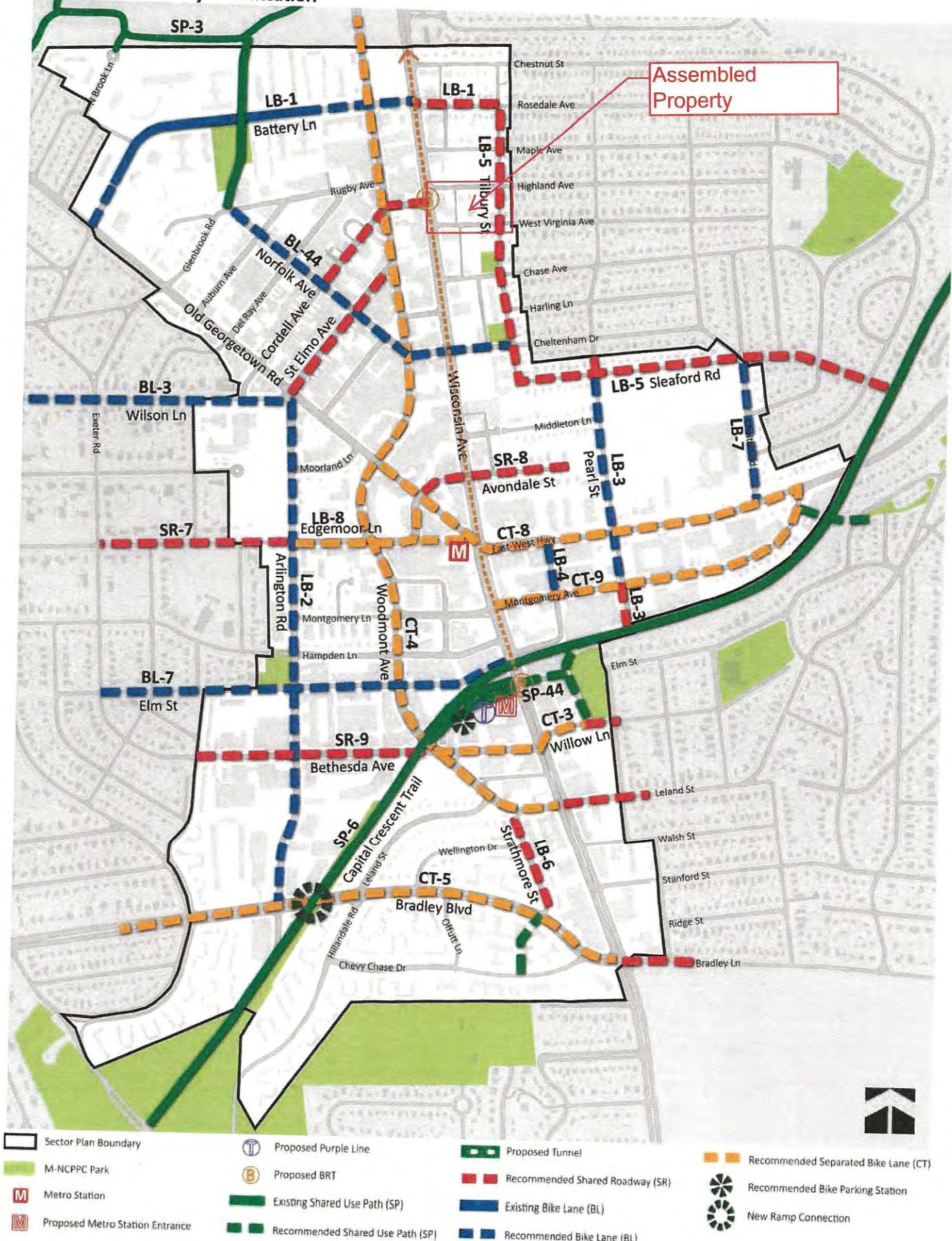


Table 2.02: Bicycle Network Recommendations

Designation	Roadway/ Route	Limits	Status
Separated Bike Lane			
CT-4	Woodmont Avenue ¹	N. Sector Plan Boundary to Wisconsin Avenue	New Recommendation
CT-5	Bradley Boulevard	W. Sector Plan Boundary to E. Sector Plan Boundary	New Recommendation
CT-3	Capital Crescent Trail (Surface Route: Bethesda Ave/ Willow Ln)	47th Street to Woodmont Avenue	Recommended
CT-8	Old Georgetown Road East West Highway	Woodmont Avenue to Wisconsin Avenue Wisconsin Avenue to Montgomery Avenue	New Recommendation
CT-9	Montgomery Avenue	Wisconsin Avenue to East-West Highway	New Recommendation
LB-2 ³	Arlington Road	Old Georgetown Road to Bradley Boulevard	New Recommendation
Bike Lane			
BL-3	Wilson Lane (MD 188)	Aberdeen Road to Old Georgetown Road	Recommended
BL-7	Elm Street	Exeter Road to Wisconsin Avenue	Recommended
LB-1	Battery Lane	Old Georgetown Road to Wisconsin Avenue	Recommended
BL-44	Norfolk Avenue/Cheltenham Drive	Battery Lane Urban Park to Tilbury Street	New Recommendation
LB-3	Pearl Street	Sleaford Road to Montgomery Avenue	New Recommendation
LB-4	Waverly Street	East-West Highway to Montgomery Avenue	New Recommendation
LB-7	Chelton Road	Sleaford Road to East-West Highway	New Recommendation
LB-8	Edgemoor Lane	Arlington Road to Metro Station	New Recommendation
Shared Roadway²			
SR-7	Edgemoor Lane	Exeter Road to Arlington Road	New Recommendation
SR-8	Commerce Ln/ Avondale St	Edgemoor Lane to Avondale Street	New Recommendation
SR-9	Bethesda Avenue	Clarendon Road to Woodmont Avenue	Recommended
LB-1	Rosedale Avenue	Wisconsin Avenue to Tilbury Street	New Recommendation
LB-5	Tilbury Street/ Sleaford Road	Rosedale Avenue to CCT	New Recommendation
LB-6	Strathmore Street	Woodmont Avenue to Bradley Boulevard	Recommended
LB-3	Pearl Street ⁴	Montgomery Avenue to S. Sector Plan Boundary	New Recommendation
Shared Use Path			
SP-3	North Bethesda Trail	N. Sector Plan Boundary to Rugby Avenue	Existing
SP-6	Capital Crescent Trail	S. Sector Plan Boundary to E. Sector Plan Boundary	Existing
SP-44	Capital Crescent Trail (Surface Route)	Elm Street to Willow Lane via 47th Street	Recommended
SP-62	Wisconsin-Woodmont Trail	N. Sector Plan Boundary to Battery Lane	Existing
LB-6	Strathmore Street Extended	South of Bradley Boulevard to Chevy Chase Drive	New Proposal

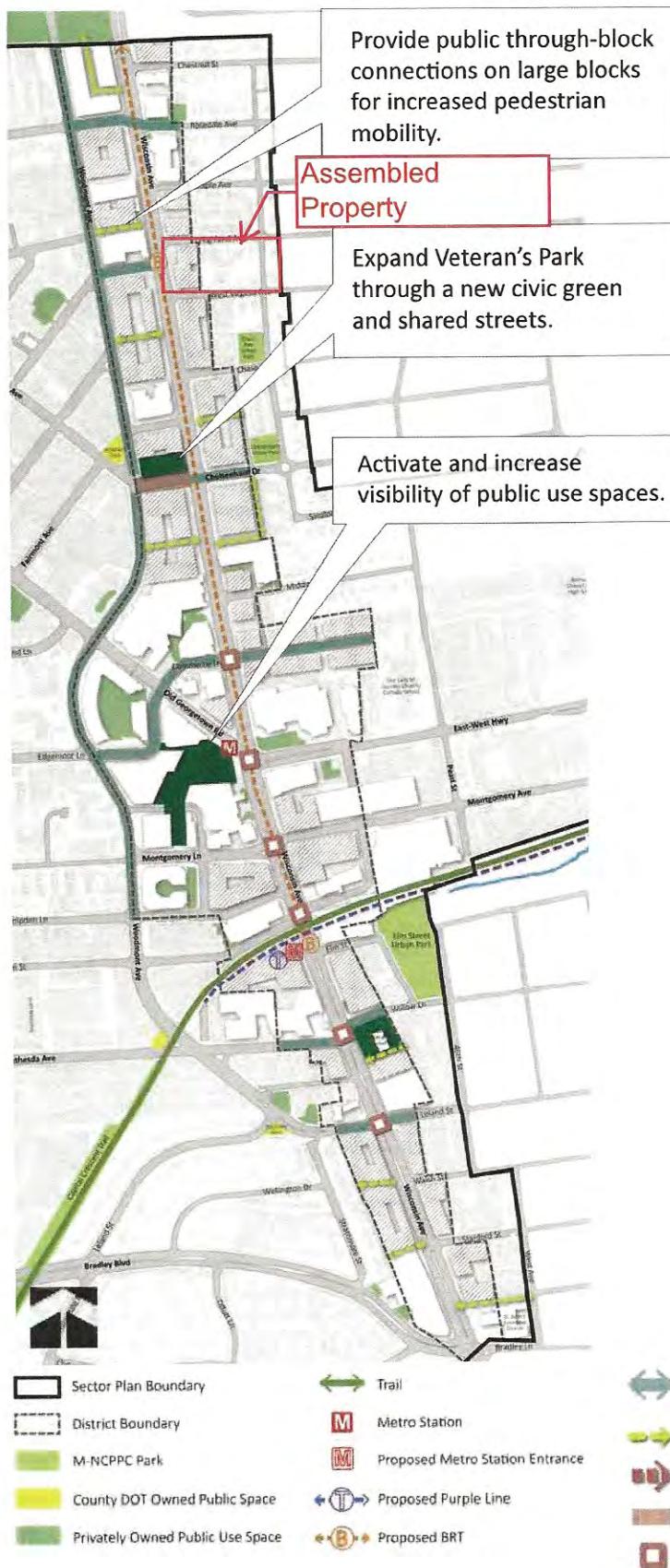
¹ Woodmont Avenue may be improved with either bike lanes or separated bike lanes, depending on the future one-way/two-way operation of the street. If the street remains one-way southbound in its ultimate condition, two-way separated bike lanes are necessary to facilitate safe, adequate and efficient bicycle circulation. Design and operation to be determined by MCDOT at the time of facility planning.

² All roads in the Sector Plan area should be designed for shared use by motor vehicles and bicycles and are designated as shared roadways unless another higher quality bicycle facility is provided (e.g. bike lanes). These shared roadways are called out for wayfinding purposes. This sector plan recommends amending the practice of implementing shared roadways on wide travel lanes; Bicycles should operate on-road as vehicles where the prevailing roadway operation is characterized by low vehicular speed and volume.

³ The "LB" designation is a "Local Bikeway" that is not included in the Countywide Bikeway Master Plan due to its limited importance to the County as a whole. LB bikeways can be implemented as any facility designation.

⁴ The LB-3 Bikeway, South of Montgomery Avenue, may be implemented as a shared use path if the County Council abandons that section of Pearl Street.

Figure 3.02: Wisconsin Avenue Corridor District Public Realm Improvements



Inviting through-block connection and public plaza

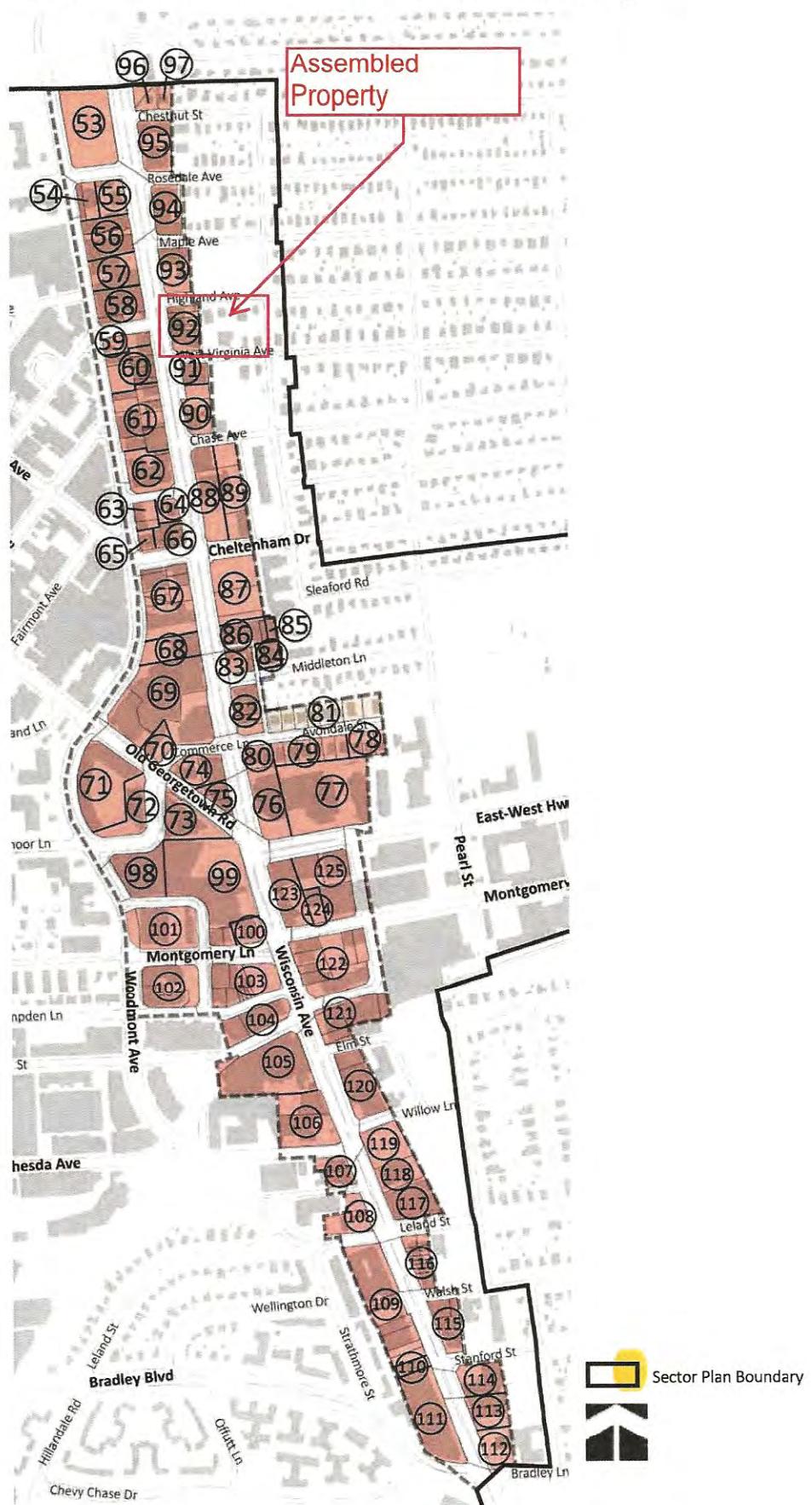
Source: buildpublic.org



Streetscape design with planting buffer and outdoor dining space

Property Specific Land Use and Zoning Recommendations

Figure 3.01: Wisconsin Avenue District Recommended Zoning

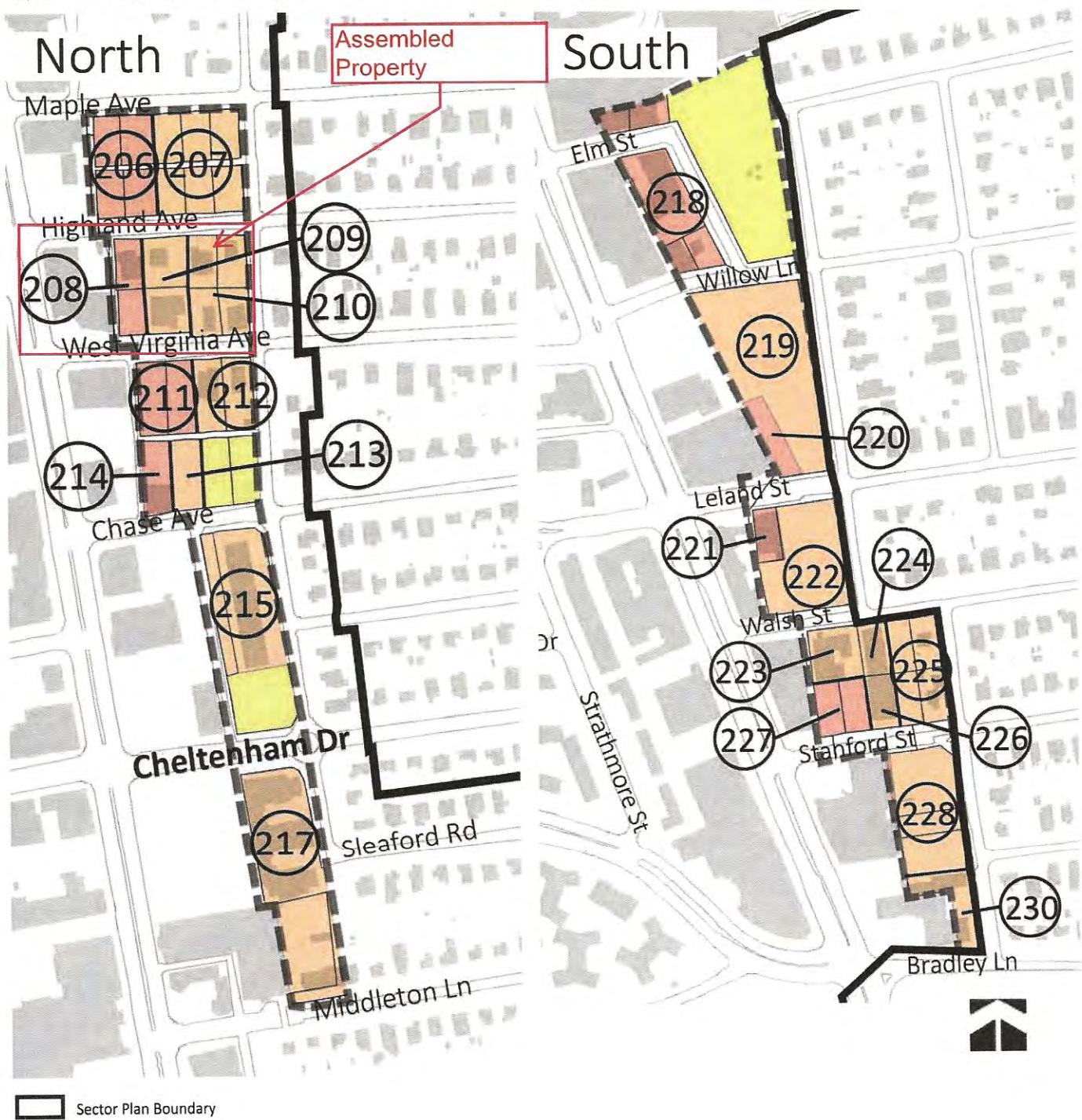


Avenue and the adjacent single residential unit neighborhood of East Bethesda.

- Rezone Map #88, 89, 90, 91, 92, 93, 94, 95, to increase the maximum allowable building heights to 90 feet to provide for an appropriate transition to the adjacent single family unit neighborhoods of East Bethesda. Increase the commercial FAR on Map #90, #91, and #92 from 2.0 to 3.0 and the residential FAR on Map #91 from 2.75 FAR to 3.0 FAR to provide flexible development opportunities and allow future development to better adapt to market conditions.
- Rezone Map #96 to reduce the maximum allowable building height to 70 feet to provide for an appropriate transition to the adjacent single residential unit neighborhoods of East Bethesda and Glenbrook Village.
- Rezone Map #97 to increase the maximum allowable building heights to 70 feet to provide for an appropriate transition to the adjacent single residential unit neighborhoods of East Bethesda.
- Rezone Map #98 from its current zone to increase the commercial density from 6.0 FAR to 8.0 FAR and increase the maximum allowable building height from 175T to 210 to provide flexible development opportunities and allow future development to better adapt to market conditions.
- Rezone Map #99 from its current zone to increase the commercial density from 6.0 FAR to 8.0 FAR and increase the maximum allowable building height from 175T to 290 feet to provide flexible development opportunities and allow future development to better adapt to market conditions.
- Rezone Map #100 from its current zone to increase the commercial density from 6.0 FAR to 8.0 FAR, increase residential FAR from 7.5 to 7.75 and increase the maximum allowable building height from 145T to 290 to provide flexible development opportunities and allow future development to better adapt to market conditions.
- Rezone Map #101 from its current zone to increase the commercial density from 6.0 FAR to 8.0 FAR, increase residential FAR from 7.5 to 7.75 and increase the maximum allowable building height from 200T to 250 to provide flexible development opportunities and allow future development to better adapt to market conditions.
- Rezone Map #102 from its current zone to increase the commercial density from 4.0 FAR to 5.0 FAR and increase the maximum allowable building height to 200 feet on the east side of the property closest to the Bethesda Metro tapering down to a compatible building height as it gets closer to Woodmont Avenue.
- Rezone Map #103, #104 from its current zone to increase the commercial density from 4.0 FAR to 5.0 FAR and increase the maximum allowable building height to 250 feet to provide flexible development opportunities and allow future development to better adapt to market conditions.
- Rezone Map #105 from its current zone to increase the maximum allowable building height to 290 feet to provide flexible development opportunities and allow future development to better adapt to market conditions.
- Rezone Map #106 from its current zone to increase the maximum allowable building height to 250 feet to provide flexible development opportunities and allow future development to better adapt to market conditions.
- Rezone Map #107 from its current zone to increase the commercial density from 2.0 FAR to 3.0 FAR and increase the maximum allowable building height to 200 feet to provide flexible development opportunities and allow future development to better adapt to market conditions. Allow an increase in the maximum allowable building height to 225 feet if the property redevelops in a manner that benefits the Farm Women's Cooperative Market to the east.
- Rezone Map #108 from its current zone to increase the commercial density from 1.0

to increase the commercial density from 6.0 FAR to 8.0 FAR, increase residential FAR from 7.5 to 7.75 and increase the maximum allowable building height from 200T to 250 to provide flexible development opportunities and allow future development to better adapt to market conditions.

Figure 3.14: Eastern Greenway Districts Recommended Zoning



- Eliminate the Transferable Development Rights (TDR) designation.
- Rezone Map #206 to increase the maximum allowable building height from 60T to 70 feet with the goal of converting this parking lot to parkland.
- Rezone Map #207 to increase the maximum allowable building height from 60 feet to 70 feet with the goal of converting this parking lot to parkland.
- Rezone Map #208 to increase the maximum allowable building height from 60T to 90 feet to provide an appropriate step up transition from the properties along Tilbury Street to Wisconsin Avenue and to allow for flexible development opportunities and allow future development to better adapt to market conditions.
- Rezone Map #209 from its current zone to CR 0.5, C-0.5, R-0.5, H-70 to allow for flexible development opportunities and allow future development to better adapt to market conditions and to provide an appropriate step up transition from the properties along Tilbury Street to Wisconsin Avenue.
- Rezone Map #210 from its current zone to CRT 0.5, C-0.25, R-0.5, H-70 to facilitate the eastern green way if the property redevelops.
- Rezone Map #211 to increase the maximum allowable building height from 60T to 70 feet with the goal of converting this parking lot to parkland.
- Rezone Map #212 from its current zone to CRT 0.5, C-0.25, R-0.5, H-70 to facilitate the eastern greenway if the property redevelops.
- Rezone Map #213, the portion that is not parkland, from its current zone of R-60 to CRT 0.5, C-0.25, R-0.5, H-70 to allow for flexible development opportunities and allow future development to better adapt to market conditions.
- Rezone Map #214 to increase the maximum allowable building height from 60T to 70 feet to provide an appropriate step up transition from the properties along Tilbury Street to Wisconsin Avenue.
- Rezone Map #215 from its current zone R-10 to a comparable CR zone, CR 1.5, C-0.25, R-1.5, H-70, to facilitate the greenway if the property redevelops in the future.
- Rezone Map #217 from its current zone (PD-35) to a comparable CRT 1.25, C-0.25, R- 1.25, H-35 zone to promote infill redevelopment.
- Rezone Map #218 to increase the maximum allowable building height from 35T to 70 feet to provide an appropriate step up transition from Elm Street Park to Wisconsin Avenue.
- Rezone Map #219 (PLD Lot 24) from its current R-60 zone to CRT 0.5, C-0.25, R-0.5, H- 70 to facilitate the eastern greenway and additional parkland.
- Rezone Map #220 to increase the maximum allowable building height from 35T to 90 feet to provide flexibility with the goal of converting this parking lot to parkland.
- Rezone Map #221 to increase the maximum allowable building height from 75T to 90 feet to provide an appropriate step up transition from 46th Street to Wisconsin Avenue.
- Rezone Map #222 (PLD Lot 10) from its current R-60 zone to CRT 0.5, C-0.25, R-0.5, H- 70 to facilitate the eastern greenway and additional parkland.
- Rezone Map #223 from its current R-60 zone to CR 1.5, C-1.5, R-0.5, H-70 to allow for flexible development opportunities and allow future development to better adapt to market conditions. This is currently a County owned property and is being used as the Writer's Center for the downtown Bethesda area.
- Rezone Map #224 to increase the maximum allowable building height from 45 feet to 70 feet to provide an appropriate step up transition from West Avenue to Wisconsin Avenue.
- Rezone Map #225 from its current R-60 zone

Eastern Greenway Recommendations

to CRT 0.5, C-0.25, R-0.5, H-70 to facilitate the eastern greenway if the property redevelops in the future.

- Rezone Map #226 to increase the maximum allowable building height from 35 feet to 70 feet to provide an appropriate step up transition from West Avenue to Wisconsin Avenue.
- Rezone Map #227 to increase the maximum allowable building height from 35T to 70 feet to provide an appropriate step up transition from West Avenue to Wisconsin Avenue.
- Rezone Map #228 and #229 from their current R-60 zone to CRT 1.5, C-0.25, R-1.5, H-70 to facilitate the eastern greenway if the property redevelops in the future.
- Rezone Map #230 to increase the maximum allowable building height from 35 feet to 45 feet to provide compatibility with the surrounding single family unit neighborhood.

no less than 20 feet, with a maximum height of 35 feet if the proposed development otherwise achieves the Eastern Greenway District vision and is compatible with the surrounding community.

- Activate ground floors of buildings facing onto the greenway, provide entries, articulate/step back upper floors and encourage balconies to ensure that the greenway facing facade is compatible with adjacent neighborhoods and is not designed as the back of the building.
- Encourage a larger destination park adjacent to the Farm Women's Cooperative Market on Parking Lot 24 to provide green space and programming within a short walk of the future Metrorail station entrance and Purple Line station.
- Allow structured parking to be built underneath the greenway or neighborhood green with sufficient soil depth for tree planting.

B. Urban Design

1. Public Realm and Building Form

- a. *Goal: Height limits and greenways will ensure compatibility with adjacent neighborhoods, provide public open space, improve connections and enhance environmental benefits.*

Recommendations:

- The greenway should be designed to accommodate elements such as tree canopy and vegetation; wide pathways; seating; stormwater management; and activity space, such as small play areas, exercise stations and community gardens.
- To enhance compatibility with the adjacent residential neighborhood, the required greenway width is equal to the amount of building height proposed. For example, a building proposed to have a maximum height of 50 feet must provide a minimum 50-foot greenway width from the existing curb. All sites should provide at minimum a 35-foot greenway. If this is not feasible because of site constraints, the Planning Board may approve a reduced greenway of

Figure 3.15: Eastern Greenway Districts Public Realm Improvements

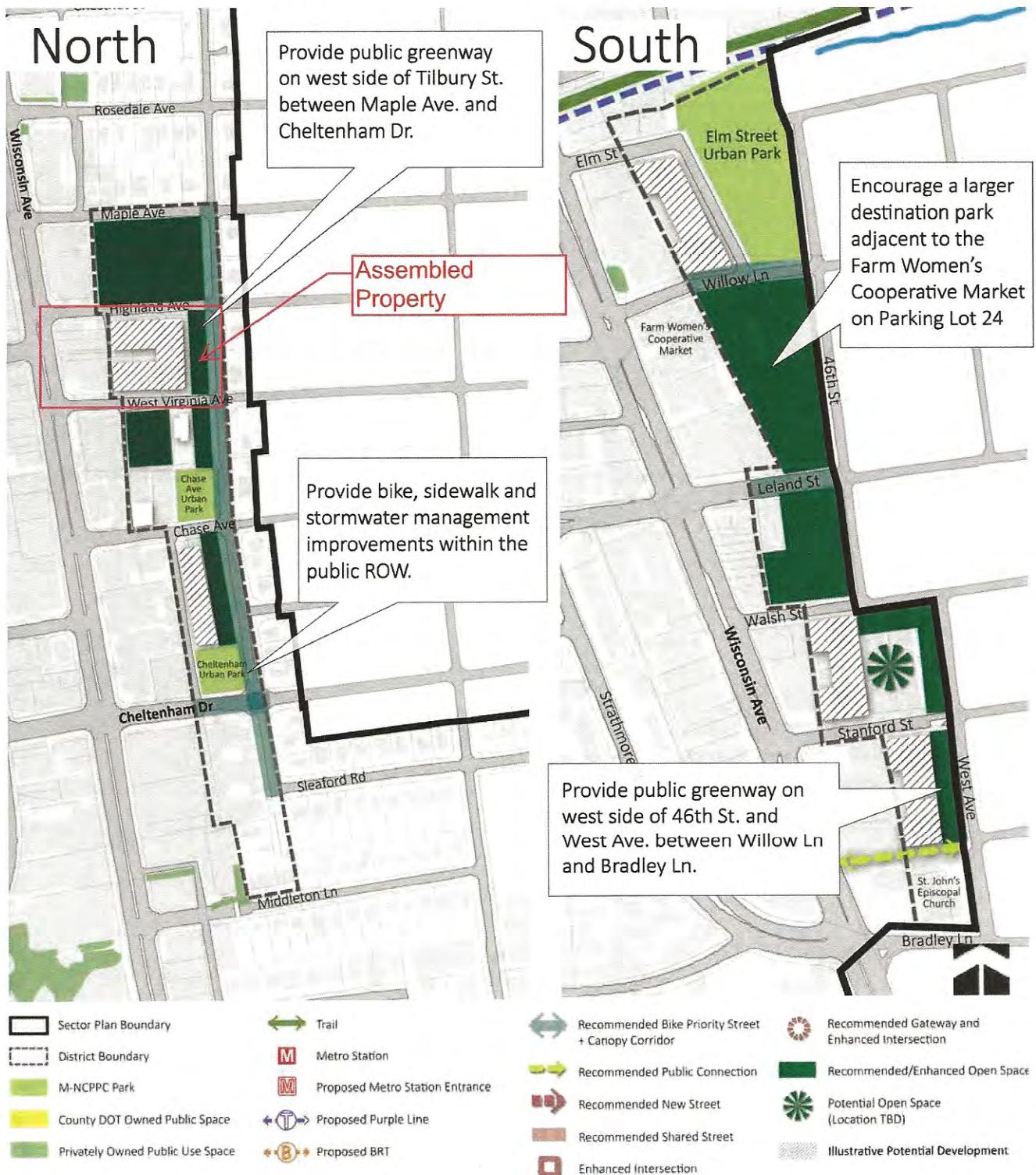
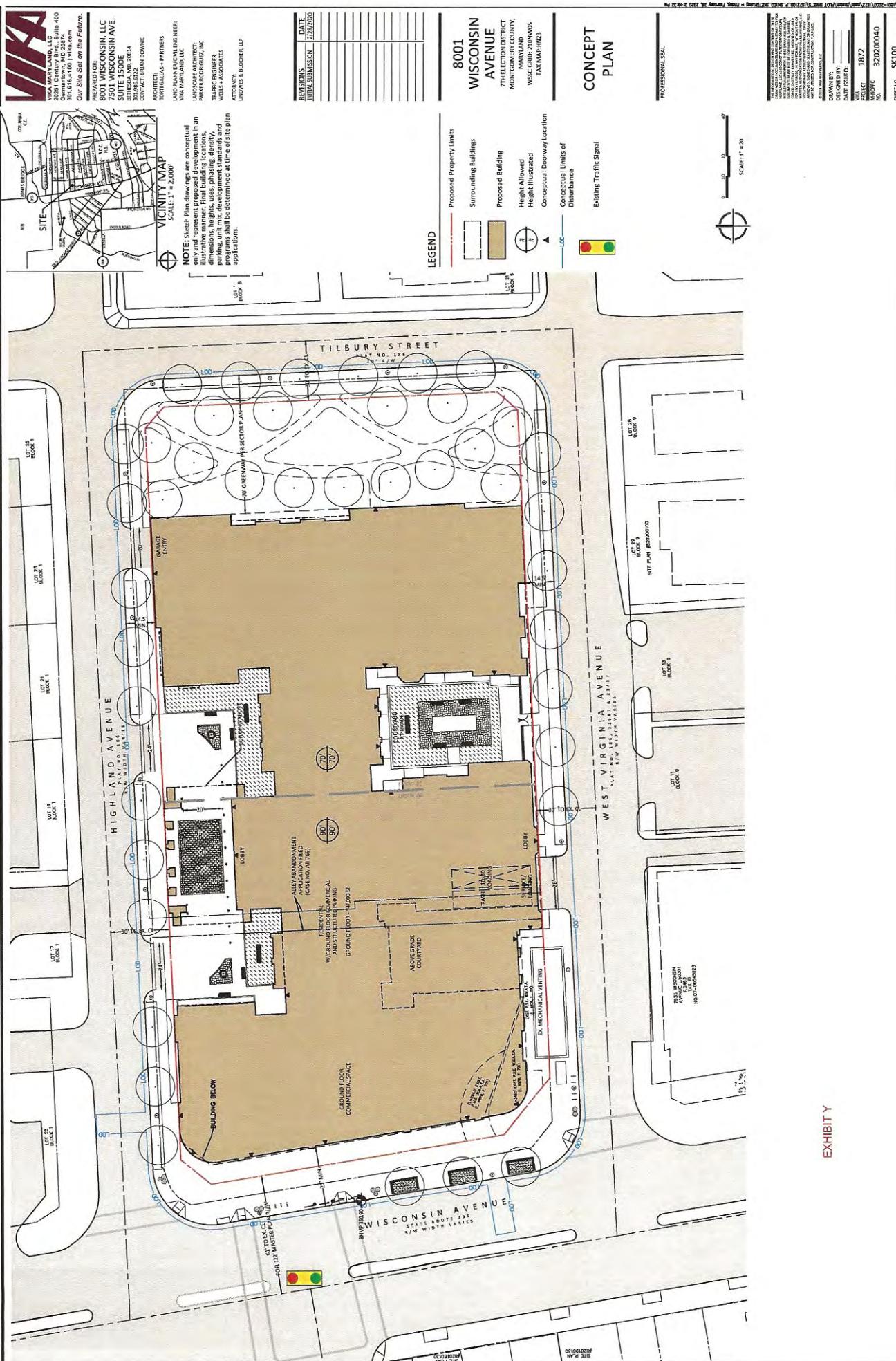


Figure 3.16: Eastern Greenway Districts Allowable Heights



Neighborhood green provides a place for informal gatherings



(52)



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Transcript of Hearing

Date: July 28, 2020
Case: (AB769) Abandonment Hearings, In Re:

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Conducted on July 28, 2020

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2 FOR MONTGOMERY COUNTY, MARYLAND	2	PAGE
3 -----x	3 OPENING STATEMENTS	5
4 In Re: :	4 TESTIMONY OF VINCENT BURKE	17
5 ABANDONMENT HEARINGS : No. AB769	5 TESTIMONY OF JOSHUA SLOAN	30
6 -----x	6 TESTIMONY OF NANCY RANDALL	41
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8	8 E X H I B I T S	
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16	16 Exhibit G Sketch of Subject Alley	9
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18	18 Exhibit I Petition and Circuit Court Order	9
19	19 Exhibit J Existing Land Images	10
20	20 Exhibit K Signage Announcing Hearing	10
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1 Hearing held remotely.	1 EXHIBITS (Continued)	
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2 (5 to 8)

7

1 P R O C E E D I N G S

2 MR. PAYLOR: Greetings and good morning to
3 all of you. It is now 11:13 on the 28th day of July,
4 2020. As you know, we are conducting this hearing
5 virtually via Zoom. We are here for a public hearing
6 for abandonment petition AB769 -- abandonment of a
7 public alley near 8000 Wisconsin Avenue. Or, to say
8 it another way, abandonment of a public alley in
9 Block 5 of the West Chevy Chase Heights subdivision.

10 My name is Michael Paylor and I am the
11 county executive's designated hearing officer and
12 will be conducting this hearing and then, following
13 the comment period, writing a recommendation for the
14 county executives. After my report has been
15 presented to the county executives, the report will
16 be submitted to the county council staff for their
17 review and recommendation to the council.

18 We are unable to provide a timeline for
19 this process but should you -- should you request to
20 be updated on the process of this report, please
21 submit your questions to Mr. Joshua Tracy. After
22 this hearing is closed, the record will remain open
23 for 14 days and close at 5:00 p.m. on August 11th,
24 2020. Any comments between now and then or now and
25 that time should be sent to Mr. Joshua Tracy at

6

1 Montgomery County Department of Transportation, 100
2 Edison Park Drive, Fourth Floor, Gaithersburg,
3 Maryland 20878.

4 There are a few ground rules that we must
5 cover before Joshua Tracy introduces the abandonment
6 petition in the record. First, please turn off or
7 silence your cellphones. Second, as an issue of
8 decorum, all participants must be given their due
9 consideration. Everyone who has made known in
10 advance that they would like to make comments will be
11 afforded to do so. Additional comments will be open
12 to participants at the end of the hearing.

13 If an interruption occurs, I will give
14 that individual that first warning. If there's a
15 second interruption, I will give that individual a
16 second warning and they will be muted. If that same
17 individual receives a third warning, that person will
18 be removed from the call. And if there are several
19 people making interruptions, I may close the hearing.

20 I will now introduce Joshua Tracy from
21 Montgomery County Department of Transportation who is
22 a real estate specialist to present the case. Josh.

23 MR. TRACY: Thank you, Michael. Hold on
24 one second, guys. Okay. So my name is Joshua Tracy.
25 I'm with the property acc -- property acquisition

1 section within the Montgomery County Department of
2 Transportation. Our office is charged with
3 administering the abandonment process.

4 This case is for the abandonment of a
5 public alley in Block 5 of the West Chevy Chase
6 Heights subdivision. The public alley is
7 approximately ten to 15 feet wide that bifurcates in
8 a north-south direction the entire block framed by
9 Wisconsin Avenue to the west, Tilbury Street to the
10 East, West Virginia Avenue to the south and Highland
11 Avenue to the north. The subject alley was dedicated
12 to public use in March of 1916 via plat number 186
13 and consists of roughly 2475 square feet.

14 Nearly all of the properties in the entire
15 of Block 5 have been assembled by the applicant, 8001
16 Wisconsin LLC and its related entities. The
17 applicant is represented by Mr. Dalrymple and Mr.
18 Gordon of Selzer and Gurvitch. In fulfillment of the
19 conditions of Section 49-62 of the Montgomery County
20 code, my office provided notice to all of butting
21 property owners and to members of the public of
22 today's hearing and solicited comments from the
23 appropriate governmental agencies and public utility
24 companies that might be affected by proposed
25 abandonment.

6

1 I'll now read into the record the
2 following exhibits. Exhibit A -- which will bring up
3 whenever Mr. Utterback is ready. Exhibit A is a
4 request letter dated October 30th, 2019 from Mr.
5 Dalrymple and Mr. Gordon -- sorry, I lost my screen
6 here -- on behalf of their client 8001 Wisconsin LLC
7 requesting abandonment of a public alley running
8 north-south on Block 5 of the West Chevy Chase
9 Heights subdivision.

10 (Exhibit A was marked for identification
11 and is attached to the transcript.)

12 Exhibit B is the public hearing
13 authorization via executive order via executive order
14 024-20 which is effective February 26, 2020.

15 (Exhibit B was marked for identification
16 and is attached to the transcript.)

17 Exhibit C which is a notice of public
18 hearing published on the county's website.

19 (Exhibit C was marked for identification
20 and is attached to the transcript.)

21 Exhibit D which is a proof of the
22 newspaper advertisement of the public hearing for two
23 consecutive weeks on July 14th, 2020 and July 21st,
24 2020 in the Washington Times.

25 (Exhibit D was marked for identification

8

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3 (9 to 12)

<p>1 and is attached to the transcript.)</p> <p>2 Exhibit E which is plat of Block 5 of the</p> <p>3 West Chevy Chase Heights subdivision with the subject</p> <p>4 public alley proposed to be abandoned highlighted in</p> <p>5 green.</p> <p>6 (Exhibit E was marked for identification</p> <p>7 and is attached to the transcript.)</p> <p>8 Exhibit F which is a legal description of</p> <p>9 the subject public alley proposed to be abandoned.</p> <p>10 (Exhibit F was marked for identification</p> <p>11 and is attached to the transcript.)</p> <p>12 Exhibit G which is a sketch of the subject</p> <p>13 public alley proposed to be abandoned from VKA [sic]</p> <p>14 Maryland LLC dated September of 2019.</p> <p>15 (Exhibit G was marked for identification</p> <p>16 and is attached to the transcript.)</p> <p>17 Exhibit H which is the original plat of</p> <p>18 the West Chevy Chase subdivision recorded on March</p> <p>19 31st of 1916.</p> <p>20 (Exhibit H was marked for identification</p> <p>21 and is attached to the transcript.)</p> <p>22 Exhibit I is a prior petition and Circuit</p> <p>23 Court order in equity case number 33819.</p> <p>24 (Exhibit I was marked for identification</p> <p>25 and is attached to the transcript.)</p>	<p>9</p> <p>1 conditional approval dated February 7th, 2020.</p> <p>2 (Exhibit O was marked for identification</p> <p>3 and is attached to the transcript.)</p> <p>4 Exhibit P is an email from the Montgomery</p> <p>5 County Division of Permitting Service dated February</p> <p>6 28, 2020 saying the department has no issue with the</p> <p>7 proposed abandonment.</p> <p>8 (Exhibit P was marked for identification</p> <p>9 and is attached to the transcript.)</p> <p>10 Exhibit Q is an email from Montgomery</p> <p>11 County Department of Permitting Services Office of</p> <p>12 the Fire Marshall saying the department has no</p> <p>13 comment in regards to the proposed abandonment.</p> <p>14 (Exhibit Q was marked for identification</p> <p>15 and is attached to the transcript.)</p> <p>16 Exhibit R which is a memorandum -- which</p> <p>17 is -- I'm sorry -- which is a -- no -- is a</p> <p>18 memorandum from Montgomery County Planning Department</p> <p>19 dated February 20th, 2020 saying the property's no</p> <p>20 longer necessary for public use or anticipated public</p> <p>21 use.</p> <p>22 (Exhibit R was marked for identification</p> <p>23 and is attached to the transcript.)</p> <p>24 Exhibit S is a statement updating 8001</p> <p>25 Wisconsin LLC's ownership in the assembled site.</p>
<p>1 Exhibit J which is the existing condition</p> <p>2 images of the subject property.</p> <p>3 (Exhibit J was marked for identification</p> <p>4 and is attached to the transcript.)</p> <p>5 Exhibit K which is signage announcing the</p> <p>6 public hearing date installed on July 13th, 2020.</p> <p>7 (Exhibit K was marked for identification</p> <p>8 and is attached to the transcript.)</p> <p>9 Exhibit L is a WSSC letter dated December</p> <p>10 21st, 2019 consenting to vacate.</p> <p>11 (Exhibit L was marked for identification</p> <p>12 and is attached to the transcript.)</p> <p>13 Exhibit M which is an email from</p> <p>14 Washington Gas with conditional approval of the</p> <p>15 abandonment dated January 23rd, 2020.</p> <p>16 (Exhibit M was marked for identification</p> <p>17 and is attached to the transcript.)</p> <p>18 Exhibit N which is the Montgomery County</p> <p>19 Department of Transportation Office of Transportation</p> <p>20 Policy Development Review Team memorandum which is</p> <p>21 dated January 27th, 2020 recommending conditional</p> <p>22 approval.</p> <p>23 (Exhibit N was marked for identification</p> <p>24 and is attached to the transcript.)</p> <p>25 Exhibit O is an email from PEPCO with</p>	<p>10</p> <p>12</p> <p>1 (Exhibit S was marked for identification</p> <p>2 and is attached to the transcript.)</p> <p>3 Exhibit T which is a preliminary plan or</p> <p>4 civil plan reflecting consolidation of the entire</p> <p>5 civil block.</p> <p>6 (Exhibit T was marked for identification</p> <p>7 and is attached to the transcript.)</p> <p>8 Exhibit U is actually a duplicate of the</p> <p>9 Park and Planning's recommendation support of the</p> <p>10 abandonment application.</p> <p>11 (Exhibit U was marked for identification</p> <p>12 and is attached to the transcript.)</p> <p>13 Exhibit V which is the resume of Josh</p> <p>14 Sloan.</p> <p>15 (Exhibit V was marked for identification</p> <p>16 and is attached to the transcript.)</p> <p>17 Exhibit W is the resume of Nancy Randall.</p> <p>18 (Exhibit W was marked for identification</p> <p>19 and is attached to the transcript.)</p> <p>20 Exhibit X are relevant excerpts from the</p> <p>21 2017 approved and adopted Bethesda downtown sector</p> <p>22 plan.</p> <p>23 (Exhibit X was marked for identification</p> <p>24 and is attached to the transcript.)</p> <p>25 Exhibit Y is the concept plan.</p>

Transcript of Hearing
Conducted on July 28, 2020

4 (13 to 16)

	13		15
1	(Exhibit Y was marked for identification 2 and is attached to the transcript.)	1	MR. PAYLOR: Okay. So I accept that 2 motion.
3	And then we have an additional exhibit 4 that will be made available. And that is excerpts 5 also from the Bethesda downtown plan design 6 guidelines. Those will be Exhibit Z.	3	MR. DALRYMPLE: Thank you. We will be 4 referring to those exhibits as we proceed here this 5 morning. We have provided extensive written 6 testimony already as summarized by Mr. Tracy in the 7 form of our -- of our initial letter and petition 8 with a lot of supporting documentation. And that 9 will be supplemented with our testimony here this 10 morning for the record all which is intended, and we 11 believe does, demonstrate that the abandonment of the 12 right-of-way in question is -- is appropriate in that 13 public use of the -- the right-of-way is not needed 14 currently or in the foreseeable future for any public 15 use or public benefit.
7	(Exhibit Z was marked for identification 8 and is attached to the transcript.)	16	The -- and we will be providing more 17 evidence on this. But just in summary, the applicant 18 has assembled the entire block as Mr. Tracy was 19 describing that is framed by Wisconsin Avenue, West 20 Virginia Avenue, Highland Avenue and Tilbury. It is 21 -- essentially what we're doing here is an extension 22 of the county council's approval of the Bethesda 23 downtown sector plan which called for redevelopment 24 in an urban fashion of the entire Bethesda central 25 business district. And with the assemblage of this
9	All right. And Michael, I'll turn it back 10 over to you for the applicant's comments.	14	1 will be offering as an expert in land planning and 2 landscape architecture and Nancy Randall a 3 transportation planner with Wells and Associates.
11	MR. PAYLOR: So at this time, we'll allow 12 the applicants to provide comments on the matter. 13 Mr. Dalrymple.	4	I would also like to acknowledge that John 5 Collich and Brian Downie, both senior executives with 6 the Saul Companies are also on this -- in -- in this 7 hearing. We do not anticipate calling them as -- as 8 witnesses.
12	14	9	I would like to thank Josh Tracy for doing 10 such a great job of organizing this and pulling the 11 record together in these difficult times. I know 12 it's been quite -- quite a challenge, but he has 13 truly demonstrated his -- his talent and his 14 expertise, so thank you for that.
13	15	15	Mr. Paylor, I would like at this point in 16 time to ask through a motion that the Exhibits A 17 through Z be accepted into the official public record 18 in this matter.
14	19	16	19 MR. PAYLOR: So by motion, all those in 20 favor of entering Exhibits A through Z into the 21 public record -- do we have a motion for those 22 exhibits to be entered into the public record -- A 23 through Z?
15	24	17	MR. DALRYMPLE: That is my motion. Yes, 25 sir.
16	24	18	To the best of my knowledge, we have not 19 seen any opposition presented to this. There are a 20 couple of names I see on the screen that I don't know 21 what their intent is. But at this point in time, 22 we're not aware of any opposition. Should we receive 23 any opposition either now or through the period that 24 the record is open, we will address that accordingly.
17	25	25	The -- in the record already is Exhibits R 25 and U -- are recommendations from the Montgomery

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5 (17 to 20)

1 County Planning Department and the planning director,
2 Gwen Wright, recommending that the abandonment
3 petition be approved. And we agree with that
4 recommendation and our testimony will bolster the
5 conclusions of the planning department.

6 The ultimate disposition of the right-of-
7 way, if it is recommended for approval by you, Mr.
8 Paylor, and ultimately adopted through a resolution
9 of the Montgomery County Council will -- will be a
10 effectuated through a record plat of subdivision
11 which will come at the very end of the entitlement
12 process and that will make sense of the -- of the --
13 the repurposed block including the inclusion of the
14 abandoned right-of-way into the block for development
15 purposes as we move forward.

16 With that, I would like to call our first
17 witness which -- who is Vincent Burke.

18 MR. BURKE: Good morning. For the record,
19 my name's Vincent Burke. I'm vice president with
20 B.F. Saul Company and I've worked with them for 17
21 years. Bob, you're on mute.

22 MR. DALRYMPLE: I didn't mute me. So Mr.
23 Utterback doesn't want me to participate. Mr. Burke,
24 can you please briefly describe your educational and
25 your professional background?

1 MR. BURKE: I have a Bachelor of the arts
2 from -- in political science from Loyola University
3 in Maryland. As I stated, I've been working with the
4 Saul organization for 17 years. I perform both
5 transactional and planning and development work
6 across all product types -- that being land, retail,
7 hotel, office, residential and mixed-use properties.
8 And I do so throughout the region but heavily in
9 Montgomery County.

10 MR. DALRYMPLE: And are you familiar with
11 the abandonment petition that has been submitted on
12 behalf of Saul for the subject property?

13 MR. BURKE: I am.

14 MR. DALRYMPLE: Can you -- are you
15 familiar with the Bethesda downtown sector plan and
16 were you active in that process?

17 MR. BURKE: Very much so. I worked
18 specifically on this property and one additional
19 property in Bethesda that Saul owns with the staff
20 throughout the entirety of the master plan process.
21 I've also worked on a similar development at 7316
22 Wisconsin Avenue just about a mile and change from
23 this site here.

24 MR. DALRYMPLE: And are you generally
25 familiar with the zoning of the property that's been

1 assembled by Saul and the potential for
2 redevelopment?

3 MR. BURKE: I am.
4 MR. DALRYMPLE: Can you describe what your
5 role will be relative to the redevelopment process
6 moving forward?

7 MR. BURKE: My colleague, Brian Downie who
8 is also on the Zoom here, and I will take the
9 property through the entitlement process and all the
10 way through its entire development.

11 MR. DALRYMPLE: Can you please describe --
12 and I would ask, Mr. Utterback, if you could put onto
13 the screen Exhibit E, please?

14 COURT REPORTER: One moment, please.

15 MR. DALRYMPLE: Thank you. Mr. Burke, can
16 you please describe the assembled block that is
17 centered on the -- with 8001 Wisconsin Avenue and how
18 this assembled block is currently approved and how it
19 relates to the public alley that is the subject of
20 this petition?

21 MR. BURKE: The subject block sits on the
22 east side of Wisconsin Avenue, Maryland 355.
23 Bordered to the north by Highland Avenue; the south,
24 West Virginia Avenue; and the east, Tilbury Street.
25 I've worked in concert with John Collich to acquire

18 20
1 the entirety of the block -- or gain control of the
2 entirety of the block beginning in 2005 and
3 completing it in 2019. The alley shown in the
4 blue/green color, sits to the rear of the single
5 loaded retail stores that face Wisconsin Avenue and
6 functions as service and loading for those stores.

7 MR. DALRYMPLE: And -- so -- just -- if
8 you could expand on your knowledge of how the public
9 alley functions relative to the existing improvements
10 both internal to the block and in the -- in the
11 larger context of the downtown Bethesda area.

12 MR. BURKE: I believe that that singular
13 purpose is -- just says service and loading to access
14 the rear of those stores. I don't believe it serves
15 any function in the greater context of downtown
16 Bethesda. It's a narrow alley lined with the
17 dumpsters and the rear doors to the stores to allow
18 for loading and service as stated. There are, on the
19 north end of the block, some parking spaces at the
20 rear of those stores in the 8017 through 23 -- 8023
21 addresses. It does not provide any function for the
22 parcels to the west heading towards Tilbury.

23 MR. DALRYMPLE: Thank you. Can you
24 describe how the 2017 approval of the Bethesda
25 downtown sector plan potentially changes the dynamics

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6 (21 to 24)

1 for the subject property?
2 MR. BURKE: The 2017 master plan envisions
3 full block planning for everything you see in yellow.
4 We worked closely with the staff during the plan to
5 develop a concept that is mixed-use with ground floor
6 retail fronting Wisconsin Avenue as it does today and
7 residential above that with a height of 90 feet at --
8 on the western portion of the block tapering down to
9 70 feet where it confronts what's known as Eastern
10 Greenway.

11 Eastern Greenway is a network of public
12 open space that will face Tilbury Street and help to
13 serve, in addition to that tapering of the height,
14 help to serve as a buffer to the single family
15 residential neighborhood that sits east of Tilbury
16 Street. In that configuration, the public alley
17 serves no purpose. All of the service and loading
18 will be internal to the block which is consistent
19 with all of Saul's urban development work. And --
20 and again, the alley will not be needed at that time.

21 MR. DALRYMPLE: Thank you, Mr. Burke. Can
22 you describe and -- and perhaps -- you can -- you can
23 choose whether you want to work from the preliminary
24 plan or the concept plan to describe what the
25 proposed redevelopment of the assembled block is --

22 1 is to be.
2 MR. BURKE: You can pull -- put up Exhibit
3 Y -- the concept plan. The concept plan shows what I
4 just described. There's a network of pedestrian
5 sidewalks that surround the property fronting all of
6 the streets that will conform to the Bethesda streets
7 [inaudible] guidelines. There is retail that will
8 confront Wisconsin Avenue and have access to
9 ingress/egress along Wisconsin Avenue as well as the
10 garage below the building.

11 There's a port share that's shown to the
12 -- on Highland Avenue to the north that will allow
13 residents drop-off and pick-up. And then moving
14 eastward on the block, you see the garage entrance
15 for what will be a three-level underground garage.
16 And continuing eastward, you see there in white a
17 placeholder of design for the Eastern Greenway Park.

18 And then moving back around the block,
19 there is a one at-grade courtyard on West Virginia
20 Avenue and then the service access also on West
21 Virginia Avenue. Again, that building will be 90
22 feet at the front tapering down to 70 feet. As it
23 moves eastward, you can see that dividing line shown
24 there and dashed in gray.

25 MR. DALRYMPLE: And Mr. Burke, do you

23 1 believe that this proposed redevelopment is
2 consistent with the -- the adopted sector plan?
3 MR. BURKE: Entirely so. Again, we
4 worked closely with the staff on this plan. This
5 concept is substantially similar to what we shared at
6 work with the staff on -- during the plan and have
7 refined since that time in advance of the staff
8 issuing their -- their letter that's on the record
9 here that affirms that our plan -- confirms with the
10 master plan and is supported by the planning staff.

11 MR. DALRYMPLE: And with this proposed
12 redevelopment in accordance with the sector plan,
13 what happens to the -- the existing right-of-way for
14 the public alley?

15 MR. BURKE: It's no longer needed? And
16 the -- and the master plan anticipated that. It
17 wasn't shown as a mid-block connection in the
18 ultimate build-out of Bethesda. And since the
19 Wisconsin Avenue facing retail, along with their
20 entirety of the block as built, will be demolished
21 that service lane is no longer needed. Again, that
22 -- that service and vehicular movement is now
23 integrated into the ultimate development plan and the
24 garage.

25 MR. DALRYMPLE: And so is retention of the

24 1 right-of-way necessary in any fashion or form to
2 serve the greater general public?

3 MR. BURKE: No.

4 MR. DALRYMPLE: Are you familiar with the
5 Montgomery County Planning Department letter that's
6 dated February 20, 2020 that's Exhibit R and Exhibit
7 U in this record?

8 MR. BURKE: I'm sorry. You froze, but
9 that's the letter I was referencing, I believe.

10 MR. DALRYMPLE: Can you hear me?

11 MR. BURKE: Yep. We can hear you.

12 MR. DALRYMPLE: Okay. That [inaudible]
13 previous -- I think it's Exhibit --

14 MR. BURKE: Exhibit R.

15 MR. DALRYMPLE: And Exhibit U, correct.
16 So are you -- are you in agreement with that -- with
17 the recommendations in that letter?

18 MR. BURKE: Total. Totally.

19 MR. DALRYMPLE: So in your professional --
20 with your professional experience and background, do
21 you believe that the public alley in question is
22 necessary for present public use or anticipated
23 public use in the foreseeable future?

24 MR. BURKE: It's necessary in the present
25 just to serve those retail properties for service and

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7 (25 to 28)

1 loading but for no other reason. So once those
2 properties are demolished, that service will be
3 handled within the context of the larger development
4 and it's designed.

5 MR. DALRYMPLE: Thank you. And I -- I
6 have no further questions of Mr. Burke. So I'll turn
7 it back to you, Mr. Paylor, if you have any
8 questions.

9 MR. PAYLOR: Thank you, Mr. Dalrymple. I
10 don't have any questions at this time. Are there any
11 other individuals who are looking to speak and
12 comment on this at this point?

13 MS. MCCRAY: Michael, you have a -- you
14 have a comment from Jason Yang in the chat.

15 MR. PAYLOR: Okay. Thank you. Could you
16 repeat the name again, please, Tiara?

17 MS. MCCRAY: Mr. Jason Yang has a comment.

18 MR. PAYLOR: Okay. Mr. Yang, this is
19 Michael Paylor. Please communicate your comment to
20 the group.

21 COURT REPORTER: It says under the comment
22 that he doesn't have a microphone.

23 MR. PAYLOR: Okay. Could be a problem.

24 MS. MCCRAY: I'm happy to read his comment
25 in.

25

1 network begins to connect along Tilbury there from
2 north to south, it can be used for that -- that
3 pedestrian movement from north to south along that
4 East side of Wisconsin Avenue.

5 MR. DALRYMPLE: And --

6 MR. BURKE: Go ahead, Bob. Excuse me.
7 MR. DALRYMPLE: With the assemblage of the
8 entire block, is the applicant able to accommodate
9 fully the recommendations of the sector plan relative
10 to the Greenway?

11 MR. BURKE: Yes, it is.

12 MR. DALRYMPLE: I have no -- no further
13 questions or comments from Mr. Burke.

14 MR. PAYLOR: Thank you, Mr. Dalrymple.
15 Mr. Yang has issued or submitted a -- an additional
16 question on this. And the question reads the
17 Greenway width is an exchange for the density and
18 height, correct? That trade was already made? Mr.
19 Burke or -- or Mr. Dalrymple?

20 MR. DALRYMPLE: I'm not -- not sure I'm
21 fully understanding the question, but the -- the
22 applicant already had the -- the rights to all of the
23 density from the -- from the right-of-way by virtue
24 of the original dedication of the alley. So the
25 density already belonged to the abutting properties

26

1 and with the creation of the Greenway, that will be
2 -- that will be dedicated to public use. But the
3 density from that Greenway will be incorporated into
4 the rest of the redevelopment of that block. So I
5 don't know if that directly answered Mr. Yang's
6 question. But if -- if not, we'd be happy to expand
7 further on that.

8 MR. BURKE: I would only add that it
9 wasn't a specific, you know, item for item trade.

10 This is -- this was full block planning and the
11 entirety of the block was considered. So --

12 MR. PAYLOR: Thank you, Mr. Burke for that
13 --

14 MR. BURKE: -- [inaudible] the massing,
15 the setbacks, the widths of the Greenway, the
16 [inaudible] setback. I'm sorry. Should I continue?

17 MR. DALRYMPLE: You're freezing up a
18 little.

19 MR. BURKE: I apologize. I'll say again.
20 I would -- I would just add that this was in full
21 block planning; not an item for item trade. So the
22 Heights massing the -- the density, the width of the
23 Greenway, the setback for the BRT station that's
24 supposed to be on Wisconsin Avenue, the widths of the
25 sidewalk, all of those things were taken into

27

28

1 MR. PAYLOR: Okay. I think I'll see it
2 now. Mr. Yang has submitted a comment. Wouldn't it
3 be nice if the width of the alley were an exchange
4 transfer to the Greenway? Not a question, but a
5 comment. Is there any dialogue that anyone would
6 like to offer on that?

7 MR. BURKE: I would just --

8 MR. DALRYMPLE: I --

9 MR. BURKE: Go ahead, Bob.

10 MR. DALRYMPLE: I was just going to ask
11 Mr. Burke, if you -- if you could describe again how
12 the Greenway is more or less a replacement for the --
13 the past circulation patterns in the downtown.

14 MR. BURKE: The Greenway -- well, in terms
15 of the width, the Greenway greatly exceeds the width
16 of the alley. The alley is ten --

17 [?]: [inaudible] --

18 MR. BURKE: -- feet.

19 [?]: ---- announce the expansion of
20 Operation --

21 MR. BURKE: The alley is a ten feet at its
22 narrowest and 15 feet at a small portion. And the
23 width of the Eastern Greenway is 70 feet. And that
24 Eastern Greenway will be publicly accessible and used
25 as open space for the community and also as the

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8 (29 to 32)

	29		31
1	consideration. And again, the staff was entirely 2 familiar with the concept and supportive of it. 3	1 design, and construction. 2	MR. DALRYMPLE: Thank you for that. Are 3 you a member of any professional societies or 4 organizations in your area of expertise?
4	MR. PAYLOR: Thank you for the additional 5 clarification, Mr. Burke. For the record, Mr. Yang 6 provided an additional statement -- an additional two 7 statements. Seems a bit deceptive to describe the 8 Greenway as a replacement for the alley right-of-way. 9 And then he continues on in saying, this does seem like a fantastic project overall, though.	5	MR. SLOAN: I'm a member of the American 6 Society of Landscape Architects, the American 7 Planning Association and American Institute of 8 Certified Planners.
10	It seems to me that based on his initial 11 statement and the summaries that both you and Mr. 12 Dalrymple provided, I think that addresses this 13 question. Mr. Yang, do you have additional questions 14 or additional comments on this?	9	MR. DALRYMPLE: Have you ever been 10 recognized as an expert witness in your area of 11 expertise and -- and what is your specific area of 12 expertise?
15	MR. DALRYMPLE: I believe I did see a 16 thumbs-up.	13	MR. SLOAN: I've been qualified as an 14 expert witness as a landscape architect and a land 15 planner in Montgomery County by the hearing examiner 16 and have participated also in abandonment hearing.
17	MR. BURKE: I'm not a Zoom professional, 18 but I did see a thumbs up there as well.	17	MR. DALRYMPLE: Mr. Paylor, we have 18 submitted for the record Mr. Sloan's resume which is, 19 I believe, Exhibit V. And based on the resume and 20 the questions we just asked and the answers, I would 21 ask that you recognize him as an expert in the area 22 of land planning and landscape architecture.
19	MR. PAYLOR: I did as well. Fantastic. 20 Thank you for that.	23	MR. PAYLOR: Thank you, Mr. Dalrymple. 24 Based on your requests, I recognize Mr. Sloan as an 25 expert in landscape architecture based on his resume
21	MR. DALRYMPLE: I've never received 22 [inaudible] so thank you, Mr. Yang.	30	1 and experience. I accept that. 2
23	MR. PAYLOR: Does anyone else have any 24 comments or does the applicant have an additional 25 witness?	2	MR. DALRYMPLE: Thank you, Mr. Paylor. 3
1	MR. DALRYMPLE: We do. And if it's okay 2 with you, Mr. Paylor, I would like to present our 3 next witness, Josh Sloan with VIKA. Are you -- are 4 you up and audible, Mr. Sloan?	3	Mr. Sloan, are you familiar with the petition for 4 abandonment which is the subject of these 5 proceedings?
5	MR. SLOAN: I think so.	6	MR. SLOAN: I am.
6	MR. DALRYMPLE: Great. If you could state 7 your name and your business address, please.	7	MR. DALRYMPLE: And have you visited the 8 property and the -- and the area around the property 9 previously?
8	MR. SLOAN: Joshua Sloan, 20251 Century 9 Boulevard, Germantown, Maryland. It's with VIKA 10 Maryland LLC. I'm vice president and director of 11 planning and landscape architecture.	10	MR. SLOAN: I have visited the property 11 and the Bethesda area generally many times.
12	MR. DALRYMPLE: And how long have you been 13 engaged in this occupation?	12	MR. DALRYMPLE: And are you familiar with 13 the -- the Bethesda downtown sector plan that was 14 adopted in 2017?
14	MR. SLOAN: I've been a landscape 15 architect for about 24 years and a land planner for 16 about 14 years.	15	MR. SLOAN: I am. Like Mr. Burke, I 16 participated in the sector plan process providing 17 recommendations and testimony during the process and 18 then through its adoption.
17	MR. DALRYMPLE: Great. Could you just 18 briefly describe your educational and your 19 professional background relative to your expertise?	19	MR. DALRYMPLE: And are you -- are you 20 familiar with the -- the current zoning of the 21 property and the areas around the subject property?
20	MR. SLOAN: I have a Master's of landscape 21 architecture from State University of New York. And 22 I've worked in the private and public practice and 23 land planning, both at Maryland National Capital Park 24 and Planning for seven years and at VIKA for seven 25 years. My previous work was landscape architecture,	22	MR. SLOAN: Yes. The property is zoned in 23 the commercial residential zones, commercial 24 residential town zones as are the properties to the 25 north and south. To the east of the properties are

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9 (33 to 36)

	33		35
1	-- are 60 residentially zoned properties.	1	MR. DALRYMPLE: Can you get into the
2	MR. DALRYMPLE: Are you familiar with the	2	details a little bit of the -- the limits of the
3	entitlement processes that will be required for the	3	public alley and how it relates to the assembled
4	redevelopment of the property?	4	block and perhaps -- would you like Exhibit F -- the
5	MR. SLOAN: I am. We've taken several	5	meets and bounds pulled up, Mr. Sloan?
6	properties through sketch plans, preliminary and	6	MR. SLOAN: That would help.
7	subdivision -- preliminary plans of subdivision site	7	MR. DALRYMPLE: Mr. Utterback, if you
8	plans in the sector plan area and other areas of the	8	could get F. I think we also need G.
9	county.	9	MR. SLOAN: Yeah. F is -- F is the
10	MR. DALRYMPLE: And are you familiar with	10	technical documentation from our surveyors of the
11	the -- the block that has been assembled by the	11	meets and bounds that describes the -- the sketch
12	applicant?	12	that's in Exhibit G. Exhibit G shows specifically
13	MR. SLOAN: Yes. With my staff, I've	13	13 the abutting lots to the east for the ten-foot alley.
14	worked on initial analysis and the natural resources	14	14 So it abuts all properties that front on Wisconsin
15	inventory, as well as surveying aspects of the block	15	15 Avenue and it also abuts the -- what's in -- is lot
16	defined by Wisconsin Avenue, West Virginia, Tilbury	16	16 seven it's on Highland Avenue in the alley, and then
17	and Highland.	17	17 a butts lot 27, I think it is, to the -- to the
18	MR. DALRYMPLE: And are you familiar with	18	18 South.
19	the public alley that Mr. -- as Mr. Tracy described	19	There was a previously abandoned alley
20	20 it -- that bifurcates the -- the assembled block and	20	20 that ran east-west that's also noted on the
21	21 how that alley functions in its current context?	21	21 description. The alley's ten feet wide until mid-
22	MR. SLOAN: I have. I've reviewed all of	22	22 block from north to south, and then it's 15 feet wide
23	23 the work our surveyors have done describing the meets	23	23 from there to further south. And I'd only note,
24	24 and bounds and the sketch and description of the prop	24	24 additionally, that this is a substandard alley. An
25	25 -- of the alley.	25	25 alley is typically dedicated at 20 feet minimum
	34		36
1	MR. DALRYMPLE: I would ask -- Mr.	1	1 paving both in the road code and in the zoning
2	Utterback back, if you could put onto the screen	2	2 ordinance Chapters 49 and 59.
3	3 Exhibit J which is an existing conditions exhibit.	3	MR. DALRYMPLE: Thank you, Mr. Sloan. Can
4	4 COURT REPORTER: One moment, please.	4	4 you -- based on your experience, can you just
5	5 MR. DALRYMPLE: Thank you. Thank you, Mr.	5	5 generally describe how the alley was initially
6	6 Utterback. Mr. Sloan, can you please, using this	6	6 created and what you believe was the purpose of the
7	7 exhibit, describe the functionality of the public	7	7 creation of the alley in its original form?
8	8 alley in these current conditions?	8	MR. SLOAN: The alley was dedicated by
9	9 MR. SLOAN: The alley provides a one-way	9	9 plat 186. I think it was in 1916. And it, like the
10	10 movement from north to south giving access to parking	10	10 blocks to the north and south, provided service
11	11 areas, service trash and recycling areas to the	11	11 access to the lots that con -- the lots that front on
12	12 properties generally facing Wisconsin Avenue fronting	12	12 Wisconsin Avenue. This is traditionally done to
13	13 on that area. There are some parking to the east of	13	13 reduce curb cuts and minimize traffic on higher
14	14 the alley for one of the properties.	14	14 volume roads and move the service requirements for
15	15 MR. DALRYMPLE: And what -- can you	15	15 properties like pick up of trash and access to
16	16 describe what your role has been in this -- in the	16	16 parking behind the properties freeing up the
17	17 entitlement process and the abandonment process to	17	17 streetscape along our primary roads.
18	18 date?	18	MR. DALRYMPLE: Thank you, Mr. Stone. And
19	19 MR. SLOAN: My role is -- is primarily	19	19 were you -- were you on -- on the screen and in the
20	20 oversight of the development of existing conditions,	20	20 -- in these proceedings for Mr. Burke's testimony
21	21 plans, concept development, entitlement, and sector	21	21 relating to the proposed redevelopment of the
22	22 plan review. So anything that comes forward with	22	22 property?
23	23 concept design and analysis of the existing	23	MR. SLOAN: I was.
24	24 conditions that that concept design is based on is	24	MR. DALRYMPLE: So -- but working off of
25	25 under my purview.	25	25 that, can you generally describe how the -- the

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10 (37 to 40)

1 right-of-way for the -- for the public alley will
2 function in the context of -- of the existing
3 improvements and how it will relate to circulation
4 needs in the future?

5 MR. SLOAN: Sure. The current alley
6 provides only vehicular access. As the Chapter 49
7 notes, alleys are not recommended for pedestrian
8 access. So the alley providing service, once these
9 lots are consolidated and put together with the
10 general development -- redevelopment of this block,
11 those service functions will be taken over, as Mr.
12 Burke described, by providing internal access for
13 loading and service from West Virginia Avenue and to
14 parking from Highland Avenue. Thus, we don't need
15 the alley anymore to provide that service and parking
16 access function.

17 MR. DALRYMPLE: Can you -- bear with me
18 for one second, please. So can you describe just
19 generally speaking how the proposed redevelopment of
20 this block will comport with the approved and adopted
21 sector plan?

22 MR. SLOAN: Sure. The sector plan
23 recommends this block for mixed-use zoning, and it
24 recommends taller building heights on Wisconsin
25 Avenue stepping down to a maximum of 70 feet on the

1 east side. The Greenway is also a recommended master
2 plan aspect of this block. And it is specifically
3 recommended as a 35-foot width minimum. And for
4 every additional foot that you provide for the
5 Greenway, you are allowed to build another foot
6 higher for your building.

7 Thus, to achieve your maximum 70 feet of -
8 - of zoned height, you would have to provide a 70-
9 foot Greenway which is exactly what this project is
10 doing. What entails though, is providing that open
11 space -- that green space and that pedestrian access
12 along the Greenway -- means you're pushing your
13 density and your height, of course, to the west.

14 And as noted in Park and Planning -- Park
15 and Planning's letter, Exhibit R, I think it is, they
16 note that to achieve these heights, you put your
17 density over the area that is -- it's on the second
18 page. That includes the -- the alley right-of-way as
19 well as the other consolidated properties. There,
20 third -- third paragraph under discussion in that
21 exhibit describes it quite well. The -- the loading
22 and trash is put to the sides. It's off of Wisconsin
23 Avenue. It doesn't disturb the Greenway and the
24 building heights are achieved as recommended in the
25 master plan.

37

1 MR. DALRYMPLE: And are you familiar with
2 the design guidelines that were adopted after the
3 adoption of the sector plan?

4 MR. SLOAN: Yes. The design guidelines
5 provide additional information regarding
6 sustainability issues and urban design issues for the
7 block and other areas.

8 MR. DALRYMPLE: And how do these design
9 guidelines play into the -- the abandonment or not of
10 the public alley?

11 MR. SLOAN: There are no specific
12 recommendations for this lot in the -- or this block
13 in the design guidelines. However, they do provide a
14 network of circulation including where mid-block
15 pedestrian throughways should be and other -- other
16 roads. And there is no recommendation for this block
17 to have a mid-block crossing -- mid-block throughway
18 for -- for pedestrians or any alley necessary.

19 MR. DALRYMPLE: Mr. Sloan, as the area
20 redevelops in accordance with the sector plan, what
21 role, if any, do you believe the current right-of-way
22 and the public alley serves with that redevelopment?

23 MR. SLOAN: I don't believe it serves any
24 -- any -- and any need for -- during -- after
25 redevelopment. All of the functions that the alley

39

40

1 is providing now will be provided by other means.

2 MR. DALRYMPLE: So do you have an opinion
3 as to whether the abandonment of the public alley
4 would be consistent or not with the adopted sector
5 plan?

6 MR. SLOAN: I do. I think the abandonment
7 of the alley is directly in line with the
8 recommendations for the master plan.

9 MR. DALRYMPLE: And in your opinion, is
10 the public alley necessary for present public use or
11 anticipated public use as a right-of-way or for any
12 other public purpose in the foreseeable future?

13 MR. SLOAN: It is not needed for any
14 public purpose. It's only serving the existing lots
15 on that -- on that property. It's not meant for
16 through traffic or circulation of any other -- any
17 other needs.

18 MR. DALRYMPLE: Thank you, Mr. Sloan. Mr.
19 Paylor, I do not have any further questions of Mr.
20 Sloan at this time. So I'll turn it back to you.

21 MR. PAYLOR: Thank you very much, Mr.
22 Dalrymple. At this point and time in the hearing,
23 are there any further comments? Okay. If there are
24 no comments, I am declaring this hearing closed. The
25 record will remain open until August -- I'm sorry?

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11 (41 to 44)

	41		43
1	MR. DALRYMPLE: I'm sorry.	1	MR. TRACY: Mr. Paylor, while we wait for
2	MR. TRACY: I think the applicant has	2	-- for Nancy, we did have --
3	additional --	3	MS. RANDALL: Guys, it's not accepting the
4	MR. PAYLOR: I apologize. Forgive me, Mr.	4	ID number or the passcode. Can you hear me?
5	Dalrymple.	5	MR. DALRYMPLE: It's -- it's pretty rough,
6	MR. DALRYMPLE: No -- no worries. Thank	6	but maybe we can just try to power through it. And
7	you, Mr. Paylor. We do have one additional witness	7	I'll -- I'll try to ask questions in more or less of
8	and she would be quite upset if we didn't allow her	8	a leading way to reduce the lead for -- for her
9	to participate because she got all dressed up for it.	9	comments. Is that -- is that acceptable, Mr. Paylor?
10	MR. PAYLOR: I apologize.	10	MR. PAYLOR: Yes, it is. Thank you.
11	MR. DALRYMPLE: No worries. No worries.	11	MR. DALRYMPLE: Okay. Ms. Randall, have
12	I would ask Ms. Randall to please identify herself	12	you ever been recognized as an expert in the area of
13	and the business and business address.	13	transportation planning in any quasi-judicial or
14	COURT REPORTER: I'm sorry, Ms. Randall,	14	judicial proceedings?
15	your microphone is still mute.	15	MS. RANDALL: I have, yes. Both federal
16	MS. RANDALL: There you go. Thank you.	16	courts, circuit court and with most jurisdictions
17	It took a while for that question to come through.	17	within the state of Maryland.
18	For the record, my name is Nancy Randall. I work for	18	MR. DALRYMPLE: Mr. Paylor, we have
19	Wells and Associates and I am a transportation	19	entered into the record Ms. Randall's resume as
20	planner. My office is located at 1110 Bonifant	20	Exhibit W and it extensively summarizes her -- her
21	Street in Silver Spring, Maryland.	21	qualifications. And we would, at this point in time,
22	MR. DALRYMPLE: Is anybody else receiving	22	offer her as an expert in transportation planning.
23	some strange feedback from --	23	And I would ask that you recognize her as such.
24	MS. MCCRAY: Yes.	24	MR. PAYLOR: So recognized Mr. Dalrymple.
25	MR. PAYLOR: Yes.	25	MR. DALRYMPLE: Thank you, Mr. Paylor.
	42		44
1	MR. DALRYMPLE: Say something again, Ms.	1	Ms. Randall, are you familiar with the abandonment
2	Randall.	2	petition that's the subject of these proceedings?
3	MS. RANDALL: Nancy Randall.	3	MS. RANDALL: I am.
4	MR. DALRYMPLE: I don't know what's the	4	MR. DALRYMPLE: And have you visited the
5	matter here.	5	properties and the surrounding areas leading up to
6	COURT REPORTER: Yeah, I'm getting a	6	this hearing?
7	static as well from her audio.	7	MS. RANDALL: I have.
8	MS. RANDALL: That's still the case?	8	MR. DALRYMPLE: And have you - are you
9	MR. DALRYMPLE: It's still the case.	9	familiar with the downtown sector plan -- Bethesda
10	MS. RANDALL: Is there a means by which I	10	downtown sector plan that was adopted for this area
11	can call by phone?	11	and specific to this -- this property?
12	COURT REPORTER: Certainly, Ms. Randall,	12	MS. RANDALL: I am.
13	if that might help. If you look on the bottom left	13	MR. DALRYMPLE: Are you familiar with the
14	hand corner of your screen, you'll see a mute button	14	transportation recommendations relevant to the
15	and next to the mute button, there is an option to	15	redevelopment of the -- the area?
16	switch to phone audio, and that should help correct	16	MS. RANDALL: I am.
17	the static there.	17	MR. DALRYMPLE: And are you familiar with
18	MR. DALRYMPLE: You're muted, Nancy.	18	the entitlement processes that are required for
19	You're muted. There you go.	19	redevelopment of the property in the CR zone?
20	MS. RANDALL: I would need a phone number.	20	MS. RANDALL: I am.
21	Thank you. Let me dial that in first.	21	MR. DALRYMPLE: Are you familiar with the
22	MS. MCCRAY: I was going to say, Nancy, I	22	block that has been assembled and -- I guess, why
23	provided you the phone number in the chat privately.	23	don't I rephrase that. Have you been present for
24	MS. RANDALL: Thank you.	24	these entire proceedings, Ms. Randall and heard the
25	MS. MCCRAY: You're welcome.	25	testimony of your colleagues?

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12 (45 to 48)

	45	47
1	MS. RANDALL: I have.	1 public use or anticipated public use in the
2	MR. DALRYMPLE: So you're familiar with	2 foreseeable future?
3	the assemblage of the -- of the block by the	3 MS. RANDALL: No, it is not. It's serving
4	applicant and the proposed improvements, correct?	4 the function for service and parking for the retail
5	MS. RANDALL: That's correct.	5 stores that are located along the frontage of
6	MR. DALRYMPLE: Can you -- are you	6 Wisconsin Avenue today.
7	familiar with the alley that bifurcates the -- this	7 MR. DALRYMPLE: And in your opinion, would
8	block and how that alley functions in the specific	8 the abandonment of the public alley be consistent
9	content -- context of this property and the	9 with the sector plan and otherwise be in the public
10	surrounding area?	10 interest?
11	MS. RANDALL: Yes, I am.	11 MS. RANDALL: It would.
12	MR. DALRYMPLE: And can you please briefly	12 MR. DALRYMPLE: Those are all the
13	describe what your role in this process has been to	13 questions I have for Ms. Randall. That -- that --
14	14 date?	14 that voice scares me and I'm afraid she's going to
15	MS. RANDALL: Yes. Initially, I prepared	15 hurt me.
16	the traffic impact study for the assembly of the	16 MR. PAYLOR: [Inaudible] Dalrymple. Does
17	properties. And then for this abandonment process to	17 the applicant at this time have any additional
18	look at the function of that alley and how it relates	18 witnesses?
19	to the public generally and the need for that alley.	19 MR. DALRYMPLE: We do not have any
20	MR. DALRYMPLE: And what -- can you	20 additional witnesses, Mr. Paylor. I do have one
21	describe what the function of the alley is in -- in	21 request that I would like to make for your
22	existing conditions?	22 consideration as -- as you move this forward in your
23	MS. RANDALL: Yes, I can. As stated	23 recommendation which is that the validity period of
24	previously by both the owner and by Mr. Sloan, it	24 the abandonment resolution, as I understand, it would
25	serves the retail developments that are located along	25 typically be five years to complete the process of
	46	48
1	Wisconsin Avenue. It serves for some parking that is	1 getting to record plat and given the times and with
2	[inaudible] of the buildings, trash pickup for those	2 the coronavirus and the disruption that it has had,
3	retail buildings as well as delivery vehicles. It	3 I believe that the council is considering a blanket
4	does not serve as a public access way for the general	4 two-year extension for approved entitlement plans.
5	public and most specifically for pedestrians since	5 In anticipation of -- of that type of -- of -- of
6	the alleys are so narrow and don't have a proper	6 accommodation by the council, I would ask that you
7	accommodation for pedestrians on those alleys.	7 consider providing a validity period for seven years
8	MR. DALRYMPLE: Mr. Utterback, could you	8 for this abandonment which is the five typically and
9	please put onto the screen Exhibit Y, the concept	9 then the two year accommodation for -- for COVID-19.
10	plan? Ms. Randall, are you familiar with this --	10 MR. PAYLOR: Thank you, Mr. Dalrymple. So
11	11 with this proposed concept plan for redevelopment of	11 considered.
12	12 the block?	12 MR. DALRYMPLE: Mr. Paylor, that is our --
13	MS. RANDALL: I am.	13 our case. I believe that through the testimony
14	MR. DALRYMPLE: Can you just generally	14 provided, both written and oral, that the applicant
15	15 describe what role, if any, the public alley will	15 has satisfied its burden of demonstrating that this
16	16 have in certainly both this block and general	16 aban -- that this right-of-way is not necessary
17	17 circulation for the downtown area?	17 presently or for public use in the foreseeable
18	MS. RANDALL: For this plan, the public	18 future. And therefore, we believe that we have made
19	alley was serving no function.	19 the case for your recommendation for the council to
20	MR. DALRYMPLE: Is it necessary for	20 adopt a resolution abandoning the right-of-way and
21	circulation for the -- for the general public in any	21 allowing it to be included in the redevelopment of
22	way?	22 the subject block as we move forward.
23	MS. RANDALL: No, it is not.	23 And with that, the applicant rests its
24	MR. DALRYMPLE: In your professional	24 case and asks for your favorable consideration, Mr.
25	opinion, is the public alley necessary for present	25 Paylor. Thank you for your patience with us and your

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13 (49 to 52)

49	51
1 conduct of an excellent public hearing.	1 CERTIFICATE OF NOTARY PUBLIC
2 MR. PAYLOR: Thank you, Mr. Dalrymple.	2
3 For the record page, Paige Nerenberg had submitted a	3
4 comment and I'll read it. And it states, as a	4 I, Lee Utterback, AAERT CER, the officer before
5 resident of east Bethesda who lives a short distance	5 whom the foregoing proceedings were taken, do hereby
6 from the project, I am happy to have B.F. Saul as a	6 certify that said proceedings were electronically
7 future neighbor and appreciate the thoughtful design	7 recorded by me; and that I am neither counsel for,
8 on the project.	8 related to, nor employed by any of the parties to
9 Are there any additional comments that	9 this case and have no interest, financial or
10 participants wish to place on the record at this	10 otherwise, in its outcome.
11 time?	11
12 MR. DALRYMPLE: No sir. Not -- not on	12
13 behalf of the applicant.	13
14 MR. PAYLOR: Thank you very much,	14 <i>Lee Utterback</i>
15 everyone. If there are no additional comments, I am	15
16 declaring this hearing closed. The record will	16 LEE UTTERBACK, AAERT CER
17 remain open until August the 11th, 2020 to	17
18 accommodate an additional comment for the record.	18
19 Those comments and any other correspondence may be	19
20 addressed to Joshua Tracy, Montgomery County	20
21 Department of Transportation, 100 Edison Park Drive,	21
22 Gaithersburg, Maryland 20878.	22
23 Thank you very much to all and this	23
24 concludes the hearing.	24
25 MR. DALRYMPLE: Thank you.	25
50	52
1 (Off the record at 12:18 p.m.)	1 CERTIFICATE OF TRANSCRIBER
2	2
3	3
4	4 I, Sheila Martin, do hereby certify that the
5	5 foregoing transcript is a true and correct record of
6	6 the recorded proceedings; that said proceedings were
7	7 transcribed to the best of my ability from the audio
8	8 recording and supporting information; and that I am
9	9 neither counsel for, related to, nor employed by and
10	10 of the parties to this case and have no interest,
11	11 financial or otherwise, in its outcome.
12	12
13	13
14	14
15	15 <i>Sheila Martin</i>
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17	17
18	18 SHEILA MARTIN
19	19 August 4, 2020
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