

Resolution No.: 17-109

Introduced: May 3, 2011

Adopted: May 3, 2011

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: DPWT Docket No. AB726
Abandonment - Portion of Whittier Boulevard Right-of-Way
Woodhaven Subdivision
Bethesda, Maryland

Background

1. By letter dated June 2, 2010, Mr. and Mrs. John Class, the Applicants, requested the County to abandon a portion of the Whittier Boulevard right-of-way in the Woodhaven Subdivision in Bethesda. The portion of the Whittier Boulevard right-of-way for which abandonment is sought adjoins property owned by the Applicants.
2. A Public Hearing to consider the abandonment proposal was held on September 13, 2010, by the designee of the County Executive.
3. Verizon had no objection to the proposed abandonment.
4. Washington Gas had no objection to the proposed abandonment.
5. Washington Suburban Sanitary Commission had no objection to the proposed abandonment.
6. PEPCO did not respond within 60 days and therefore, concurrence is presumed.
7. The Montgomery County Planning Board approved the abandonment with the following conditions: 1) that the area that is two feet from the back of the existing sidewalk along Whittier Boulevard be excluded; 2) that the Department of Transportation be provided an access easement to reach a 15-inch diameter drainage pipe located in the existing right-of-way and to be able to perform necessary maintenance; and, 3) that the necessary plat to assemble the Whittier Boulevard Abandonment Area with the Applicants' parcel be recorded.
8. The Department of Transportation (DOT) recommended approval conditioned upon: 1) the granting of an easement to the County for the maintenance of storm drainage facilities and the granting of any easements necessary for public utilities; 2) the provision of a sufficient right-of-way, where necessary for the sidewalk along the west side of Whittier Boulevard; and 3) the recording of a new record plat incorporating the right-of-way.

9. The Department of Fire and Rescue Services had no objection to the proposed abandonment.
10. The Police Department did not respond within 60 days and therefore, concurrence is presumed.
11. The County Executive recommends approval of the proposed abandonment.

Action

The County Council for Montgomery County, Maryland finds that the portion of the unimproved Whittier Boulevard right-of-way adjoining the Applicants' property in the Woodhaven Subdivision that is proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment subject to the following conditions which must be satisfied at Applicants' sole cost and expense prior to the abandonment becoming effective:

1. Applicants must survey the area to be abandoned and record a new record plat incorporating the area to be abandoned into the Applicants' property.
2. The new record plat must provide for sufficient right-of-way where necessary for the sidewalk along the west side of Whittier Boulevard and that the area that is two feet from the westerly side of the existing sidewalk shall be excluded from the Abandonment Area;
3. The Applicants must prepare, grant and record an easement to the County, in form and substance acceptable to the County, for the placement, construction, reconstruction and maintenance of storm drainage facilities and access thereto;
4. The Applicants must prepare, grant and record any easements necessary for public utilities in form and substance acceptable to such utility provider to the placement, construction, reconstruction and maintenance of any utilities located within the Abandonment Area or in any relocation acceptable to such utilities;
5. 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.
6. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.



Linda M. Lauer, Clerk of the Council

**OFFICE OF THE COUNTY EXECUTIVE
EXECUTIVE OFFICE BUILDING
ROCKVILLE, MARYLAND 20850**

IN THE MATTER OF: Abandonment Petition AB726

Portion of Whittier Boulevard, Woodhaven Subdivision, Bethesda, Maryland

BEFORE: Michael L. Subin¹, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

The property owners, Margaret and John Class ("Applicants"), submitted a request, dated June 2, 2010, requesting the abandonment of a portion of unimproved Whittier Boulevard (MD 188), at the corner with Wilson Lane, in Bethesda, Maryland. (Exhibit 1) The portion to be abandoned is approximately 3,254 square feet of public right-of-way, as shown on Exhibit 6 (hereinafter "'Abandonment Area"). The property is in the Woodhaven Subdivision of Bethesda Maryland, and is within the Bethesda/Chevy Chase Policy Area. The Applicant's lot, Lot 22, Block V, Woodhaven, was originally recorded in 1958 as Record Plat No. 165-45. A copy of the record plat is included as a part of Exhibit 13.

The Applicants state that the Abandonment Area is not being utilized and that the abandonment of the right-of-way would make their irregular sized lot more regular. They further state that they wish to landscape the Abandonment Area on the periphery of their property. If approved, the County Department of Transportation proposes to then convey the abandoned right-of-way to the Classes.

Executive Order 168-10, authorizing the hearing, was issued on July 16, 2010. Notices were sent to nearby civic associations and residents, as reflected on Exhibit 3. Public notices for the hearing appeared in *The Montgomery Sentinel* on September 2 and 9, 2010. (Exhibit 4) A public hearing was held on September 13, 2010, at approximately 11:30 a.m., in the Executive Office Building lobby auditorium, 101 Monroe Street, Rockville, Maryland.

¹ The hearing was held on the record before Diane Schwartz Jones, Public Hearing Officer. The matter has been transferred to the undersigned Public Hearing Officer. The proceedings were transcribed and the undersigned Hearing Officer has been provided the entire record for review.

II. Summary of Testimony and Evidence

The Applicants propose that the County abandon the right-of-way as reflected on Exhibit 5.

At the hearing on the proposed abandonment, Mr. Michael Cassedy testified on behalf of the Montgomery County Department of Transportation (hereinafter "MCDOT"). The Exhibits that are listed on Attachment 1 to this Report and Recommendation were introduced into the record through Mr. Cassedy. Mr. Cassedy testified that his office requested comments from the public, government agencies and public utility companies in fulfillment of the requirements of Montgomery county Code, Section 49-62.

On September 21, 2010, the Montgomery County Planning Board recommended approval of the proposed abandonment with the following conditions: 1) that the area that is two feet from the back of the existing sidewalk along Whittier Boulevard be excluded; 2) that MCDOT be provided an access easement to reach 15-inch diameter drainage pipe and to be able to perform necessary maintenance; and, 3) that the necessary plat to assemble the Whittier Boulevard Abandonment Area with the Applicants parcel be recorded.

MCDOT offered its conditional approval of the proposed abandonment, by letter dated September 27, 2010 (Exhibit 12), with the following conditions: 1) the granting of an easement to the County for the maintenance of storm drainage facilities and the granting of any easements necessary for public utilities; 2) the provision of a sufficient right-of-way, where necessary for the sidewalk along the west side of Whittier Boulevard; and, 3) the recording of a new record plat incorporating the right-of-way.

The Montgomery County Department of Fire and Rescue Services, by e-mail dated July 1, 2011 (Exhibit 11), offered no objections to AB726 for the unimproved portion of Whittier Boulevard at Wilson.

A list of residents and a civic association (Exhibit 3) were sent notices of the Public Hearing. However, neither the residents nor the civic association offered any testimony, oral or written.

Verizon, by e-mail dated July 30, 2010 (Exhibit 8), stated that it had no facilities in the right-of-way and, therefore, had no objections to the abandonment.

Washington Gas, by letter dated July 27, 2010 (Exhibit 9), stated that it has no gas lines in the area of the proposed abandonment.

The Washington Suburban Sanitary Commission (WSSC), by letter dated August 25, 2010 (Exhibit 10), after a review of its records, determined that the partial abandonment would have no adverse impacts on WSSC facilities.

Comments were also solicited from the Montgomery County Public School (MCPS) System, but none were received prior to the close of the record. After the record closed, MCPS indicated that, since no MCPS interests would be involved, it had no objections.

III. Conclusions and Recommendations

The abandonment of road rights-of way is governed by the provisions of sections 49-63, Montgomery County Code. 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. The hearing and notice procedures have been satisfied, and the public agencies and utility companies have been given an opportunity to review the petition for abandonment as described above.

Section 49-63 allows abandonment if the right-of-way is not needed for public use or if abandonment is necessary to protect the health, safety and welfare of the residents in the neighborhood. In determining health, safety and welfare issues, the Council may consider: 1) any adopted land use plan applicable to the neighborhood; 2) the safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives in the immediate neighborhood for local and through traffic; and, 3) changes in fact and circumstances since the original dedication of the right-of way. In this case, abandonment turns on whether or not the right-of-way is needed for public use.

The right-of-way is located immediately adjacent to the Classes' property. No other private properties are located immediately adjacent to the right-of-way. The right-of-way is unimproved. All of the public agencies involved testified that there are either no plans for its use or there would be no adverse impacts of the abandonment.

Conditions were recommended to the abandonment which generally included: 1) the granting of an easement to the County for the maintenance of storm drainage facilities and the granting of any easements necessary for public utilities; 2) the provision of a sufficient right-of-way where necessary for the sidewalk along the west side of Whittier Boulevard; and, 3) the recording of a new record plat incorporating the right of way; 4) that the area that is two feet

from the back of the existing sidewalk along Whittier Boulevard be excluded; 5) that MCDOT be provided an access easement to reach its 15-inch diameter drainage pipe and to be able to perform necessary maintenance; and, 6) that the necessary plat to assemble the Whittier Boulevard public right-of-way with the applicants be recorded.

Given these facts, and based on a thorough review of all testimony and evidence on the record, I conclude that the right-of-way, as reflected on Exhibit 5, for inclusion into the Applicants' property is no longer needed for public use, with the conditions as set forth above, are met. Therefore, I recommend abandonment of the right-of-way reflected on Exhibit 5, subject to the following conditions:

The Applicants must conduct a survey of the area to be abandoned in order to better define the Abandonment Area. The Abandonment Area must not include the sidewalk and an area two feet from the end of the four (4) foot wide concrete sidewalk. The Applicants must prepare, for review and approval, by MCDOT, a description of the Abandonment Area excluding the sidewalk and the two foot strip adjacent thereto. The revised Abandonment Area shall then be the area to be abandoned upon satisfaction of the conditions herein provided;

The Applicants must prepare, grant and record an easement to the County, in form and substance acceptable to the County, for the placement, construction, reconstruction and maintenance of storm drainage facilities and access thereto. The Applicants must prepare, grant and record an access easement to the County for the maintenance of storm drainage facilities.

The Applicants must prepare, grant and record any easements necessary for public utilities in form and substance acceptable to such utility provider to the placement, construction, reconstruction and maintenance of any utilities located within the Abandonment Area or in any relocation acceptable to such utilities.

Signature Page Follows

Respectfully submitted,

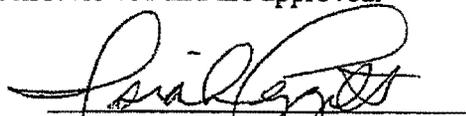


Michael L. Subin

February 23 2011

The Public Hearing Officer's Recommendations have been reviewed and are approved.

Date: Feb 29, 2011


Isiah Leggett, County Executive

