



ideas that work

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AB 758

April 12, 2017

VIA HAND-DELIVERY

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

Re: Housing Opportunities Commission of Montgomery County;
Petition to Abandon Rights-of-Way along Second Avenue and
Fenwick Lane in Silver Spring, Maryland

Dear Mr. Roshdieh:

In accordance with our recent telephone conversation, enclosed is the Petition to Abandon Right-of-Way along Second Avenue and Fenwick Lane in Silver Spring, filed on behalf of the Housing Opportunities Commission.

Please note that, at his request, the check for the \$2,500.00 filing fee is being hand-delivered to Mike Cassedy of MCDOT, along with his copy of the Petition, in order to expedite processing. A copy of the check is attached to this letter for your information.

Please let me know if you have any questions. Thank you.

Very truly yours,

LERCH, EARLY & BREWER, CHARTERED

William Kominers

Enclosures

cc: Mr. Michael Cassedy
Susan M. Reutershan, Esquire



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April 12, 2017

Al Roshdieh, Director
Montgomery County Department of Transportation
101 Monroe Street 10th Floor
Rockville, Maryland 20850

RE: Housing Opportunities Commission of Montgomery County;
Petition to Abandon Rights-of-Way along Second Avenue and
Fenwick Lane in Silver Spring, Maryland

Dear Mr. Roshdieh:

This office represents the Housing Opportunities Commission of Montgomery County ("HOC") and the Alexander House Development Corporation ("AHDC") (a corporation of which the Housing Opportunities Commission is the sole member), Petitioners in the above-referenced matter.

Petitioner HOC (formerly known as The Housing Authority of Montgomery County) owns Lots 6, 7, and part of Lot 8 in Block "A" in the subdivision known as "E. Brooke Lee's 2nd Addition, Silver Spring," recorded in the Land Records of Montgomery County as Plat No. 237. The property is improved with a 14-story multi-family residential building known as "Elizabeth House". Petitioner AHDC owns the "Alexander House Condominium", recorded in the Land Records of Montgomery County as Condominium Plats No. 6802 through 6822 on Lot 17, Block "A", in E. Brooke Lee's Addition to Silver Spring and shown as Plat No. 18112. The property is improved with a 16-story multi-family building residential building known as "Alexander House."

Petitioners request the abandonment of a portion of the rights-of-ways comprising the original alignment of Fenwick Lane -- the area bounded by the HOC and AHDC properties on the south, the current alignments of Fenwick Lane on the west, and Second Avenue on the east, in the Silver Spring Central Business District ("CBD"). This petition for abandonment ("Petition") is made pursuant to the provisions of Section 49-62, et. seq., of the Montgomery County Code, 2014, as amended (the "Code"). Petitioners own the properties adjacent to the portions of Second Avenue and Fenwick Lane that are the subject of this request. The property for which abandonment is requested consists of portions of prior roadway dedications related to an earlier configuration of the Fenwick Lane/Second Avenue intersection. Now that the intersection has been reconfigured, portions of the previous dedications are no longer needed and

have become “unused right-of-way”. As that intersection has been reconfigured over time, and the locations of the actual travel lanes relocated, the subject rights-of-way have ceased to be used for roadway purposes.

As described below, the property that is the subject of this request is no longer needed for public transportation purposes because (1) the reconfiguration of the Fenwick Lane/Second Avenue intersection has rendered it unused as a road area and therefore surplus; and (2) the prior roads have been replaced by newer roads that serve the same transportation purposes.

If this Petition to Abandon is granted, Petitioners intend to incorporate the rights-of-way to be abandoned (and the density attributable to the previous dedications associated with those abandoned areas for the portions of right-of-way currently used for the existing Fenwick Lane and Second Avenue) into their joint development project known as “Elizabeth Square”. The Petitioners’ properties are a part of the Elizabeth Square Project.

The Elizabeth Square project (“Elizabeth Square” or “Project”) is located on the west side of Second Avenue and bounded by Fenwick Lane, Apple Avenue and the railroad right-of-way. The Project received Project Plan and Preliminary Plan approvals from the Montgomery County Planning Board (“MCPB”) on July 23, 2015 (Project Plan No. 920150010, MCPB Resolution No. 15-88; Preliminary Plan No. 120150030, MCPB Resolution No. 15-89). The site plan application for the Elizabeth House III component of the Project (Phase IA of the Project, on land rights leased from Acorn Storage No. 1 LLC, successor in interest to LDG, Inc.), was approved by the MCPB on October 20, 2016 (Site Plan No. 820160160, MCPB Resolution No. 16-116).

Elizabeth Square has been approved by the MCPB to be a mixed-use development for the construction of up to 772,078 square feet of total development, including 766,046 square feet of residential development with up to 907 dwelling units, including at least a minimum of 15% MPDUs, and 10% WFHUs or the equivalent of either, as approved by the Montgomery County Department of Housing and Community Affairs (“DHCA”), plus other affordable units under other guaranteed programs, plus up to 6,032 square feet of non-residential use, and an additional 63,896 square feet of government-operated facilities, all on 3.123 acres of land. (The Project and Preliminary Plans for the Project were filed prior to October 29, 2014, and were approved under the optional method of development procedures of the CBD-1 and CBD-2 zones. The Project is grandfathered under the Zoning Ordinance in effect prior to October 29, 2014 (pursuant to Section 7.7.1 of the current Zoning Ordinance).)

Phase I of Elizabeth Square includes: (1) renovations to the existing Alexander House, (2) the demolition of the Fenwick Professional Park small commercial buildings, and (3) the construction of Elizabeth House III to house the senior population currently living in the existing Elizabeth House. Phase II (which site plan is to be submitted sometime after the Phase I construction begins) will be the demolition of the existing Elizabeth House and the construction of a new “Elizabeth House IV” that will house a mixed - income population.

If the Petition to Abandon is granted, the resulting density from the abandoned rights-of-way will be added to the Elizabeth Square Project in order to provide more affordable housing in the Project.

In order to add the land area from the abandonment into the Project, the entire Project must be resubmitted using the zoning and standards of the New Zoning Ordinance. This entails filing a Sketch Plan for optional method development using the CR Zone standards of the current Zoning Ordinance. That future Sketch Plan, and the related Site Plan, will utilize the density from the abandoned right-of-way to increase the density available to the new Elizabeth House IV. The Preliminary Plan for the Project will also be amended to incorporate the additional land area and associated development density, and subject it to adequate public facilities review.

The area Petitioner requests be abandoned is described in detail below.

Area to be Abandoned

The area to be abandoned consists of the right-of-way area previously dedicated for parts of Fenwick Lane and Second Avenue (the "Abandonment Area"). The Abandonment Area is bordered by the HOC property and the AHDC property on the south, the current operating roadway of Fenwick Lane within its right-of-way on the west, and the current operating roadway of Second Avenue within its right-of-way on the east (The Abandonment Area is shown on Exhibit "1" and described in the Legal Description attached as Exhibit "2"). The Abandonment Area is informally known as "Kramer Park", though it is not a formally dedicated park, but merely unused right-of-way.

The Abandonment Area is generally triangular in shape, adjoining other public rights-of-way on two sides and the HOC Property on the third. These adjacent public rights-of-way are in current use as roadways. The Abandonment Area is comprised of two components: (1) the prior dedications for road rights-of-way that are not now being used or needed for roadway purposes and are therefore appropriate for abandonment; and (2) the underlying fee interest to the centerline of the adjoining operating streets that are in current use as Fenwick Lane and Second Avenue, which underlying fee interest is attributable to, and associated with, the areas being abandoned. Together, the two components represent the additional tract area that would be added to the Elizabeth Square Project and upon which the added development density would be based.

These areas are described below and depicted in the exhibits and legal descriptions attached to this Petition:

Prior dedications

Part 1

Part 1 is part of the dedicated street right-of-way as shown on a plat of subdivision entitled "Woodside", and recorded in the Land Records of Montgomery County in Plat

Book A at page 25. The Part 1 area is shaded in blue on Exhibit "3" and is generally located to the immediate south of Part 2 (described in detail below). Part 2 is described below and is the area shaded in green on Exhibit "3". Part 1 is located to the immediate north and parallel to Part 3 (described below). Part 3 is the area shaded in red on Exhibit "3". Part 1 contains 2,670 square feet of land area as shown on Exhibit "3".

Part 2

Part 2 is part of the property described in a deed from Sophie D. Ash to the Board of County Commissioners of Montgomery County, Maryland, dated October 10, 1931, and recorded in the Land Records of Montgomery County in Liber 528 at folio 114. The area of Part 2 is shaded in green on Exhibit "3", and is generally located to the immediate south of the Fenwick Lane/Second Avenue intersection and adjacent to Part 1 (described above). Part 2 contains 576 square feet of land area as shown on Exhibit "3".

Part 3

Part 3 is part of the property described in a deed from Richard T. Wilson and Laura C. Wilson to John Van Riswick and William A. Fenwick, executors of Philip Fenwick, dated March 17, 1869, and recorded in the Land Records of Montgomery County in Liber EBP 6 at folio 213. The area of Part 3 is shaded in red on Exhibit "3" and is generally located along Fenwick Lane, adjacent to the north side of the HOC property. The HOC property is known as Lots 6, 7 and part of Lot 8, Block A, E. Brook Lee's 2nd Addition to Silver Spring. Part 3 is also located along a portion of the north side of AHDC's property (known as Lot 17, Block A, E. Brook Lee's 2nd Addition to Silver Spring). Part 3 contains 3,447 square feet of land area as shown on Exhibit "3".

The prior dedications comprise Parts 1, 2 and 3 and contain a total 6,693 square feet of land area.

The Abandonment Area includes as a part of its gross tract area: (i) the prior dedications described above, and (ii) its attributable pro-rata portions of (a) the adjoining Fenwick Lane right-of-way, and (b) the adjoining Second Avenue right-of-way, extending generally to the center line of each of those adjacent street rights-of-way, described below.

Pro-rata portions of right-of-way

In addition to the Abandonment Area, this abandonment also incorporates the fee interest (subject to the dedications for surface use as roadways) for the land in the existing street rights-of-way that are adjacent to the northeast, east, and northwest property lines of the Abandonment Area. These portions of the land underlying the rights-of-way of the existing streets are appurtenant to, attributable to, and travel with the dedications above (as shown on Exhibit "4") unless otherwise separated. Once the dedications above are abandoned, the fee interest in the appurtenant pro rata portions of the adjoining right-of-way follow.

With the abandonment, including the adjacent areas attributable to the rights-of-way, there is no change or effect on the function of those adjoining operating streets. These pro rata portions of the land underlying the Fenwick Lane and Second Avenue rights-of-way and appurtenant to the abandoned area, comprise a total of 9,659 square feet and are shaded in green on Exhibit "4".

The Abandonment Area of 6,693 square feet is no longer necessary for roads, and therefore for road right-of-way purposes. If this Petition is granted, the tract area increase resulting from the Abandonment Area will also include the density attributable to 9,659 square feet of net area in the existing street right-of-way (while the roads remain in operation), for a total additional tract area as a result of the abandonment of 16,352 square feet (i.e., 6,693 square feet of prior dedication area, plus 9,659 square feet of appurtenant land underlying the current rights-of-way). Once abandoned, the Abandonment Area will take the current zoning classification of the adjacent Elizabeth House and Alexander House properties (namely, CR-5.0, C-4.0, R-4.75, H-145T).

The land area comprising the Abandonment Area, and the density arising from that land area, is intended to be incorporated into the Elizabeth Square Property through a re-subdivision and related regulatory plans. The resubdivision will have two components. The single record lot comprising the Elizabeth Square Project will be expanded by being amended and re-platted to include the 6,693 square foot Abandonment Area that is not a portion of the operating roads within the rights-of-way of Fenwick Lane or Second Avenue. The development density arising from the Abandonment Area will then be incorporated into the new Elizabeth Square Project to be constructed on the Elizabeth Square property. This can increase the development density of the building(s) and provide more affordable housing in the Project.

As noted previously, the Abandonment Area is no longer needed for public roadway purposes. The intersection of Fenwick Lane and Second Avenue has been reconfigured over the years and the Abandonment Area is no longer a direct travel lane for vehicles. The underlying land from the former configuration is no longer used or needed for public purposes because replacement configurations of portions of Second Avenue and Fenwick Lane now exist to provide the necessary transportation options for this area of the CBD and, as a result, the property that comprises the Abandonment Area is no longer needed for public transportation purposes.

If this Petition is granted, the abandonment will allow the development of an optional method of development residential project by a government agency whose mission is to provide affordable housing in the County for individuals at different income levels. The property to be abandoned will be available to provide more affordable housing than could otherwise be provided if the property remains as is.

The perimeter properties to the Abandonment Area are owned by HOC or AHDC (as noted above) or by the County and are currently unused right-of-way or the underlying fee interest attributable to, and associated with, the areas being abandoned.

In support of this Petition are the following:

1. The portions of Fenwick Lane and Second Avenue to be abandoned (the Abandonment Area) (Exhibit "1");
2. The Legal Description of the Abandonment Area (Exhibit "2");
3. The three parts comprising the portions of Fenwick Lane and Second Avenue to be abandoned (Exhibit "3");
4. The net area in the existing street right-of-way (to their centerlines) that represents the fee interest (subject to the dedications for surface use as roadways) for the land in the existing street rights-of-way that are adjacent to the northeast, east, and northwest property lines of the Abandonment Area (Exhibit "4");
5. A list of adjoining property owners (Exhibit "5");
6. A check in the amount of \$2,500.00 made payable to Montgomery County, Md. for the filing fee associated with the proposed abandonment.

Thank you for your consideration of this Petition.

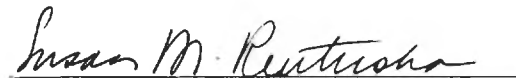
Please contact us if you have any questions or if you would like any additional information.

Very truly yours,

LERCH, EARLY & BREWER, CHTD.



William Kominers



Susan M. Reutershan

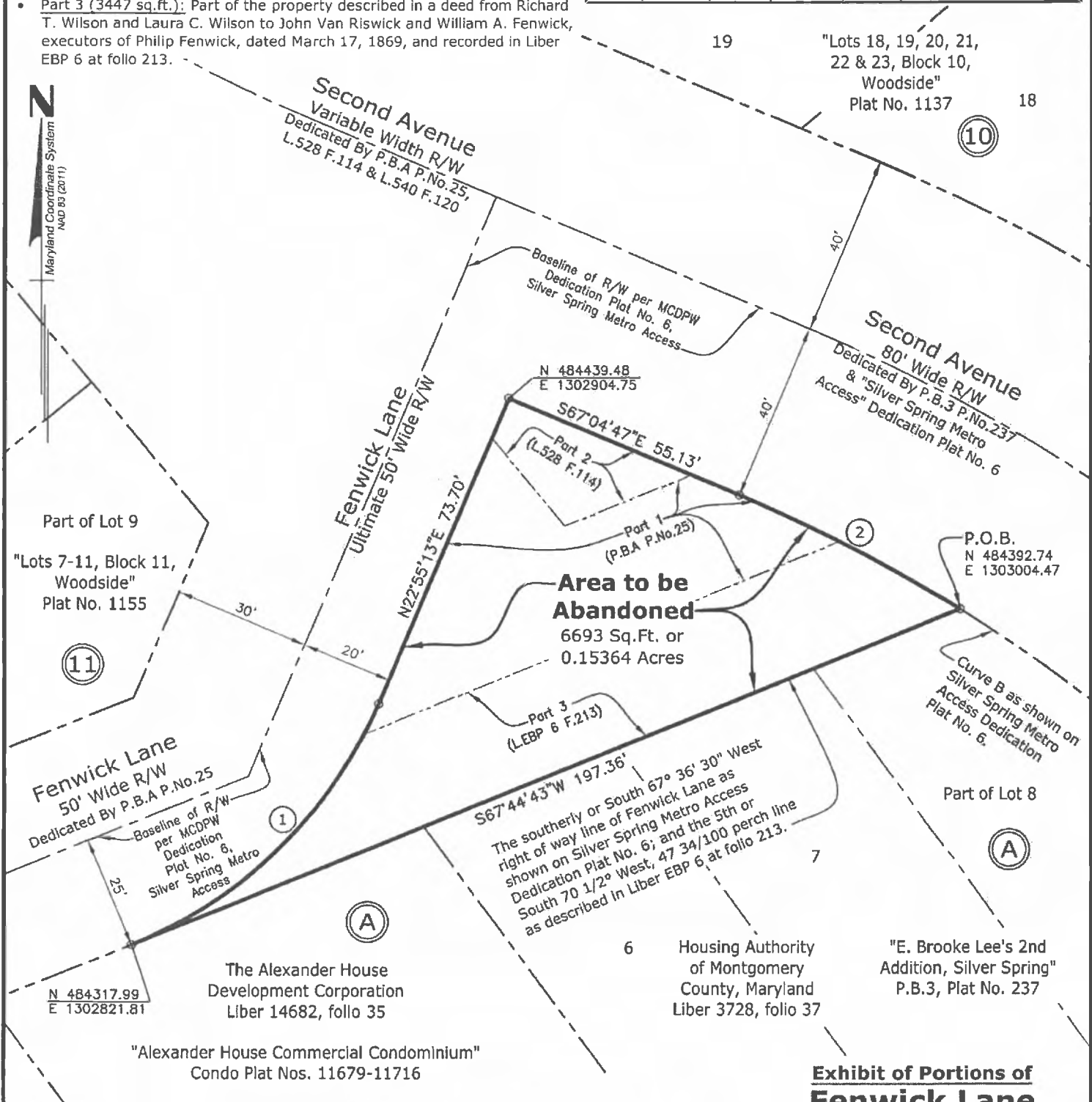
cc: Mr. Greg Leck
Mr. Stacy Spann
Mr. Brian Kim
Mr. David Dise
Mr. Greg Ossont
Mr. Gabriel Albornoz
Mr. Bruce Lee
Mr. Michael Cassedy

Note:

The "Area to be Abandoned" shown hereon is comprised of the following parts:

- **Part 1 (2670 sq.ft.):** Part of the dedicated street right of way as shown on a plat of subdivision entitled "Woodside" and recorded in Plat Book A as Plat No. 25.
- **Part 2 (576 sq.ft.):** Part of the property described in a deed from Sophie D. Ash to The Board of County Commissioners of Montgomery County, Maryland, dated October 10, 1931, and recorded in Liber 528 at folio 114.
- **Part 3 (3447 sq.ft.):** Part of the property described in a deed from Richard T. Wilson and Laura C. Wilson to John Van Riswick and William A. Fenwick, executors of Philip Fenwick, dated March 17, 1869, and recorded in Liber EBP 6 at folio 213.

Curve Table						
Curve	Radius	Length	Tangent	Chord	Bearing	Delta
1	100.00'	78.23'	41.24'	76.25'	N45°19'58"E	44°49'30"
2	360.00'	55.14'	27.62'	55.08'	S62°41'29"E	8°46'32"



**Description of Part of
FENWICK LANE
Wheaton (13th) Election District
Montgomery County, Maryland**

Being part of the dedicated street right of way of "Fenwicks Road" (50 foot wide right of way) as shown on a plat of subdivision entitled "Woodside" and recorded among the Land Records of Montgomery County, Maryland in Plat Book A as Plat Number 25; also being part of the property acquired by The Board of County Commissioners of Montgomery County, Maryland, from Sophie D. Ash, by a deed dated October 10, 1931, and recorded among the aforesaid Land Records in Liber 528 at folio 114; also being part of the property acquired by John Van Riswick and William A. Fenwick, executors of Philip Fenwick, from Richard T. Wilson and Laura C. Wilson, by a deed dated March 17, 1869, and recorded among the aforesaid Land Records in Liber EBP 6 at folio 213, and being more particularly described as follows:

Beginning for said parcel of land at a point at the northerly end of Curve B of the westerly right of way line of Second Avenue (80 foot wide right of way) as shown on a plat entitled "Dedication Plat No. 6, Silver Spring Metro Access, Second Avenue, Prepared for Department of Public Works", dated July, 1972, and having MSA number CSU 2129-20; said point being at the intersection of said westerly right of way line of Second Avenue and the southerly or South 67° 36' 30" West right of way line of Fenwick Lane (variable width right of way) as shown on said Dedication Plat No. 6; said point also being on the 5th or South 70 1/2° West, 47 34/100 perch line as described in the aforesaid deed recorded in Liber EBP 6 at folio 213; thence running with part of said southerly right of way line of Fenwick Lane and with part of said 5th deed line, and binding on the northerly lines of Lots 6, 7 and 8, Block A, as shown on a plat of subdivision entitled "E. Brooke Lee's 2nd Addition, Silver Spring" and recorded among the aforesaid Land Records in Plat Book 3 as Plat Number 237, and binding on the northerly or North 67° 44' 43" East, 103.12 foot boundary line as shown on a plat of condominium entitled "Alexander House Commercial Condominium" and recorded among the aforesaid Land Records as Condominium Plat Numbers 11679-11716, the following course and distance:

1. South 67° 44' 43" West, 197.36 feet to a point of curvature; thence leaving said southerly right of way of Fenwick Lane and running across the aforesaid property described in Liber EBP 6 at folio 213 and across the aforesaid right of way shown on Plat Book A, Plat Number 25, the following course and distance
2. 78.23 feet along the arc of a curve deflecting to the left, having a radius of 100.00 feet (chord: North 45° 19' 58" East, 76.25 feet) to a point of tangency; thence running across the aforesaid right of way as shown on Plat Book A,

Plat Number 25 and across the aforesaid property described in Liber 528 at folio 114, parallel to and 20 feet east of the South 22° 47' 00" West, 139.58 foot baseline of Fenwick Lane as shown on the aforesaid Dedication Plat No. 6 the following course and distance

3. North 22° 55' 13" East, 73.70 feet to a point; thence running across the aforesaid property described in Liber 528 at folio 114, across the aforesaid right of way as shown on Plat Book A, Plat Number 25, and across the aforesaid property described in Liber EBP 6 at folio 213, parallel to and 40 feet southwest of the baseline of Second Avenue as shown on the aforesaid Dedication Plat No. 6, the following 2 courses and distances:
4. South 67° 04' 47" East, 55.13 feet to a point of curvature; thence
5. 55.14 feet along the arc of a curve deflecting to the right, having a radius of 360.00 feet (chord: South 62° 41' 29" East, 55.08 feet) to the Point of Beginning; containing 6693 square feet or 0.15364 acres of land more or less.

This description was prepared by Rodgers Consulting, Inc., and is in the Maryland Coordinate System (NAD83/91), U.S. survey feet, based on network Real Time Kinematic GPS and conventional survey observations. Controlling stations are Washington Suburban Sanitary Commission NAD83 Traverse Stations 20711 and 20815. The average combined scale/elevation factor for site: 0.99994082.
20711: Northing 483597.999, Easting 1299796.197
20815: Northing 484433.857, Easting 1302004.187

The undersigned, being a licensed surveyor, personally prepared or was in responsible charge of the preparation and the survey work reflected in this metes and bounds description, in compliance with the requirements set forth in "COMAR" Title 09, Subtitle 13, Chapter 06, Regulation .12.

(License Expiration Date: 12-23-2017)



n:\md-montgomery\fenwick professional park\documents\survey\descriptions\fenwick lane abandonment (2017).docx

Hatch Legend

Part 1 - 2670 sq.ft.

Part 2 - 576 sq.ft.

Part 3 - 3447 sq.ft.

"Parcel A, Block 11,
Woodside"
Plat No. 24522

"Lots 7-11, Block 11,
Woodside"
Plat No. 1155

Part of Lot 9

Fenwick Lane
50' Wide R/W
Dedicated By P.B.A Pg.25

Baseline of R/W per MCDPW
Dedication Plat No. 6,
Silver Spring Metro Access

LDG, Inc.
Liber 3093, folio 82

"Lot 116-Block A,
E. Brooke Lee's 2nd
Addition, Silver Spring"
Plat No. 2250

The Alexander House
Development Corporation
Liber 14682, folio 35

"The Alexander House Condominium"
Condo Plat Nos. 6802-6822

"Lot 17, Block A,
E. Brooke Lee's 2nd
Addition To Silver Spring"
Plat No. 18112

Housing Authority
of Montgomery
County, Maryland
Liber 3728, folio 37

"E. Brooke Lee's 2nd
Addition, Silver Spring"
Plat No. 237

**Total Area to
be Abandoned**
6693 Sq.Ft. or
0.15364 Acres

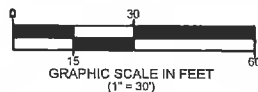
Fenwick Lane
70' Wide R/W
Dedicated By P.B.A Pg.25
& "Silver Spring Metro
Access" Dedication Plat No. 6

Second Avenue
80' Wide R/W
Dedicated By P.B.A Pg.25
& "Silver Spring Metro
Access" Dedication Plat No. 6

part of Lot 33
"E. Brooke Lee's 2nd
Addition, Silver Spring"
Plat No. 237

**RODGERS
CONSULTING**

19947 Century Boulevard, Suite 200, Germantown, Maryland 20874
Ph: 301.948.4700, Fax: 301.948.6256, www.rodgers.com



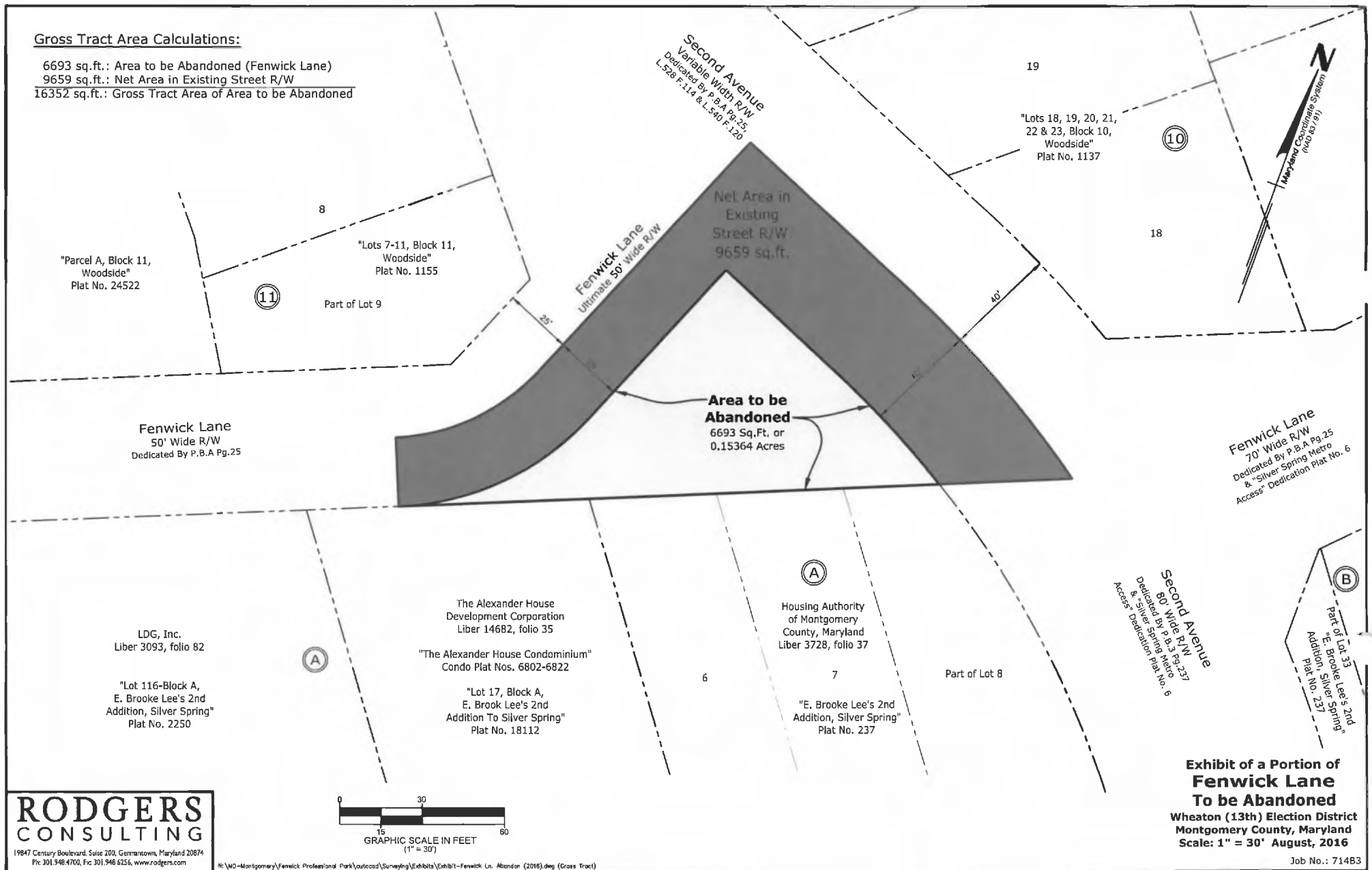
N:\MD-Montgomery\Fenwick Professional Park\cutover\Surveying\Exhibits\Exhibit-Fenwick Ln. Abandon (2016).dgn (Color)

**Exhibit of a Portion of
Fenwick Lane
To be Abandoned**
Wheaton (13th) Election District
Montgomery County, Maryland
Scale: 1" = 30' August, 2016

Job No.: 714B3

Gross Tract Area Calculations:

6693 sq.ft.: Area to be Abandoned (Fenwick Lane)
 9659 sq.ft.: Net Area in Existing Street R/W
 16352 sq.ft.: Gross Tract Area of Area to be Abandoned



Adjoining Property Owners

1. Housing Opportunities Commission of Montgomery County
10400 Detrick Avenue
Kensington, Maryland 20895
2. Alexander House Development Corporation
c/o Housing Opportunities Commission of Montgomery County
10400 Detrick Avenue
Kensington, Maryland 20895
3. Montgomery County Department of Transportation
c/o Al Roshdieh, Director
101 Monroe Street, 10th Floor
Rockville, Maryland 20850
4. David and D. Goren
8600 2nd Ave.
Silver Spring, Md. 20910
5. Nedan LLC
1906 Franwall Ave.
Silver Spring, Md. 20910
6. John H. Rossi
918 Stanley Ave.
Los Altos, Ca. 94024



HOUSING
OPPORTUNITIES
COMMISSION
OF MONTGOMERY COUNTY MD
KENSINGTON, MARYLAND 20895



PNC Bank, N.A.
Washington DC
16-3/540

CHECK NO. 529924

DATE 03/30/2017

PAY: **** TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS

\$2,500.00***
Void after six months

THE
TO
ORDER
OF:

MONTGOMERY COUNTY, MD
DEPT FIN/DV OF TREASURY
255 ROCKVILLE PIKE L-15
ROCKVILLE, MD 20850



⑈ 529924⑈ ⑆054000030⑆ 5303549116⑈