

SECOND AVENUE & FENWICK LANE

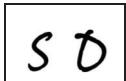
RIGHT-OF-WAY ABANDONMENT NO. AB-758

Description

Request to abandon a portion of public Right-of-Way totaling 6,693 square feet at the corner of Second Avenue and Fenwick Lane in downtown Silver Spring.

COMPLETED: 2/3/2025
ADMINISTRATIVE APPROVAL

Planning Staff



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LOCATION

Located at the intersection of Second Avenue and Fenwick Lane

MASTER PLAN

2022 Silver Spring Downtown and Adjacent Communities Plan

APPLICANT

Housing Opportunities Commission of Montgomery County (HOC) & the Alexander House Development Corporation (AHDC)

ACCEPTANCE DATE

April 12, 2017

REVIEW BASIS

Chapter 49-62

PUBLIC HEARING

MCDOT Hearing: February 18, 2025, virtual

Summary:

- Staff requests permission to transmit comments to Montgomery County Department of Transportation (MCDOT) in advance of their Public Hearing.
- The Abandonment request was originally filed in 2017 and put on hold pending various agreements relating to the Elizabeth Square Project. The original request has been amended.
- The Applicants jointly own the adjacent property to the south of the Subject Right-of-Way requested for abandonment, which totals 6,693 square feet.
- The County Council approves abandonments and closures of improved public rights-of-way. MCDOT is the lead executive agency for this application and must conduct a Public Hearing, for which MCDOT will provide public notice. Before the MCDOT Public Hearing, the County Executive solicits comments from the Planning Board, in this case via the Planning Director, and other agencies.
- Staff has not received any public correspondence on the Right-of-Way Petition as of the date of this staff report.

SECTION 1: RECOMMENDATIONS AND CONDITIONS

ABANDONMENT OF PUBLIC RIGHT-OF-WAY

Staff recommends approval of Public Right-of-Way Abandonment Petition No. AB-758, for a portion of the corner of Second Avenue and Fenwick Lane in downtown Silver Spring, subject to the 2022 *Silver Spring Downtown and Adjacent Communities Plan* with the following condition:

1. Before issuance of building permit for construction of a building on the Abandonment Area, the Applicant must record a subdivision plat for the Elizabeth Square Project, incorporating the Abandonment Area into a single lot of record.

SECTION 2: SITE DESCRIPTION

SURROUNDING NEIGHBORHOOD

The neighborhood surrounding the Elizabeth Square project and associated Abandonment Area (Subject Property or Property) includes multi-family residential uses, commercial uses, and retail uses, as shown in Figure 1 below. Across Fenwick Lane to the north is the mixed-use development project Fenwick Station. The southeastern portion of that adjoining block on which Fenwick Station is located contains older, small, residential-style buildings, now used for commercial purposes. Across Second Avenue to the northeast are a few older, small commercial buildings. To the north of and adjacent to the small commercial buildings on Second Avenue is a commercial condominium building. Across Second Avenue to the east and southeast is a surface parking lot, owned by HOC. Adjacent to the surface parking lot is County Parking Garage No. 7. To the south across Apple Avenue is the District Court of Maryland courthouse. To the immediate west of the Property is the Capital Crescent Trail (CCT) and further to the west and adjacent to the CCT is right-of-way owned by WMATA.

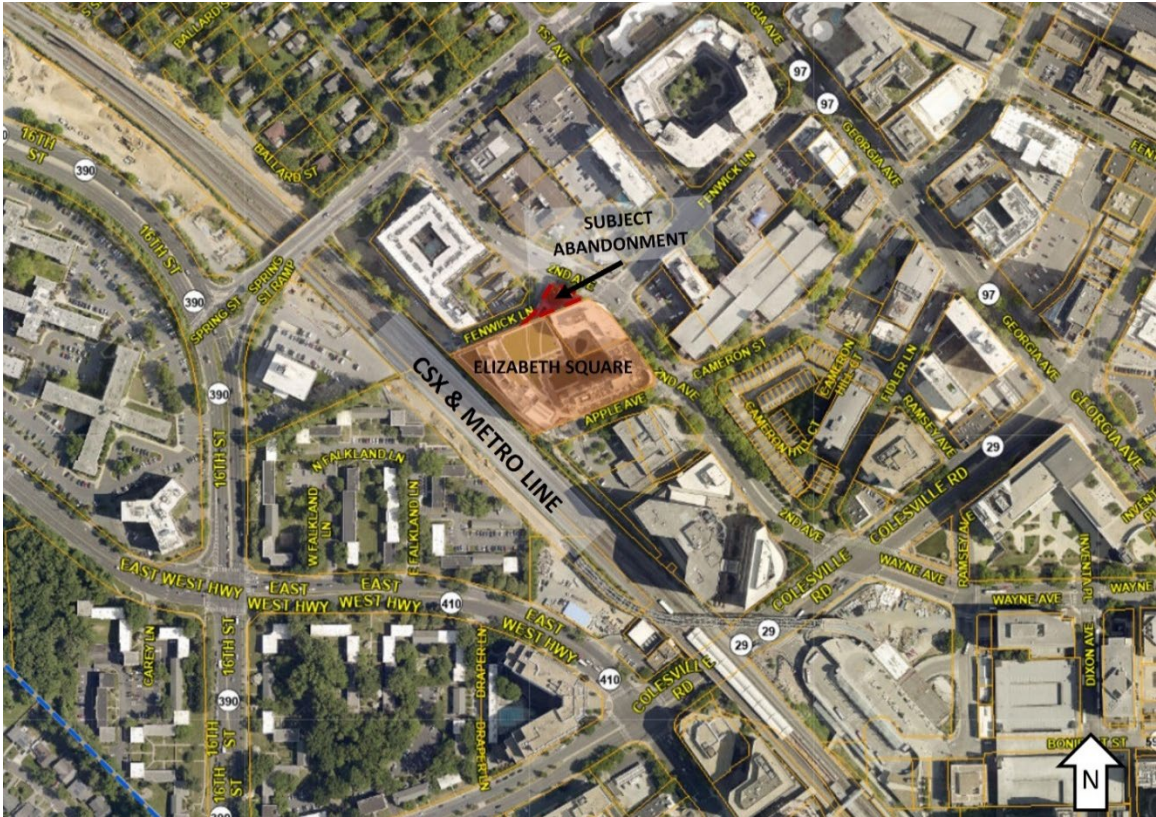


Figure 1 – Vicinity Map

The associated Elizabeth Square Project shown in Figure 1 above, is bordered by Second Avenue on the east, Fenwick Lane on the north, Apple Avenue on the south, and the CSX railroad right-of-way on the west, all in the 2022 *The Silver Spring Downtown and Adjacent Communities Plan* area.

HISTORY AND BACKGROUND

The Subject Abandonment petition filed by the HOC and the AHDC (a corporation of which the HOC is the sole member) is in conjunction with the approved Elizabeth Square Project (Sketch Plan No. 320170090, Preliminary Plan Amendment No. 12015003B and Site Plan No. 820170140). The Preliminary Plan was approved with a condition requiring the Subject Right-of-Way be abandoned prior to recordation of the Phase II plat (see Attachment A, Preliminary Plan No. 12015003B Resolution Condition #3).

ELIZABETH SQUARE PROJECT

In December of 2017, the Planning Board approved Sketch Plan No. 320170090, Preliminary Plan Amendment No. 12015003B and Site Plan No. 820170140 for the Elizabeth Square Project, which is a public-private partnership between HOC and Lee Development Group, Inc. The approvals allow up to

996,109 square feet of total development, with up to 853,510 square feet of residential development for up to 906 dwelling units, up to 5,451 square feet of non-residential uses, and up to 137,148 square feet of publicly owned or operated facilities including the public amenities provided in the existing Alexander House, 120,058 square feet of the publicly owned or operated facilities for the full-size South County Regional Recreation and Aquatic Center (SCRRAC) and associated amenities. This element of the Elizabeth Square Project is now called the Silver Spring Recreation and Aquatic Center (SSRAC). The density from the Subject Right-of-Way area is already included in the approved Elizabeth Square Project Planning Board approvals.

In January of 2023, the Planning Director approved Minor Site Plan Amendment, No. 82017014A to allow for minor modifications to the building materials, hardscape, landscape, and lighting elements.



Figure 2 – Approved 2017 Site Plan

Since the Planning Board approvals in December 2017, The Leggett, formerly referred to as Elizabeth House III, was constructed and opened in May 2023. Following that, the SSRAC was completed and opened in February 2024. The demolition of the existing Elizabeth House (for construction of Elizabeth House IV) is estimated to begin in February 2025.

SUBJECT ABANDONMENT

The Subject Abandonment pertains to a portion of the rights-of-way comprising parts of the original alignment of Fenwick Lane and Second Avenue – the area bounded generally by the HOC and AHDC properties on the south, Fenwick Lane on the north, Second Avenue on the east, and the railroad right-of-way on the west in downtown Silver Spring. The total abandonment area is 6,693 square feet (“Subject Right-of-Way/Abandonment Area”).

The Abandonment Area consists of portions of areas used for roadway and other associated public purposes, related to an earlier configuration of the Fenwick Lane/Second Avenue intersection. As the Fenwick Lane/Second Avenue intersection has been reconfigured over time, and the locations of the actual travel lanes relocated, the Abandonment Area has ceased to be used for roadway purposes. Instead, the area is now used only for utility lines and a drop off for the now vacant Elizabeth House Building, shown Figures 3 and 4.

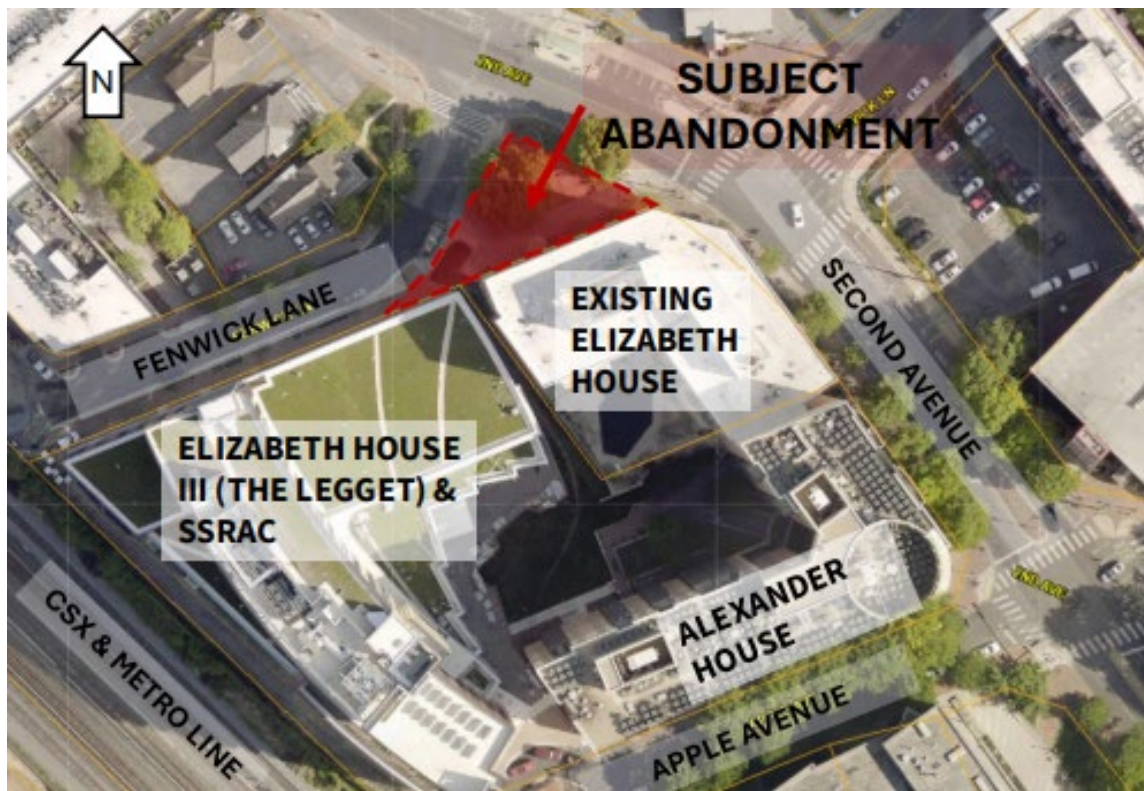


Figure 3 – Aerial View of Abandonment Area



Figure 4 –Abandonment Area

The Abandonment Area includes two unplatted parcels previously dedicated to public use (Parts 1 and 2 in Figure 5 below). A third unplatted parcel acquired in fee simple by Montgomery County (Part 3 in Figure 5) will be disposed of through the County Council's process for disposition by the County pursuant to appropriate process.

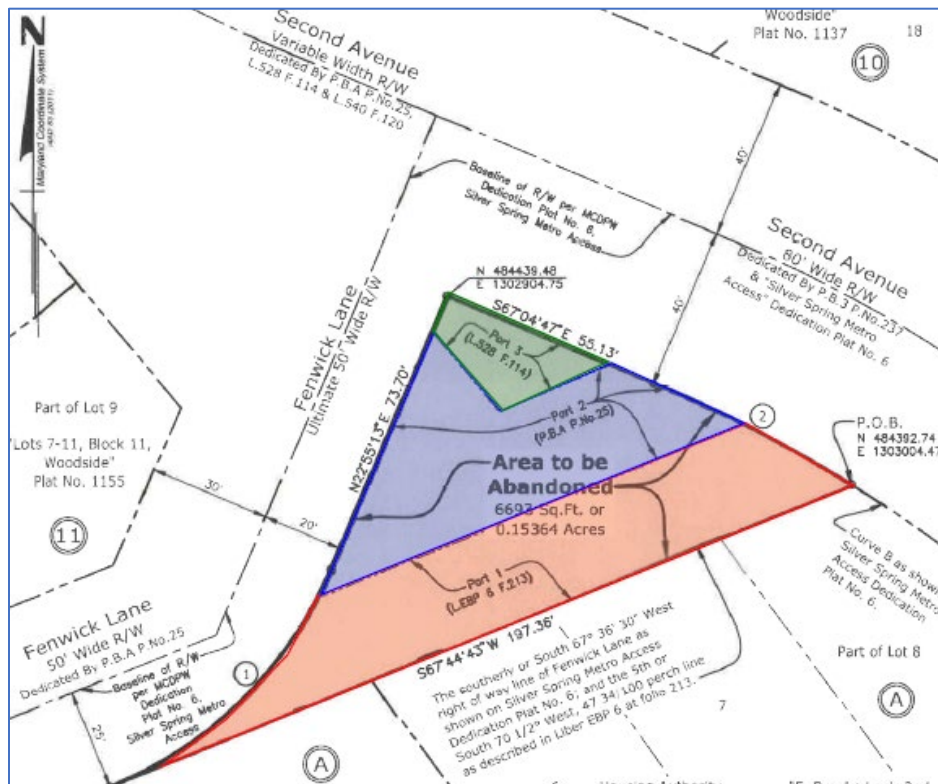


Figure 5 – Subject Abandonment Area

SECTION 3: PETITION

The petition to abandon was originally filed on April 12, 2017. However, consideration of the petition was put on hold pending negotiation and signing of various documents relating to the Elizabeth Square Project. Given the passage of time since the original filing and that a hearing on the petition has not been scheduled with the MCDOT, the petitioners have submitted this amended petition to MCDOT for continuation of the review. MCDOT will hold a public hearing (virtual) on Tuesday, February 18, 2025 for this Application.

The Abandonment Area is no longer needed for public transportation purposes, or other general public purposes because: (1) the reconfiguration of the Fenwick Lane/Second Avenue intersection has rendered it unused as a road area and therefore surplus; (2) the original road configuration has been replaced by a newer road configuration that serves the same transportation purposes; (3) the utilities within the properties either have been, or are in the process of being, relocated or terminated; and (4) pedestrians will no longer need to access the Abandonment Area in its current configuration because the pedestrian functions (sidewalks) will remain in the existing public right-of-way adjacent to the Abandonment Area, and replacement of public facilities (primarily the bus stop relocation), will occur pursuant to the approval of the Elizabeth Square Project.

The land area comprising the Abandonment Area, and the density arising from that land area was reflected in the approved Elizabeth Square Project and is intended to be incorporated through a subdivision plat. The Preliminary Plan approval for the project has been conditioned on the Abandonment.

SECTION 4: FINDINGS AND ANALYSIS

CONFORMANCE TO THE MASTER PLAN(S)

Abandonment or closures of a public Right-of-Way, require approval by the Montgomery County Council in accordance with Section 49-63 of the County Code. The role of the Planning Commission (or its designee) in this process is to provide comments and recommendations informed by the County Code and applicable plans and policies.

FINDINGS REQUIRED BY SECTION 49-63

- a. A Right-of-Way may be abandoned or closed if the Council by resolution finds that:***
 - i. the Right-of-Way is no longer necessary for present public use or anticipated public use in the foreseeable future, or***
 - ii. the abandonment or closing is necessary to protect the health, safety and welfare of the residents near the Right-of-Way to be abandoned or closed. In assessing health, safety, and welfare issues, the Council may consider: any adopted land use plan for the***

neighborhood; safe and efficient pedestrian and vehicular traffic patterns; and changes in fact and circumstances since the original dedication.

The 2022 *Silver Spring Downtown and Adjacent Communities Plan* does not make recommendations for the proposed right-of-way Abandonment Area. The Abandonment Area consists of portions of areas used for roadway and other associated public purposes, related to an earlier configuration of the Fenwick Lane/Second Avenue intersection. As the Fenwick Lane/Second Avenue intersection has been reconfigured over time, and the locations of the actual travel lanes relocated, the Abandonment Area has ceased to be used for roadway purposes. Instead, the area is now used only for utility lines, which will be relocated, and a previous drop off for the now vacant Elizabeth House Building.

The 2018 *Master Plan of Highways and Transitways*, and the 2018 *Bicycle Master Plan* are silent as to any modifications to the proposed Abandonment Area. The streetscape improvements being implemented as part of the Elizabeth Square Project will conform to the Silver Spring Streetscape Guidelines. A public bike path will be located adjacent to the western property line of the Elizabeth Square Project. The CCT bike path is proposed to be accessible from the Property at both north and south ends of the Project. Therefore, safe and efficient pedestrian and bicycle traffic patterns will be furthered by the Abandonment.

The Abandonment Area is not necessary for any present or anticipated public uses, nor is the Abandonment Area being used for public purposes at present. This is either because those past and current uses have been or are approved to be relocated or terminated due to: (1) other projects (like the Purple Line), or (2) as a part of implementing the improvements called for by the Elizabeth Square Project in the area that encompasses the Abandonment Area. Any public use previously occurring in the Abandonment Area, will now take place elsewhere. Thus, there is no longer a need for any of those possible uses to take place in the Abandonment Area. Accordingly, the facts and circumstances since the original dedications in 1869 (Part 1), 1889 (Part 2) and 1931 (Part 3) on Figure 5 have changed.

The Preliminary Plan, Sketch Plan, and Site Plan approvals, which contemplated and expected the Abandonment to occur, were reviewed and approved pursuant to the Zoning and Subdivision Codes. These Codes include intents and purposes to promote the health, safety and welfare of the present and future inhabitants of the county. Thus, their approval will further these purposes, including the Abandonment of the Subject Rights-of-way.

The Abandonment will allow implementation of the approved Site Plan for this portion of the Elizabeth Square Project. This has two important public benefits. First, the addition of the Abandonment Area to the overall tract area for the project allows greater density to the project, therefore creating both more housing generally and more affordable housing. Second, use of the Abandonment Area allows the approved Site Plan to rotate the proposed Elizabeth House IV building into the Abandonment Area, thus completely opening up access

to the Project from Second Avenue, through a space fully open to the sky (separated from having any connection to Alexander House). This provides a much better visual and physical connection for the public to the public use plaza at the center of the Project. This plaza also serves as access and a forecourt for the Silver Spring Recreation and Aquatic Center, enhancing its connection to the public.

Therefore, the Subject Abandonment Area, meets the necessary findings for Section 49-63 of the County Code.

SECTION 5: CITIZEN CORRESPONDENCE AND PUBLIC NOTICING

The Petitioner has complied with all submittal and noticing requirements. As of the date of this Staff Report no correspondence has been received.

SECTION 6: CONCLUSION

Staff recommends approval of the Subject Petition with the recommended condition of approval included above and transmittal of these comments to MCDOT.

ATTACHMENTS

Attachment A: Elizabeth Square Project Resolutions

ACCEPTED & APPROVED BY


JASON K. SARTORI, PLANNING DIRECTOR

February 6, 2025

DATE APPROVED

This memorandum constitutes the written opinion of the Planning Director in this matter, and the Decision Mailing Date of this memorandum is [] (which is the date that this decision is mailed to all parties of record).