

AGENDA ITEM #3H
March 23, 2010
Action

MEMORANDUM

March 19, 2010

TO: County Council
FROM: Glenn Orlin, ^{GO}Deputy Council Staff Director
SUBJECT: **Action**—abandonment of a portion of Maple Avenue

A portion of Maple Avenue in the Avery Lodge Subdivision northeast of Rockville has been proposed for abandonment.

During its review of Bill 31-96 (Abandonments--Procedures) more than a decade ago, the Transportation, Infrastructure, Energy and Environment Committee indicated that a proposed abandonment or road closure should proceed directly to the Council unless there is some disagreement expressed over the abandonment. Therefore, there is no remaining disagreement about this abandonment.

Council staff recommendation: Approve this abandonment with the conditions suggested by the Executive and Hearing Examiner.

Attachments

Executive's transmittal letter	©1
Draft adoption resolution	©2-4
Map noting location of proposed abandonment	©5
Hearing Examiner's reports	©6-19




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 15, 2010

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 
Office of the County Executive

SUBJECT: DPWT Docket No. AB718, Portion of Maple Avenue
Avery Lodge Subdivision, Rockville
4th Election District

For your consideration, attached herewith is a proposed Resolution whereby the County Council may approve the abandonment of an unimproved portion of Maple Avenue in the Avery Lodge Subdivision in Rockville. Supporting data are submitted as follows:

1. Council Resolution
2. Letter requesting the abandonment from Ms. Lena Jones, the Applicant
3. A Public Hearing was held on January 5, 2009, as announced by Executive Order No. 287-08.
4. The Hearing Examiner's Revised Report and Recommendation
5. A location map and tax map for reference

Attachments

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DPWT Docket No. AB718
Abandonment – Portion of Maple Avenue
Avery Lodge Subdivision
Rockville, Maryland

Background

1. By letter dated May 12, 2008, from Ms. Lena Jones, the Applicant, requested the County to abandon a portion of an unimproved road known as “Maple Avenue” in the Avery Lodge Subdivision in Rockville. The portion of Maple Avenue right-of-way for which abandonment is sought adjoins Lot 4, Block 2, owned by the Applicant, and Lot 3, Block 3, owned by Mr. Roland Kircher, and is approximately 50 feet wide and 210 feet long.
2. A portion of the right-of-way proposed for abandonment is used or desired by the Department of Parks to be used for pedestrian access into the Rock Creek Regional Park.
3. A Public Hearing to consider the abandonment proposal was held on January 5, 2009, by the designee of the County Executive.
4. Washington Gas had no objection.
5. Washington Suburban Sanitary Commission did not respond within 60 days and therefore, concurrence is presumed.
6. VERIZON objected unless granted an easement for its existing and future facilities.
7. The Montgomery County Planning Board conditioned its approval upon: a) only the eastern 30 feet of the existing 50-foot right-of-way contiguous to Lot 4, Block 2 be abandoned with the residual 20 feet remaining as public right-of-way; and b) recordation of a new record plat.
8. The Department of Transportation recommended approval conditioned upon: a) the Applicant granting a 20-foot wide perpetual access easement to permit pedestrian access to the adjacent parkland; b) a perpetual access easement over the entire 50-foot wide right-of-way to permit continued access to Lot 3, Block 3; c) easements for County storm drains and public utilities; and d) Applicant must record a new record plat.

9. The Department of Fire and Rescue Services had no objection.
10. The Police Department had no objection.
11. PEPCO 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 30 foot strip of right-of-way adjoining Lot 4, Block 2 to five feet past the centerline of the existing right-of-way referred to on the record plat as Maple Avenue and consisting of an estimated length of 210 feet and an area of approximately 6,300 square feet in the Avery Lodge Subdivision proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment of said 30 foot wide strip, subject to the following conditions which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective:

1. The area proposed for abandonment must be subject to a permanent and perpetual public improvements easement sufficient in form and substance to allow for the current and future placement, maintenance and repair of utilities and drainage, the form and substance of which must be approved by the Office of the County Attorney for Montgomery County, Maryland;
2. Conveyance to the Jones by Quit Claim Deed of any interest Mr. Kircher or the current owner of 5722 Dimes Road may have in the portion of the right-of-way to be abandoned;
3. Applicant must prepare the public improvement easement and Quit Claim Deed referenced in the preceding paragraphs 1) and 2) and cause each to be duly executed by all necessary owners, mortgagees and lienholders of record and to be recorded in the Land Records for Montgomery County, Maryland;
4. The Applicant must prepare for signature by the Jones and Mr. Kircher (or his successor) a plat redefining the Maple Avenue right-of-way by including the 210 foot long, 30-foot wide portion of the right-of-way being abandoned into Lot 4, Block 2 in the Avery Lodge Subdivision located at 5718 Dimes Road. The plat must be approved by the Department of Transportation prior to the Applicant recording it in the Land Records of Montgomery County, Maryland;
5. Execution of the referenced Quit Claim Deed by Mr. Kircher or any successor in title to the 5722 Dimes Road is in the sole discretion of Mr. Kircher or any such successor and is included in the Public Hearing Officer's Revised Report and Recommendation as a condition of the abandonment. If Mr. Kircher, or his successor in title to 5722 Dimes Road chooses not to execute a Quit Claim Deed as described above, the recommendations of the original Public Hearing Officer's Report and Recommendation

(Copies of the original and revised reports are in the case file maintained by the Department of Transportation) shall be deemed not to be revised or otherwise amended;

6. 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.
7. 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.

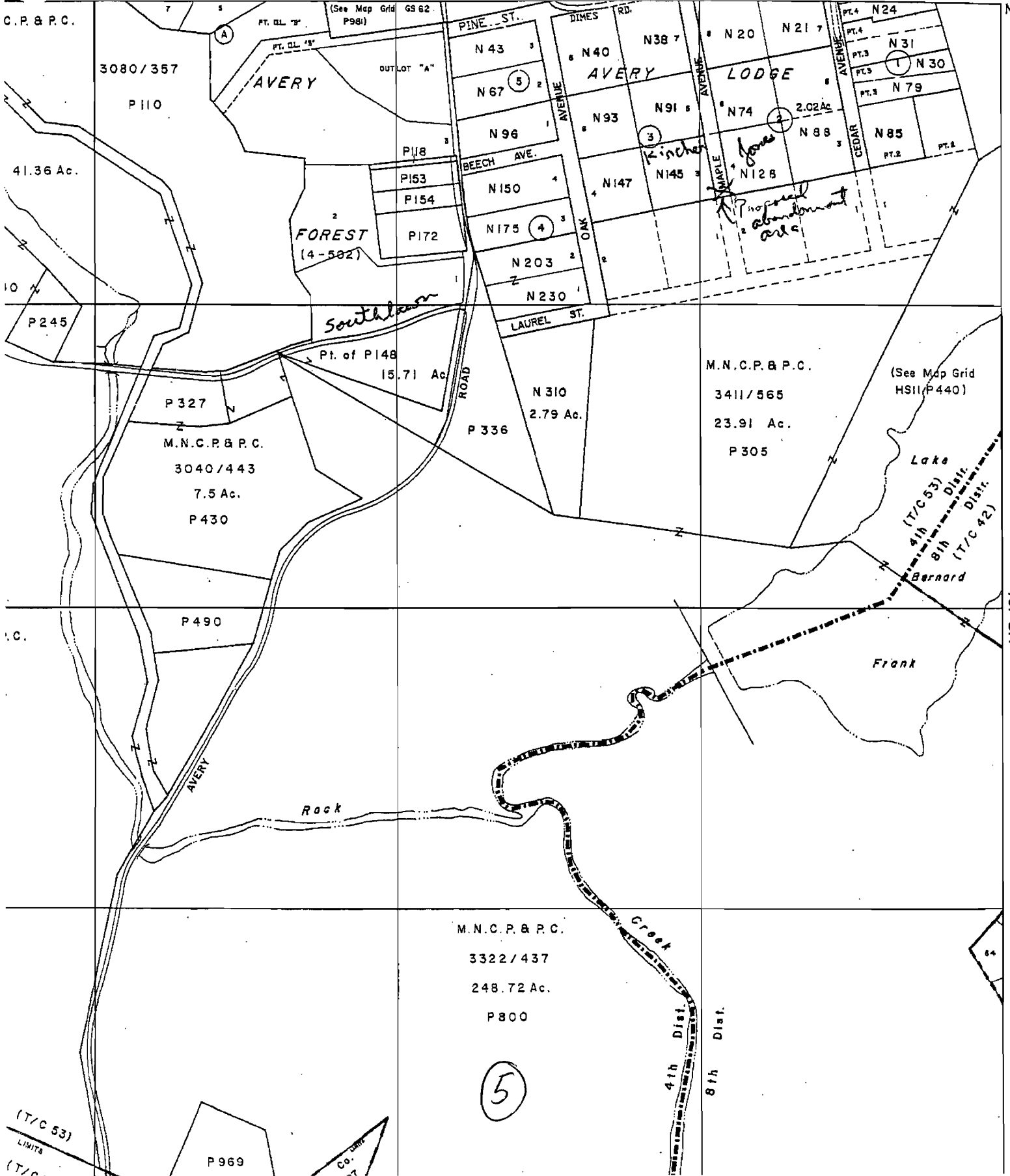
Linda M. Lauer, Clerk of the Council

Tax Map GS 61

G 6

W30000

GS 562



C.P. & P.C.

3080/357

P110

41.36 Ac.

P 245

P 327

M.N.C.P. & P.C.

3040/443

7.5 Ac.

P 430

P 490

FOREST
(4-502)

South

Pt. of P148
15.71 Ac.

N 310
2.79 Ac.

P 336

M.N.C.P. & P.C.

3411/565

23.91 Ac.

P 305

(See Map Grid
HS11/P440)

Lake

Bernard

Frank

M.N.C.P. & P.C.

3322/437

248.72 Ac.

P 800

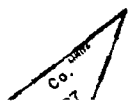
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(T/C 53)

LIMITS

(T/C

P 969



HS 121

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

IN THE MATTER OF PETITION OF:

LENA JONES

Applicant

For
ABANDONMENT OF A PORTION OF
MAPLE AVENUE IN
THE AVERY LODGE SUBDIVISION,
Rockville

An unimproved right-of-way

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* DEPARTMENT OF
* TRANSPORTATION
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* PETITION NO. AB 718
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BEFORE: Diane Schwartz Jones, Public Hearing Officer

**PUBLIC HEARING OFFICER'S REVISED REPORT AND
RECOMMENDATION**

On June 29, 2009 the undersigned hearing officer issued a Report and Recommendation in Abandonment Petition number AB 718 (the "Original Report"). The abandonment petition had been filed by Lena Jones, who lives at 5718 Dimes Road, and requested abandon of a portion of an unimproved road known as "Maple Avenue" in the Avery Lodge Subdivision. A copy of the June 29, 2009 Report and Recommendation is attached and incorporated herein as Attachment 1.

Following issuance of the Report and Recommendation, the Montgomery County Department of Transportation ("MCDOT") discovered that there was a January 6, 2009 email that had been inadvertently omitted from the hearing record. The email is from Roland S. Kircher, the owner of the property on the other side of the right-of-way for

which abandonment is sought, to Michael Cassedy with the MCDOT. Mr. Kircher, who resides at 5722 Dimes Road, wrote that he supports the proposed abandonment, that he does not need any of the abandoned right-of-way but would still require a 20-foot wide perpetual access easement along the frontage of his property (Lot 3, Block 3 - N145). He also indicated that he was aware that he is being requested to sign a quit claim deed to the Joneses and a new record plat, which he understands would be at no cost to him.

The Original Report discussed the various recommendations from the Montgomery County Planning Board ("MCPB"), the MCPB staff, and MCDOT staff. Respectively, these recommendations were that 30 feet, 25 feet and, subject to a 20-foot easement, all of the right-of-way be abandoned. The evidence in the record established that the right-of-way continues to be used by the public for pedestrian access into Rock Creek Regional Park and to Lake Frank. In the absence of any reliable evidence to the contrary, the undersigned Hearing Officer concluded that the MCPB proposal could leave a 5-foot strip of land owned by Mr. Kircher but physically separated from his parcel by the remaining right-of-way and that the Jones's request would leave Mr. Kircher's underlying fee simple interest in the remaining right-of-way carrying the entire remaining public use burden. The Original Report therefore concluded that $\frac{1}{2}$ or 25 feet of the right-of-way from the Jones's adjacent lot be abandoned subject to a $12 \frac{1}{2}$ - foot easement from the existing centerline of the road for public access and utilities.

Given the previously omitted email, the undersigned Hearing Officer is of the opinion that while the email is not the best evidence to indicate Mr. Kircher's position regarding the important issue of title to property, it is sufficient to revise and amend the Original Report. The email indicates that Mr. Kircher supports the Jones's abandonment

request and implies that he does not object to providing the Joneses with a quit claim deed to the 5-foot strip that he would own unencumbered if the right-of-way is abandoned.

For that reason and based upon the evidence of record, including Mr. Kircher's January 6, 2009 email, the Original Report in this matter is revised and I now recommend that the 30-foot strip of right-of-way adjoining Lot 4, Block 2 to five feet past the centerline of the existing right-of-way referred to on the record plat as Maple Avenue and consisting of an estimated length of 210 feet and an area of approximately 6,300 square feet be abandoned subject to the conditions stated below which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective. The 20-foot wide remainder of Maple Avenue shall remain intact. The terms of the abandonment are subject to the following conditions:

- 1) the area proposed for abandonment must be subject to a permanent and perpetual public improvements easement sufficient in form and substance to allow for the current and future placement, maintenance and repair of utilities and drainage, the form and substance of which must be approved by the Office of the County Attorney for Montgomery County, Maryland;
- 2) Conveyance to the Joneses by quit claim deed of any interest Mr. Kircher or the current owner of 5722 Dimes Road may have in the portion of the right-of-way to be abandoned;
- 3) Applicant must prepare the public improvement easement and quit claim deed referenced in the preceding paragraphs 1) and 2) and cause each to be

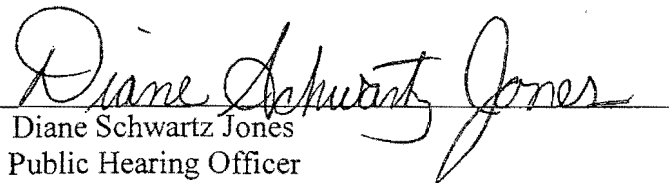
duly executed by all necessary owners, mortgagees and lienholders of record and to be recorded in the Land Records for Montgomery County, Maryland;

- 4) Applicant must prepare for signature by the Joneses and Mr. Kircher (or his successor) a plat redefining the Maple Avenue right-of-way by including the 210 foot long, 30-foot wide portion of the right-of-way being abandoned into Lot 4, Block 2 in the Avery Lodge Subdivision located at 5718 Dime Road. The plat must be approved by the Department of Transportation prior to Petitioner recording it in the Land Records for Montgomery County, Maryland.

Execution of the referenced quit claim deed by Mr. Kircher or any successor in title to 5722 Dimes Road is in the sole discretion of Mr. Kircher or any such successor and is included in this Revised Report and Recommendation as a condition of the above-stated abandonment. If Mr. Kircher, or his successor in title to 5722 Dimes Road chooses *not* to execute a Quit Claim Deed as described above, the recommendations of the Original Report shall be deemed not to be revised or otherwise amended.

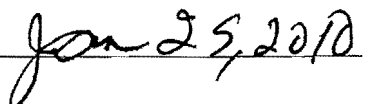
Respectfully submitted,

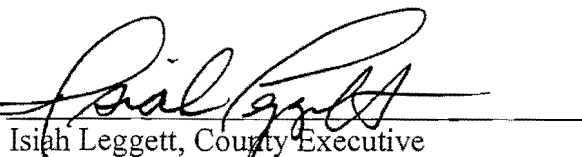
January 21, 2010


Diane Schwartz Jones
Public Hearing Officer

The Public Hearing Officer's Recommendation for AB718 has been reviewed and is approved.

Date:




Isiah Leggett, County Executive

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

IN THE MATTER OF PETITION OF:

LENA JONES

Applicant

For
ABANDONMENT OF A PORTION OF
MAPLE AVENUE IN
THE AVERY LODGE SUBDIVISION,
Rockville

An unimproved right-of-way

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* DEPARTMENT OF
* TRANSPORTATION
*
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* PETITION NO. AB 718
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BEFORE: Diane Schwartz Jones, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

Lena Jones, who lives at 5718 Dimes Road¹ petitioned the County to abandon a portion of an unimproved road known as "Maple Avenue" in the Avery Lodge Subdivision. (Exhibit 1)². The portion of the unimproved road for which abandonment is sought is that portion of Maple Avenue that adjoins Lot 4, Block 2 owned by Kevin and

¹ The portion of Dimes Road on which the Petitioner, Lena Jones, lives was platted in 1891 in Plat Book B at Plat 19 as Maple Avenue. Therefore, for purposes of referring to addresses of the Petitioner and others, the street address names will be used; however, in referring to the portion of right-of-way requested to be abandoned the right-of-way will be referred to as Maple Avenue.

² Exhibit References are to items designated in Attachment 1 as Exhibits and are not attachments to this Report and Recommendation but are incorporated by reference.

Lena Jones with a street address of 5718 Dimes Road and Lot 3, Block 3 which is owned by Roland Kircher and has a street address of 5722 Dimes Road. (Exhibit 6) The area of the proposed abandonment is not provided other than in the form of yellow highlighting on the Record Plat of Subdivision between lots 3 and 4. From the plat it appears that the area of proposed abandonment is approximately 10,500 square feet (50' x 210'). (Exhibit 6)

Mrs. Jones on behalf of her husband and herself seeks the abandonment of a portion of Maple Road so that they can construct a 2-3 car garage that will house an electric vehicle. They own approximately one acre of land that abuts public park land.³ (Tr. P. 21) Mr. and Mrs. Jones asked for the abandonment because the well and septic serving their property, along with underground propane tanks, interfere with the placement of the garage near their home. (Exhibit 1) Additionally, Mr. Michael Cassedy with the Department of Transportation, indicated at the hearing that he visited the site and that slanted doors on the opposite side of the house hinder locating the garage wholly within the Jones' property as well. (Tr. P. 15)⁴

A public hearing on the request was held on January 5, 2009 at approximately 1:00 pm in the Lobby Level Auditorium of the Executive Office Building, 101 Monroe Street in Rockville, Maryland. Notice of Hearing was mailed to 21 properties in the area, including to Mr. Roland Kircher at 5722 Dimes Road, the owner of the above described Lot 3, Block 3 that adjoins the portion of Maple Road for which Mr. and Mrs. Jones seek abandonment. (Exhibit 3) Mr. Cassedy indicated that there is no homeowners'

³ Lots 1 and 2 Block 3 and Lots 1 and 2 Block 2 of the Avery Lodge subdivision are publicly owned as part of the adjacent park.

⁴ References to the hearing transcript are reflected herein as "Tr. P. ____."

association or other civic association so notice was not sent to such an organization. (Tr. P. 11)

Public notice of the hearing was published in the *Montgomery County Sentinel* newspaper on December 11 and December 18, 2008, per the Certification of the Montgomery County Sentinel. (Exhibit 4) The right-of-way was duly posted with notice of the hearing as well. (Exhibit 7)

Testimony was received at the hearing from Mr. Cassidy and the Applicant, Lena Jones. Exhibits 1-14 described in Attachment 1 were entered into the record and a subsequent email was included as Exhibit 15. The record was held open for two weeks until 5:00 pm on January 20, 2009.

Summary of Testimony and Evidence

The right-of-way for which abandonment is sought is adjacent to and runs the length of Lot 4, Block 2 owned by Mr. and Mrs. Jones and Lot 3, Block 3 which is owned by Roland Kircher and is the only means of legal access to these two lots. Mr. Cassidy testified that Mr. Kircher consents to the abandonment. (Tr. P. 14) However, despite the Hearing Officer's request that a letter of consent to the abandonment be obtained from Mr. Kircher and the record being held open for two weeks, no letter from Mr. Kircher indicating his position on the requested abandonment was ever provided.

Mr. Cassidy described the evidence that was assembled in satisfaction of the requirements of Montgomery County Code Section 49-62. The proposal was submitted to the Montgomery County Department of Transportation, Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission, public

utilities, Montgomery County Police Department; and the County Department of Fire and Rescue Services.

The Montgomery County Planning Board (“Planning Board”) on behalf of the Maryland National Capital Park and Planning Commission considered the request for abandonment and, at its December 18, 2008 public hearing conditionally approved the request provided that 1) “only the eastern 30 feet of the existing 50-foot right-of-way contiguous to Lot 4, Block 2 of the Avery Lodge with the residual 20 feet remaining in the public right-of-way” and 2) that the abandonment become effective upon the recordation of a record plat incorporating the 25 feet of right-of-way adjacent to Lot 4 plus the 5 feet of right-of-way that will revert to the owner of Lot 3, Block 3. The Planning Board pointed out in its letter dated December 19, 2008 that its recommendation differed from that of the Department of Parks staff. Both the Planning Board and its staff took the position regarding their desire to assure open and accessible convenient public access to Rock Creek Regional Park and Lake Frank by way of a path with a width of 20 feet . However, the staff memo from the Department of Parks requested that ½ of the current road right-of-way remain in public ownership. (Exhibit 10)

In addition to comments from the Planning Board, comments were obtained from Verizon, Washington Gas, the Department of Police, the Department of Transportation, and the Montgomery County Department of Fire and Rescue Services.

Verizon indicated that it has existing facilities in the area proposed for abandonment and therefore objects to the abandonment *unless* an easement is granted to Verizon for its existing facilities and future facilities, or if the Applicant pays for the relocation or removal of Verizon’s facilities. (Exhibit 8) Washington Gas, on the other hand, wrote

that it has no facilities in the area to be abandoned and therefore has no objection to the requested abandonment. (Exhibit 9) The Montgomery County Police Department had no objection to the proposed abandonment. (Exhibit 11) Likewise, the Department of Fire and Rescue Services had no objection to the abandonment. (Exhibit 13)

The Department of Transportation conditionally recommended approval of the requested abandonment. DOT recommends the following conditions: 1) a 20 foot wide perpetual access easement to permit pedestrian access to the parkland be granted; 2) a perpetual access easement over the entire 50' right-of-way be granted to permit continued access to the Roland Kircher property; 3) easements be granted for County storm drain and public utilities; and 4) Applicant must record a new record plat.

II. Discussion

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.

The right-of-way in question was dedicated more than a century ago and has been used as access to 5718 and 5722 Dimes Road. At the time the right-of-way was created it was platted to serve two additional lots (Lot 1, Block 3 and Lot 2, Block 2) and a paper street called "Laurel Street." The two additional lots and Laurel Street were, at some point acquired by Park and Planning for parkland and incorporated into the adjacent park.

The right-of-way proposed for abandonment is used or desired by the Department of Parks to be used for pedestrian access into the park. (Exhibit 6)

Mrs. Jones requests the abandonment for the purpose of building a 2-3 car garage to house an electric vehicle that she and her husband have purchased. Due to well and septic field constraints on one side of their home and slanted basement storm doors on the other and set back requirements, Mr. and Mrs. Jones propose to place the garage partially on the Maple Avenue right-of-way.

If the right-of-way is abandoned it will revert partially to Mr. and Mrs. Jones as owners of Lot 4, Block 2 and partially to Mr. Kircher, the owner of Lot 3, Block 3. DOT suggests a full abandonment be authorized with a 20-foot easement to Mr. Kircher for access. Park and Planning recommends abandonment of 30 feet adjacent to the Jones' property. 25 feet of that 30 feet would revert to Mr. and Mrs. Jones as owners of Lot 4, Block 2 leaving a 5-foot strip of abandoned right-of-way that would revert to Mr. Kircher, owner of Lot 3, Block 3. This 5-foot strip would be physically separated from the remainder of the Kircher lot by the remaining right-of-way. The Planning Board recommended that a quit claim deed be provided for the 5-foot strip of abandoned right-of-way from Mr. Kircher to Mr. and Mrs. Jones. However, the Department of Parks staff recommended that at least ½ of the right-of-way remain in public ownership or control noting that the Department of Parks has "had trouble in the past with enforcement of easements across land that is in private ownership." (Exhibit 10)

Mr. Kircher did not join in the request for abandonment and the Planning Board submission did not reflect any evidence as to Mr. Kircher's position on this request. No evidence was submitted by the Petitioner to indicate that Mr. Kircher supports the

proposed abandonment. At best, Mr. Cassidy's comment that he was told by Mrs. Jones that Mr. Kircher consents to the abandonment is second tier hearsay and is not adequate to support the impact of the requested action on both public interests and private property rights. Mr. Kircher was however provided notice of the proposed abandonment. (Tr. P. 11 and Exhibit 3) The Hearing Officer expressly requested that a statement be obtained from Mr. Kircher and be submitted into the record which was held open for two weeks post-hearing. (Tr. Pps. 22-23) However, nothing was submitted. There is no reliable evidence that Mr. Kircher has any interest, desire or willingness to provide the quit claim deed contemplated by the Planning Board in its recommendation.

Montgomery County Code section 49-63 permits the County Council to abandon a right-of-way if it is no longer needed for present or for anticipated use in the foreseeable future. It is clear from the evidence that the only two parties who use any portion of the right-of-way proposed for abandonment for vehicular travel are the two adjoining property owners, the Kirchers and Mr. and Mrs. Jones. Maple Avenue leads directly into parkland. It appears from the Planning staff memorandum that pedestrian use is made of the right-of-way and that the right-of-way, at least in part, should be protected for pedestrian access into the park. (Exhibit 10) Given the Planning Board recommendation and the concerns of the Department of Parks, pedestrian access into the park needs to be preserved. Therefore, I cannot recommend that the entirety of the right-of-way, as requested by Applicant, be abandoned because there has not been a demonstration that the entire right-of-way is no longer needed for present or anticipated use in the foreseeable future.

Turning to the alternative suggestion of the Planning Board and its staff respectively that either 30 feet or 25 feet (e.g. ½ of the right-of-way) be abandoned, I am concerned that if the quit claim deed is not provided, the Applicant will end up with the 25 feet of right-of-way from the center line of Maple Avenue, Mr. Kircher will end up with unencumbered fee simple ownership of the 5-foot strip and the County will retain the remaining 25 feet of right-of-way sandwiched between the 5-foot strip and Mr. Kircher's Lot 3, Block 3. Given the evidence actually produced, this may happen and is an outcome that does not make sense.

It would have been preferable if both adjoining property owners had requested abandonment so that the entire right-of-way could be dealt with fully, fairly and properly. That however did not happen. The proposals from all involved seem to direct that the reserved pedestrian access be directed onto the portion of right-of-way adjoining Mr. Kircher's property, leaving Mr. Kircher's encumbered fee simple interest under the remaining dedicated right-of-way subject to the entirety of the public use burden. Rather, in fairness to both adjacent properties, the pedestrian access should be perpetually preserved equidistant from the centerline of the road.

Given the facts presented, and subject to the below-stated conditions, it is my recommendation that only the ½ of the right-of-way abutting the Applicant's property to the centerline of the Maple Avenue right-of-way be abandoned and that within that area to be abandoned certain easements be preserved including an easement for utilities within the entire abandoned portion of the right-of-way and for public use for access to the park over and across an easement area that measures 12 ½ feet from the centerline of Maple Avenue. If, the remaining portion of the Maple Avenue right-of-way abutting the

Kircher property is ever abandoned, it should be conditioned on the same easements so that a total 25-foot public use easement (measured 12 ½ feet in each direction from the existing centerline of Maple Avenue) for access to the park is preserved and so that utilities would be adequately addressed.

III. Conclusions and Recommendations

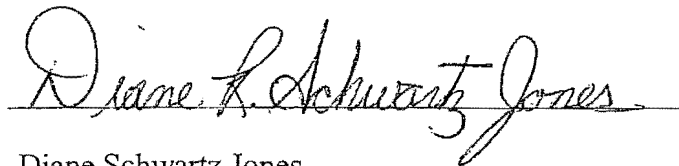
Based on a thorough review of the testimony and the evidence of record, I recommend that the 25 foot strip of right-of-way adjoining Lot 4, Block 2 to the centerline of the existing right-of-way referred to on the record plat as Maple Avenue and consisting of an estimated length of 210 feet and an area of approximately 5,250 square feet be abandoned subject to the following conditions which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective:

- 1) the area proposed for abandonment must be subject to a permanent and perpetual public improvements easement sufficient in form and substance to allow for the current and future placement, maintenance and repair of utilities and drainage, the form and substance of which must be approved by the Office of the County Attorney for Montgomery County, Maryland;
- 2) the area proposed for abandonment must be subject to a permanent and perpetual public use easement for access to the park measuring 12 ½ feet from the centerline of existing Maple Avenue, the form and substance of which must be approved by the Office of the County Attorney for Montgomery County, Maryland;
- 3) Applicant must prepare the public improvement easement and perpetual pedestrian access easement referenced in the preceding paragraphs 1) and 2)

and cause each to be duly executed by all necessary owners, mortgagees and lienholders of record and to be recorded in the Land Records for Montgomery County, Maryland;

- 4) Applicant must prepare for signature by the property owners a plat redefining the Maple Avenue right-of-way by including the 210 foot long, 25-foot wide portion of the right-of-way being abandoned into Lot 4, Block 2 in the Avery Lodge Subdivision located at 5718 Dime Road. The plat must be approved by the Department of Transportation prior to Petitioner recording it in the Land Records for Montgomery County, Maryland.

Respectfully submitted,



Diane Schwartz Jones
Public Hearing Officer

June 29, 2009

The Public Hearing Officer's Recommendation for AB718 has been reviewed and is approved.

Date: 6/29/09



For Isiah Leggett, County Executive

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