



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

IN THE MATTER OF: AB765, ABANDONMENT OF A PORTION OF KENTBURY DRIVE IN BETHESDA, MD

Proposed abandonment of a portion of the Kentbury Drive right-of-way in Bethesda, MD, containing approximately 3,750 square feet of land, more or less.

BEFORE: Michael L. Subin, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. BACKGROUND

This report and recommendation considers the abandonment request of Mary J. Sisak (the "Applicant") as it concerns Kentbury Drive in the vicinity of her property located at 4301 Chestnut Street in Bethesda, Maryland. In this vicinity, Kentbury Drive is an approximately 50-foot wide right-of-way that is not improved with pavement or asphalt and dead-ends at the Columbia Country Club.

In a letter dated February 20, 2019, the Applicant requested the abandonment of that portion of Kentbury Drive lying immediately adjacent to her property to the centerline of Kentbury Drive. Said portion of the Kentbury Drive right-of way sought to be abandoned contains 3,750 square feet of land, more or less, and may be further described as that approximate 25-foot by 150-foot section of the westernmost portion of Kentbury Drive lying immediately adjacent to the Applicant's property (the "ROW").¹ Thus, half the width of Kentbury Drive right-of-way in the vicinity of the Applicant's property is the subject of this abandonment proceeding.

¹ The exact dimensions require a survey, but the area requested for abandonment may fairly be described as running from the centerline of Kentbury Drive to the easternmost edge of the Applicant's lot (Lot 11 in the subdivision known as Columbia Forest as depicted on Plat No. 2321) as bounded and contained by the Columbia Country Club property to the north and the northerly line of the intersection of the rights of way of Chestnut Street and Kentbury Drive to the south.

A public hearing was held in the Lobby Auditorium, Executive Office Building, 101 Monroe St., Rockville, MD 20850 on June 26, 2019, commencing at 7:49 p.m. The record remained open until 5:00 p.m., July 10, 2019.

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 1: Applicant's letter dated February 20, 2019 requesting abandonment.

Exhibit 1(a): GIS Map depicting the location of Kentbury Drive in relation to the adjacent homes.

Exhibit 1(b): Boundary survey of the Applicant's property depicting existing conditions, including the presence of a 36 inch storm drain pipe in the ROW.

Exhibit 2: Subdivision Plat No. 2321 depicting the Columbia Forest subdivision and the dedication of Kentbury Drive to public use in 1949.

Exhibit 3: An aerial photo depicting the subdivision, the surrounding area, and existing rights of way.

Exhibit 4: Executive Order No. 076-19, issued on April 11, 2019, authorizing a hearing on June 26, 2019.

Exhibit 5: Notice of the Public Hearing in *The Montgomery Sentinel* for two consecutive weeks on June 13 and 20, 2019.

Exhibit 6: A photograph of the sign posted on the ROW that provides notice to the public of this hearing to consider the abandonment of the ROW.

Exhibit 7: The list of abutting property owners who were provided notice of the hearing.

Exhibit 8: Email from Mr. and Mrs. Perry and Dianne Seiffert dated June 24, 2019 expressing conditional support of the proposed abandonment.

Exhibit 9: Letter dated June, 20, 2019 from the Columbia Country Club objecting to the requested abandonment.

Exhibit 10: Email dated April 25, 2019 from Mark Terry, Chief of the Traffic Engineering Section, Montgomery County Department of Transportation (“MCDOT”) Traffic Division indicating no objections to the abandonment request.

Exhibit 11: Email dated April 25, 2019 from Atiq Panjshiri, Manager, Right of Way Plan Review for the Montgomery County Department of Permitting Services (“MCDPS”) indicating the presence of a 24 inch storm drain with the ROW and requesting further information to calculate the amount of easement area required to be retained.

Exhibit 12: Email dated May 2, 2019 from Washington Gas Co. confirming that it does not have any facilities within the ROW and consequently has no objections to the requested abandonment.

Exhibit 13: Memorandum dated May 22, 2019 from Rebecca Torma and Brenda Pardo of the MCDOT Development Review Team recommending approval of the requested abandonment, subject to certain conditions being first met.

Exhibit 14: Memorandum dated May 7, 2019 from staff at the Montgomery County Planning Department of the Maryland National Capital Park and Planning Commission (“MNCPPC”) recommending approval of the requested abandonment, and further recommending that the full 50’ width of the subject portion of Kentbury Drive be abandoned.

III. SUMMARY OF STATEMENTS MADE AT THE HEARING HELD ON JUNE 26, 2019 CONSTITUTING EVIDENCE FOR THIS REPORT

1. Mr. Eric Willis, Chief of the Property Acquisition Section for the Montgomery County Department of Transportation

Mr. Eric Willis spoke on behalf of the Montgomery County Department of Transportation (“MCDOT”). Mr. Willis explained that his Office is charged with the administration of requests to abandon County rights of way. In so doing, Mr. Willis laid out the procedural history concerning the abandonment request, and he summarized all comments and 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. Willis described the nature of the ROW at issue as an unimproved portion of Kentbury Drive, in East Bethesda, Maryland. At this location, Kentbury Drive and Chestnut

Street merge and dead-end at the Columbia Country Club. Mr. Willis stated that this portion of Kentbury Drive was dedicated to public use on or about May, 1949 via subdivision plat number 2321 (Exhibit 2), which depicts this portion of Kentbury Drive as an approximately 50-foot wide right-of-way running in a North-South direction between Lots 1 and 11 for approximately 150-feet before dead-ending at the boundary of the Columbia Country Club. Mr. Willis further stated that the Applicant resides at 4301 Chestnut Street and is requesting the abandonment of the western half of Kentbury Drive located immediately adjacent to her property (Lot 11), which constitutes approximately 3,750 square feet of land, encompassing dimensions of approximately a 25-foot width by a 150-foot length as measured from the centerline of Kentbury Drive to the eastern edge of the Applicant's property.

Mr. Willis further stated that in accordance with section 49-62 of the Montgomery County Code, 2014 (as amended) MCDOT provided notice of Applicant's request to adjacent property owners and solicited comments from the appropriate government agencies and public utility companies potentially impacted by the requested abandonment. Mr. Willis advised that no comments were received from WSSC, Pepco, Verizon, the Montgomery County Police Department ("MCPD"), or the County's Fire and Rescue Service, and that with the passage of more than 60 days' notice, that their concurrence is presumed, pursuant to the Montgomery County Code.

2. Ms. Mary Sisak, the Applicant

At the hearing, the Applicant provided an overview of her property and that of her neighbor, Mr. Perry Seiffert, in relation to Kentbury Drive, noting that Kentbury Drive runs between their respective properties at the merger of Chestnut Street and Kentbury Drive. Ms. Sisak stated that the front half of Kentbury Drive located between her property and that of Mr. Seiffert is nothing more than a grassy, weedy area, and that the back half of Kentbury Drive is wooded. The Applicant contended that she has resided there since 1993 and that there has never been a road there nor has one been proposed. The Applicant opined that she did not believe that a road would ever be constructed in that location because Kentbury Drive presently dead-ends at the Columbia County Club's golf course, and contended that there were no plans in the foreseeable future to put a road through the existing golf course. In essence, the Applicant was

pointing out that Kentbury Drive is presently an unbuilt road to nowhere with no future plans to run a road through the golf course.

The Applicant stated that she is requesting the abandonment for the purpose of integrating the land into her lot.

3. Mr. Cary Hinton

The Applicant's spouse, Mr. Cary Hinton, stated that since he and the Applicant have resided in their home, that they have maintained the grass on 50 percent of Kentbury Drive (adjoining the Applicant's lot), and that their neighbor, Mr. Seifert has maintained the grass on the other 50 percent of Kentbury Drive (adjoining Mr. Seifert's lot).

4. Mr. Perry Seifert

Mr. Perry Seifert testified that he had no comments other than those expressed by him in his email of June 24, 2019 (Exhibit 8). In that email, Mr. Seifert stated that he had no objections to the abandonment *provided* that granting the Applicant's request would not preclude him from petitioning for the abandonment of remaining half of Kentbury Drive.² Otherwise, Mr. Seifert would object to the granting of the petition under consideration.

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 1, 1(a), 1(b), 4 through 14, and the transcript of proceedings.

² Nothing in the law precludes Mr. Seifert from petitioning for the abandonment of that portion of Kentbury Drive that is adjacent to his property to the centerline of the right of way.

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 Kentbury Drive is a County right of way that was dedicated to public use in April, 1949. *See* Exhibit 2. The dedication reflects that Kentbury Drive was dedicated as a street that is roughly 50 feet in width and 150 feet in length that dead ends at the Columbia Country Club. *Id.* Notwithstanding the dedication, there is no evidence in the record that Kentbury Drive was ever improved for pedestrian or vehicular use, or that it was at any time used by pedestrians or vehicles. By all accounts, this segment of Kentbury Drive is presently an unconstructed road to nowhere and has likely been so for over 70 years.

In light of the above finding of fact, I find the recommendations of the staff at the Montgomery County Planning Department of the MNCPPC to be highly persuasive. *See* Exhibit 14. 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. Staff at the Montgomery County Planning Department recommended abandonment after considering the existing transportation network and approved master plans.³ *See* Exhibit 14. As part of that review, Montgomery County Planning Department Staff considered the potential future need to improve Kentbury Drive if the Columbia Country Club were to seek to redevelop its property in the future.⁴ In short, the Planning Department found that even if the Columbia Country Club were to redevelop, that there were multiple sites of access to the property along its frontages on Jones Bridge Road, East-West

³ Indeed, staff recommended that the full 50-foot right of way of Kentbury Road be abandoned rather than just the 25-foot adjacent to the Applicant's property.

⁴ The Planning Department recommendation indicates that there are no current or anticipated plans to develop the Columbia Country Club and that this was a hypothetical was considered as part of its due diligence review.

Highway, and Connecticut Avenue such that the Kentbury Drive right of way would not be needed as a future site access point. *See* Exhibit 14. Staff also pointed out additional rights of way in the form of the Purple Line/Georgetown Branch trail that cut across the Country Club as well as two disconnected segments of Newdale Road that could be improved and connected to provide a multimodal connection across the Columbia Country Club property.

In evaluating the evidence, I have carefully considered the opposition to the abandonment request set forth in that letter dated June 20, 2019 from the Columbia Country Club. *See* Exhibit 9. The Club candidly admits that it "... has no foreseeable plans for development of its property..." *Id.* However, the Club opposes the abandonment request because of the potential need for the ROW by the Club, without specifying any more. While it is impossible to predict the future, the Columbia Country Club's letterhead indicates that it has existed since 1898 – predating the subdivision by some 50-odd years. *Id.* Furthermore, in the 70-plus years since the dedication of Kentbury Drive, there has not been a demonstrated need for the ROW for pedestrian or vehicular use, nor does the record demonstrate any true need for it by the Club over that period. I do not find the Club's generalized concern about the potential future need for the ROW to be particularly compelling when weighed against the recommendations and the technical expertise of the staff at the Planning Department.

Notwithstanding the above findings, even though Kentbury Drive was never constructed for pedestrian or vehicular use, it is presently improved with a storm-drainage pipe. *See* Exhibits 1(b), 11, and 13. The storm-drainage pipe is located almost entirely within the western part of the right of way that is the subject of this abandonment. *See* Exhibit 1(b). Thus, the ROW is currently in the public use. The record further reflects that the County will continue to need a storm drain to serve this area. *See* Exhibits 11 and 13. In reviewing the evidence, I find that there is a continuing need for a storm drainage system in this general location, and I find the recommendations of MCDOT Development Review Team to address the existing storm drain to be reasonable and necessary should Council be inclined to grant the abandonment request. *See* Exhibits 11 and 13.

In reviewing the evidence, I find that the County solicited comments from Pepco, Verizon, and WSSC pursuant to section 49-62(g) of the County Code concerning the abandonment request; however, those utilities have not provided a response within 60 days after

notice was first published.⁵ Accordingly, it is presumed that they do not oppose the abandonment request.

In reviewing the evidence, I find that the County solicited comments from Washington Gas pursuant to section 49-62(g) of the County Code concerning the abandonment request. Washington Gas indicated that it has no facilities within the requested abandonment area and has no objections to the abandonment request. *See Exhibit 12.*

In reviewing the evidence, I find that the County solicited comments from the Montgomery County Police Department and the Montgomery County Fire and Rescue Services pursuant to section 49-62(g) of the County Code concerning the abandonment request; however, those agencies have not provided a response within 60 days after notice was first published.⁶ Accordingly, it is presumed that they do not oppose the abandonment request.

In conclusion, having thoroughly considered the entire record of these proceedings, it is my recommendation that the ROW be abandoned. The record is clear that the ROW has not been used for pedestrian or vehicular purposes in the more than 70-plus years since it was originally dedicated, and there are no discernable plans for the development of or use by the Columbia Country Club that would militate against abandoning the ROW. Moreover, the agencies vested with the responsibility of development planning for the future recommend the abandonment and have not expressed any concern with respect to how the abandonment will impact the existing and future transportation network, nor are those agencies concerned with site access to the Club should it ever be redeveloped. Notwithstanding, the ROW is presently burdened with a storm drain, accordingly, it is my finding that if the recommendations of the MCDOT Development Review Team are accepted, that the ROW is no longer needed for present public use or anticipated public use in the future. Accordingly, I recommend that the Applicant's February 20, 2019 petition to abandon Kentbury Drive from its centerline to the easternmost edge of the Applicant's lot (Lot 11) be granted, subject to the following requirements that are conditions precedent to abandonment:

⁵ No response was ever provided.

⁶ No response was ever provided.

1. That the Applicant be required to grant, to the satisfaction of the County and at the Applicant's expense, any necessary easements for the existing County storm drainage system that is located within the abandoned area; or, at the Applicant's expense and to the satisfaction of the County, relocating the existing storm drainage system and granting necessary easements for the relocated system;
2. That the Applicant be required to grant, to the satisfaction of the County and at the Applicant's expense, any necessary public utility easements for existing utilities that are located within the abandoned area, if any; or, at the Applicant's expense and to the satisfaction of the County, relocating the existing utilities, if any, and granting necessary public utility easements for the relocated utilities;
3. That the Applicant shall be required to grant the aforementioned storm drainage and public utility easements as directed by the County and in the County's sole discretion as to the dimensions of the required easement areas; and
4. That the Applicant must at its sole cost prepare and record a new record plat incorporating the abandoned area into the Applicant's adjacent property.

SIGNATURE PAGE FOLLOWS

Respectfully submitted,



Michael L. Subin

Date: *March 25, 2020*

The Public Hearing Officer's Recommendations regarding the APPROVAL of AB 765, the abandonment of a portion of a right-of-way on Kentbury Drive, Bethesda, MD is APPROVED.

Marc Elrich, County Executive

Date: