

1 MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION

2 -----x

3 In Re: PUBLIC HEARING/MCDOT : Petition No.

4 : AB782

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HEARING

10

BEFORE MICHAEL PAYLOR - HEARING OFFICER

11

Conducted Virtually

12

Wednesday, September 21, 2022

13

1:01 p.m. EST

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23 Job No.: 448620

24 Pages: 1 - 18

25 Recorded By: Shannon Hayes



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1 HEARING, held virtually.

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13 Pursuant to agreement, before Shannon Hayes,

14 Court Reporter, in and for the State of Maryland

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1 A P P E A R A N C E S

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3 ON BEHALF OF THE MCDOT:

4 TIARA MCCRAY

5 MONTGOMERY COUNTY DEPARTMENT OF

6 TRANSPORTATION

7 Division of Transportation Engineering

8 100 Edison Park Drive

9 4th Floor

10 Gaithersburg, Maryland 20878

11 240.777.8792

12 (Present via videoconference)

13

14

15 ALSO PRESENT:

16 David Harris - MCDOT
17 Robert Birenbaum - County Attorney
18 Eric Willis - MCDOT
19 Benjamin Oshman - Petitioner
20 Joan Goksel
21 Patricia Fogel
22 Suresh Pokharel - MCDOT
23
24
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1 P R O C E E D I N G S
2 (Whereupon, the court reporter was duly
3 sworn.)

4 MR. PAYLOR: Well, greetings, and good
5 afternoon to all of you. It's 1:01 on September
6 the 21, 2022, and we are conducting this hearing
7 virtually via Zoom. We're here for a public
8 hearing on abandonment petition AB782 to consider
9 an application received from Benjamin and Michelle
10 Oshman to abandon a public access easement in
11 proximity to Bayard Boulevard in Bethesda,
12 Maryland. My name is Michael Paylor, and I am the
13 county executive's designated hearing officer with
14 the county's Department of Transportation. This
15 right of way abandonment hearing is conducted
16 pursuant to section 4962 after the Montgomery
17 County code.

18 And my role in the abandonment process is
19 to receive testimony concerning the abandonment
20 request, and then develop a report and
21 recommendation to be submitted to the county
22 executive concerning the applicant's petition for
23 abandonment. To do this, I will consider
24 statements made during this hearing, of written
25 comments received within the comment period. And

1 these comments will be accepted until October 5,
2 2022 at 5:00 p.m. And that includes documents
3 submitted directly to Mr. David Harris, who is a
4 real estate specialist for Montgomery County's
5 Department of Transportation to support or explain
6 a position on this particular abandonment case.

7 My report and recommendation will then be
8 forwarded to the county executive for consideration,
9 and the county executive will then forward the report
10 to the county executives for the report and his
11 recommendation-- excuse me, his recommendation to the
12 county Counsel. It is the county Counsel that will
13 decide whether to grant or deny the applicant's
14 petitionment -- petition for abandonment. And for
15 those who wish to submit written comments, please
16 submit these comments to Mr. David Harris at
17 Montgomery County Department of Transportation, 100
18 Edison Park Drive Fourth Floor, Gaithersburg,
19 Maryland, 20878, or you may e-mail them to
20 david.harris@montgomerycountymd.gov by October 5,
21 2022.

22 There are a few ground rules that we must
23 cover before Mr. Harris introduces the abandonment
24 petition in the record. First, please turn off or

25 silence your cell phones. Second, as an issue of



1 decorum, all participants must be given due
2 consideration. Those seeking to offer comment
3 following the close of the petitioner's case for
4 abandonment are asked to be mindful of the time
5 and limit their comments to relevant matters. If
6 an interruption occurs, I personally will give
7 that individual their first warning --warning. If
8 there is a second interruption, I will give that
9 individual a second warning and they will be
10 muted. And if that same individual receives a
11 third warning, that person will be removed from
12 the call. And if there are several people making
13 interruptions on the call, I may close the
14 hearing.

15 Following my introduction to Mr. Harris and
16 his introduction of the abandonment, the applicant
17 will submit its case for why I believes the right
18 of way should be abandoned. And after the
19 applicant has completed its case, those who have
20 registered to speak will be afforded the

21 opportunity to make relevant comments. So now, I
22 introduce Mr. David Harris from Montgomery County
23 Department of Transportation to present the case.
24 Mr. Harris?

25 MR. HARRIS: Good afternoon, everybody,

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1 and thank you, Mr. Paylor. My name is David
2 Harris. I am a real estate specialist within the
3 property acquisition section for Montgomery County
4 Department of Transportation. My section is
5 responsible for administering requests for the
6 abandonment of public rights of way. And Mr.
7 Paylor noted earlier, this process is governed by
8 the county code details, the county code -- the
9 county's Counsel's authority to abandon a public
10 right of way if it finds that, one, the right of
11 way is no longer needed it for a public use or
12 anticipated for future public use or, two, the
13 abandonment is necessary to protect the health,
14 safety, and welfare of the residents near the
15 right of way of abandoned -- to be abandoned.

16 The subject of this case is a portion of a

17 public alley covering an approximately 301 square
18 footarea located at 4803 Bayard Boulevard, Bethesda.
19 The publicity was initially established in
20 connection with a subdivision plan entitled
21 Crestview and dated October 8, 1920. Prior --
22 prior county Counsel resolutions, namely
23 resolution 8-1019, dated September 14, 1974 and
24 resolution 18-290, dated October 13, 2015,
25 approved the abandonment of other portions of this

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1 public alley located behind several adjoining
2 lots. It is unclear from the language of those
3 resolutions whether any further portions of the
4 alley were to be abandoned. Since the
5 resolution's adoption -- since the resolution's
6 adoption, multiple re-subdivisions have been filed
7 to incorporate portions of the alleyway into
8 adjacent lots, apparently without any subsequent
9 county resolutions.

10 The applicant asserts in its petition that
11 the public alley no longer serves a current or future
12 public use and that other portions of the public

13 alley have already been abandoned and incorporated
14 into adjacent lots. The Office of the County
15 Attorney has advised through discussion with the
16 applicant that because the property is subject to
17 the public access easement, having been used by
18 the public, it is legally county right of way and
19 thus creating the need for this abandonment
20 process today. As part of the administrative
21 process, we have provided the requisite notices to
22 other public agencies, other property owners, and
23 to the public at large. During this process, we
24 have collected a number of exhibits that I will
25 now introduce into the hearing record. Okay. All



1 right.

2 So first, we have Exhibit A, which is from
3 Page 5, -- one to five, which is the applicant's
4 abandonment petition. We received the application
5 for abandonment petition on May 3, 2022. The
6 application included deeds for the applicant's
7 property. Next, we have Exhibit B, pages six
8 through eight, which is the collection of plats

9 and plans, the first one being the boundary survey
10 of the applicant's property, the plat titled
11 Crestview and dated October 8, 1920, and, finally,
12 a plat map of the area. Exhibit C, Page 9, is
13 executive order number 191-22, which authorizes
14 today's public hearing. Next is Exhibit D, Page
15 10, an abandonment aerial, which shows the portion
16 of the 15-foot-wide public alley behind 4803
17 Bayard Boulevard to be abandoned.

18 The next is Exhibit E, pages 11 and 12,
19 comment solicitation emails for county agencies. The
20 request was submitted June 20, 2022. Exhibit F,
21 pages, 13 to 14, the comments, solicitation emails
22 for public utility companies, which was sent,
23 again, on June 20th. Exhibit G, pages 15 and 16
24 of the Washington Times ad. The advertisement ran
25 September 1st and 8th notifying of this public



1 hearing. Exhibit H, pages 17 to 22, the public
2 hearing traffic sign. Request for the sign was
3 submitted May 27, 2022, and the sign was installed
4 at July 26, 2022. Exhibit I, pages 23 to 24, the

5 Go Montgomery advert. Ad ran September 15, 2022
6 advertising a public hearing, today's public
7 hearing. Exhibit J, Page 25, MCDOT calendar event
8 submission. The submission was created May 27th
9 notifying of today's public hearing.

10 Next is Exhibit K, Page 26, the HOACA and
11 certified mailing list. This includes all HOA
12 members and adjoining owners to the subject
13 property. Exhibit L, Page 27, comment,
14 solicitation, and public hearing noticed from the
15 HOACA. These emails were sent out May 20, 2022
16 with no objections. Exhibit M, pages 28 to 33,
17 the general public notice and mailing list for
18 certified mail recipients. Certified mail was
19 sent out on August 10, 2022 with no objections,
20 again. Exhibit N, Page 34, the Department of
21 Transportation Development Review Committee's
22 comment, dated July 20, 2022. There were no
23 objections, but there was a note that all existing
24 utilities, if any, along the proposed abandoned
25 portion of the public alley of Bayard Boulevard

1 shall remain in place with a proposed public
2 utility easement or relocated at the applicant's
3 expense.

4 If the -- if the existing utility is
5 relocated, it should be within a right of way
6 proposed for the public utility easement.

7 Next is Exhibit O, Page 35, the Department of
8 Transportation Division of Traffic, Engineering,
9 and Operations comment, dated July 28, 2022. They
10 had no objection. Exhibit P, Page 36, the
11 Department of Transportation Division of
12 Permitting Services plan review comment was dated
13 July 28th and had no objections. Exhibit Q, Page
14 37, Department of Transportation Division of
15 Permitting Services Fire and Rescue's comments
16 dated May 23, 2022. They had no objection.
17 Exhibit R, pages 38 to 41, MNCPPC's comments,
18 dated July 13, 2022 with no objection. Exhibit S,
19 Page 42, WSSC's comments, dated July 26. They had
20 no objection. Exhibit T, Page 43, Washington Gas'
21 comment, dated -- dated July 20, 2022. They had
22 no objection, as well. And finally, Exhibit U,
23 Page 44, the Pepco comment, dated July 20, 2022.
24 They had no objection. Thank you, Mr. Paylor. I
25 turn this hearing back in your direction.



1 (Exhibits A through U were marked.)

2 MR. PAYLOR: Well, thank you, Mr.
3 Harris. At this time, the applicant may submit
4 its case.

5 MR. OSHMAN: Yeah. Hi, this is Ben
6 Oshman, the applicant. As part of the initial
7 petition, I believe I put in some of the reasons,
8 but I may -- this is my chance to kind of state
9 them, which is the -- the alley as it stands right
10 now really serves no public use, no purpose to the
11 community. Large portions of it have been
12 overgrown. And at both ends of the alley, there's
13 really no access into it just because of the way
14 people have used the alley up to now. I think at
15 one end someone has built in a driveway just for
16 their house, but other than that, the entire alley
17 is, you know, it's been repurposed as vegetable
18 gardens and flower beds and there's trees
19 overgrowing it. So long story short, I don't see
20 that it really is serving a purpose to the
21 community the way it stands now. Thank you.

22 MR. PAYLOR: Thank you, Mr. Oshman. Is
23 there anyone on the call who is registered to
24 speak on this abandonment case? If so, they may
25 do so now. I don't -- okay. Are there any

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1 additional comments to be placed on record at this
2 time?

3 MS. MCCRAY: We have no comments in the
4 chat at this time.

5 MR. PAYLOR: Wow.

6 MR. HARRIS: Okay.

7 MR. PAYLOR: Okay then. If there are no
8 additional comments, I'm declaring that this
9 hearing is closed. And as I mentioned earlier,
10 the record will remain open until October the 5,
11 2022 to accommodate an additional comment period
12 for the record. Excuse me, not a comment period,
13 but additional comments for the record. I
14 apologize. Those comments, as with any of the
15 correspondence, may be addressed to Mr. David
16 Harris at Montgomery County Department of
17 Transportation, 100 Edison Park Drive,

18 Gaithersburg, Maryland, 20878. And David, are you
19 taking comments, as well, by e-mail, or you only
20 taking them by mailing?

21 MR. HARRIS: Oh, I'll take them anyway
22 they -- they reach me.

23 MR. PAYLOR: Okay. All right. And
24 also, then, we'll make sure that Mr. Harris'
25 e-mail is provided. So that's

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1 david.harris@montgomerycountymd.gov. I think I
2 mentioned that earlier, but --

3 MR. HARRIS: You did.

4 MR. PAYLOR: -- I apologize. And so
5 again, those -- the record will remain open until
6 October 5th, and certainly appreciate you all's
7 participation. And thank you so much, Tiara, for
8 putting that in the chat. And so as of now, I
9 declare that this hearing has ended.

10 MR. HARRIS: Okay, thank you, sir.

11 MR. OSHMAN: Thank you.

12 (Off the record at 1:15 p.m.)

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1 CERTIFICATE OF COURT REPORTER
2 I, Shannon Hayes, the officer
3 before whom the foregoing proceedings were taken,
4 do hereby certify that said proceedings were
5 electronically recorded by me; and that I am
6 neither counsel for, related to, nor employed by
7 any of the parties to this case and have no
8 interest, financial or otherwise, in its outcome.
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Shannon Hayes, Court Reporter, in and for the
State of Maryland



1 CERTIFICATION OF TRANSCRIPT
2 I, Krystin Spolar, do hereby certify that
3 the foregoing transcript, to the best of my ability,
4 knowledge, and belief, is a true and correct
5 record of the proceedings; that said proceedings

6 were reduced to typewriting under my supervision;
7 and that I am neither counsel for, related to, nor
8 employed by any of the parties to this case and
9 have no interest, financial or otherwise, in its
10 outcome.

11

12

13 _____

14 Krystin Spolar

15 Planet Depos, LLC

16 October 3, 2022

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