

GORDON S. WOODWARD
GWOODWARD@GRSM.COM
DIRECT DIAL: (301) 512-9218



ATTORNEYS AT LAW
277 S. WASHINGTON STREET, SUITE 550
ALEXANDRIA, VA 22314
WWW.GRSM.COM

March 8, 2024

Via Electronic Mail

Tiara.McCray@montgomerycountymd.gov

Michael L. Paylor, Chief
Division of Traffic Engineering & Operations
Montgomery County Department of Transportation
101 Monroe Street, 10th Floor
Rockville, MD 20850

Re: Supplemental Comment from HOC regarding Amended Petition AB-784,
Request for the County to Abandon Certain Right-of-Way Easements on
Either Side of Washington Grove Lane between Mid-County Highway
and Shady Spring Drive in Gaithersburg, Maryland.

Dear Mr. Paylor:

The Housing Opportunities Commission (“HOC”) is writing to support the position expressed by the Emory Grove United Methodist Church (the “Church”) in its submission of March 7, 2024. In short, HOC agrees the County likely holds a right-of-way easement at Area 2 and that this interest is appropriate for abandonment.

A. The Issue

Abandonment Petition AB 784 involves two distinct areas - Area 1 on the south side of Washington Grove Lane and Area 2 on the north side of Washington Grove Lane.¹ See Exhibit 1 (Revised Survey).²

¹ Area 2 is less than 2,900 square feet.

² The Church, with its letter of March 7, 2024, submitted a revised survey which reflects an additional Deed they discovered during their research (MO.CO.MD 6857-401), which impacts the property lines at the northwest corner of the intersection of Washington Grove Lane and Emory Grove Road. This revised survey is attached here as Exhibit 1. The revised survey has a slight impact on the Petitioners’ Abandonment petition in that it reduces the size of Area 2. In other words, the area for which the Church is requesting a right-of-way abandonment is now slightly smaller.

Michael L. Paylor, Chief
Division of Traffic Engineering & Operations
Montgomery County Dept. of Transportation
March 8, 2024
Page Two

With regard to Area 1, all relevant entities agree that abandonment is appropriate (subject to easements being provided to protect water and electrical infrastructure). Therefore, abandonment with regard to Area 1 should proceed.

With regard to Area 2 – the major stakeholders have also indicated support for the requested abandonment (subject to easements being provided to protect water and electrical infrastructure). These major stakeholders include:

- Maryland-National Capitol Park and Planning Commission (“Park and Planning”);
- Washington Suburban Sanitary Commission (“WSSC”);
- Potomac Electric Power Company (“Pepco”)³; and
- Fire Department Access and Water Supply (“Fire Department”).

The only comment to suggest the Application should not be expeditiously sent to Council for prompt approval comes from the Office of the County Attorney (“OCA”). As of the date of this letter, the OCA has not formally opposed the abandonment request and has not provided written comments.⁴ However, the OCA appeared at the hearing on January 25, 2024, and queried whether the County actually has an interest in Area 2 that it can abandon.⁵ The OCA’s comments, to the extent we understand them, simply express a hesitation to recommend the County act on the requested Area 2 abandonment in the absence of a clear, documented chain of title for Area 2. Respectfully, this hesitation is misplaced given: i) extensive research has revealed there is nothing further to be found in the documented title chain with regard to Area 2; and ii) strong circumstantial evidence that the County has a right-of-way interest in Area 2 that it can abandon.

Significantly, the OCA conceded that it was legally permissible for the County to abandon any right-of-way interest it might have, even if such interest is not identified or defined in a recorded title document (for example, the County can abandon a prescriptive easement). The OCA also agreed that, assuming the County has a right-of-way interest in Area 2, it was appropriate to abandon this interest as all relevant County agencies support the request (subject to certain easements being provided). Thus, the request satisfies the standard set forth in the County Code at §49-63(c).

³ Pepco submitted a late comment on February 27, 2024. Petitioners were able to schedule a meeting with Pepco on Monday, March 4, 2024, during which Petitioners and Pepco discussed the abandonment request. After Petitioners clarified a number of details regarding the request, Pepco confirmed that it had no objection to the Petition, subject to its equipment remaining in place and Petitioners committing to provide easements sufficient to protect the equipment. The Petitioners agreed. This was confirmed in a letter to Pepco dated March 7, 2024, and Pepco’s email response, both of which have been submitted to the record in this case.

⁴ To the extent a County Agency is taking a position on the abandonment request, a written response is required.

⁵ As previously indicated, the OCA expressed no objection or concerns with regard to HOC’s request for the abandonment of the County’s right-of-way located in Area 1.

Michael L. Paylor, Chief
Division of Traffic Engineering & Operations
Montgomery County Dept. of Transportation
March 8, 2024
Page Three

As indicated, the OCA did not express formal opposition to the requested Area 2 abandonment. The OCA's only question was whether the County actually has an interest in Area 2 that it can abandon, the answer to which is yes. As discussed below, the County has an interest and abandonment with regard to Area 2 is appropriate.

B. The County clearly has an interest in Area 2

The Church has supplied a detailed analysis of the history of Washington Grove Lane and the evidence that reflects the County has a use interest for road purposes in Area 2.

We will not reiterate the Church's position here in its entirety. Suffice it to say, the Petitioners have not uncovered a formal dedication for Washington Grove Lane at this location or a fee transfer of this property to the County. Nevertheless, it is clear that: a) the road exists; b) sometime in the late 19th or early 20th century, it shifted slightly to the south;⁶ and c) the County, in all likelihood, retains a right to use the gap between the existing road and the property lines of the neighboring properties owned by the Church, for road purposes.

Moreover, it is clear the County holds itself out as having an interest in Area 2, at least in part because Pepco has infrastructure in this area and is using this area based on its understanding that the County holds use rights at this location (this infrastructure includes one utility pole).

As a result, it is clear the County is maintaining a use interest with regard to Area 2 that it can abandon.

Petitioners are, of course, not requesting that Pepco's utility pole be moved. The Church has specifically agreed to provide a utility easement to protect this infrastructure. The Church is only asking the County abandon its retained right to widen the road at this location (based on the fact that this area was formerly road and/or roadbed).⁷

C. Policy Considerations

Petitioners agree the County's right-of-way interest in Area 2 is not well-documented. However, in cases like this, the County must be willing to rely on circumstantial evidence and it must act in a practical manner. To do otherwise, will severely and unnecessarily limit the potential for development. More importantly, it will make it nearly impossible for individuals or

⁶ See Letter of W. Aubertin. Exhibit 2.

⁷ The Petitioners are requesting this abandonment because the fact that County could potentially expand the road here will affect the project – it may interfere with financing, and will affect architectural design as well as building setbacks.

Michael L. Paylor, Chief
Division of Traffic Engineering & Operations
Montgomery County Dept. of Transportation
March 8, 2024
Page Four

small communities (like local churches) to pursue changes because they may be unable to pay experts to conduct exhaustive title searches or to engage in protracted legal proceedings. In any event, the following policy considerations suggest that abandonment should be recommended with regard to Area 2 (in addition to Area 1).

1. Development

The County should favor practical solutions that encourage development in cases where the relevant stake holders all support moving forward. In such cases, the County should facilitate, not impede, community-driven development.

In addition, as indicated in Amended Petition AB 784, the County supports the Heritage Emory Grove project and is currently in the process of transferring over 23 acres of property to be used in connection with this proposed development. *See* the Amended Petition, Exhibit I. It would be counter-productive, to say the least, to insist that the Petitioners engage in further legal proceedings to precisely define the genesis, history, and nature of the County's interest in Area 2 before the County can release its right to potentially widen the road at this location.

The OCA suggested that perhaps a quiet title action might be warranted. A quiet title action may, ultimately, be warranted, but this misses the point. The underlying fee ownership of Area 2 and the County's right-of-way to expand the road are two separate and distinct issues, and it is far more efficient and cost effective if the right-of-way abandonment issue with regard to Area 2 is decided now. Three examples serve to make this point. First, if the County abandons whatever right it has to widen the road as this location, then a quiet title action may not be necessary. Second, it is possible that a quiet title action will still be necessary to establish title ownership in the Church. However, forcing the Church to go through a quiet title action before the County abandons its right-of-way interest in Area 2, could result in the Church having to file a separate abandonment proceeding just for Area 2 at a later date. Finally, if the County is actually intent on maintaining a right-of-way at this location - we cannot imagine why this would be the case, but if it is - it is far better for the Petitioners to understand this now as opposed to eight to ten months from now.

In sum, it is quite clear that the County maintains a use interest at Area 2, and extremely likely that this use interest includes the right to expand the road. As the OCA conceded, it is legally permissible for the County to abandon any right-of-way road-widening interest it might have, even if such interest is not defined by a recorded title document – and in this case, that is what should be done.

2. Affordable Housing

The County is experiencing an affordable housing crisis. Its stated policy is to encourage the development of affordable housing. As a result, the County, as discussed above, should take the practical step of releasing any road-widening right-of-way interest it has (or may have) in Area 2, so that the Heritage Emory Grove project, which includes a significant amount of affordable housing, can move forward. To do otherwise will, at best, increase the cost of housing (making it less affordable) and, at worst, destroy the current scope and design of the project (a project to which the County is already in the process of transferring approximately 23 acres).

3. Equity and Systemic Injustice

The impact of the OCA's concern regarding abandoning any road-widening right-of-way the County may have in Area 2 represents an example of systemic injustice. Emory Grove was founded by emancipated individuals in 1860 (and did not receive running water until the early 1970's). The County has had numerous opportunities over many years to precisely define its rights and interests at Area 2. Not the least of which was when Washington Grove Lane, in its current form, was constructed. Unfortunately, the County did not avail itself of these opportunities. Now, the OCA is unnecessarily insisting on rigorously defining the County's interests at this location before moving forward. Worse yet, it is pushing the cost of the County's past failure to remedy the issue back onto the local community, and doing so in a way that might seriously imperil the overall project and prevent this historic community from productively rebuilding itself. Petitioners do not think the OCA's intention is to act in an unjust fashion with regard to the Emory Grove Community. Unfortunately, that is the effect of the OCA's action in this circumstance.

D. Conclusion

There is no issue with regard to Area 1 - all relevant entities agree that abandonment is appropriate. Therefore, abandonment with regard to Area 1 should proceed.

The issue raised informally by the OCA is whether the County has an interest in the Area 2 property that it can abandon. The answer is yes. In the late 19th or early 20th century, Washington Grove Lane shifted slightly to the south. However, the County retained a right of use in the gap between the existing road and the existing property lines, as evidenced by the Pepco utility pole in this location. In all likelihood, this right of use includes expanded road use as the area was previously road and/or roadbed. However, the County has no need for such expanded road use at this location and all County agencies that have commented agree that abandonment of any such use right at this location is appropriate and satisfies the standard set

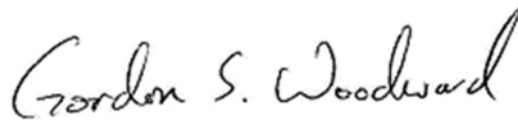
Michael L. Paylor, Chief
Division of Traffic Engineering & Operations
Montgomery County Dept. of Transportation
March 8, 2024
Page Six

forth in the County Code at §49-63(c). Significantly, the OCA conceded that it was legally permissible for the County to abandon any right-of-way interest it might have, even if such interest is not identified and defined in a recorded title document. In this case, there is simply: i) no need to require more investigation into the deed history of Area 2; ii) no harm in granting this request; and iii) significant policy reasons for moving forward.

Finally, we request that any decision on this request be issued as expeditiously as possible. As previously indicated, the Petitioners have upcoming deadlines and are attempting to move this forward with all available diligence in order to maintain the viability of the project as envisioned.

For these reasons, HOC respectfully requests that the Hearing Officer recommend the abandonment of the County's road-widening right-of-way in Areas 1 and 2, subject to the provision of utility easements as requested.

Best regards,

A handwritten signature in black ink that reads "Gordon S. Woodward". The signature is written in a cursive, slightly slanted style.

Gordon S. Woodward
Counsel for the Housing Opportunities Commission



**ABANDONMENT AREA #1
LINE & CURVE TABLE**

LINE	BEARING	DISTANCE
L1	N 49°48'30" W	42.65'
L2	N 07°36'01" W	57.36'
L3	N 40°03'36" E	216.87'
C1	1135.00'	320.37'
CHORD BEARING CHORD DIST.		
N 48°08'46" E 319.31'		
DISTANCE		
L4	N 56°13'57" E	31.15'
L5	S 81°52'46" E	37.44'
L6	S 39°59'29" E	40.00'
L7	S 43°45'27" W	324.14'
L8	S 43°45'27" W	291.69'

56,826 SQ. FT. or 1.3045 ACRES±

**ABANDONMENT AREA #2
LINE & CURVE TABLE**

LINE	BEARING	DISTANCE
L10	N 57°58'27" E	38.61'
L11	N 57°26'24" E	46.50'
L12	S 40°44'33" W	44.97'
L13	N 57°31'06" E	9.16'
C2	1215.00'	169.90'
CHORD BEARING CHORD DIST.		
S 48°03'58" W 169.78'		
DISTANCE		
L14	S 40°03'36" W	45.74'
L15	N 63°37'07" W	15.44'
L16	N 44°06'32" E	94.74'
L17	N 44°06'14" E	77.70'

2,522 SQ. FT. or 0.0579 ACRES±

LEGEND

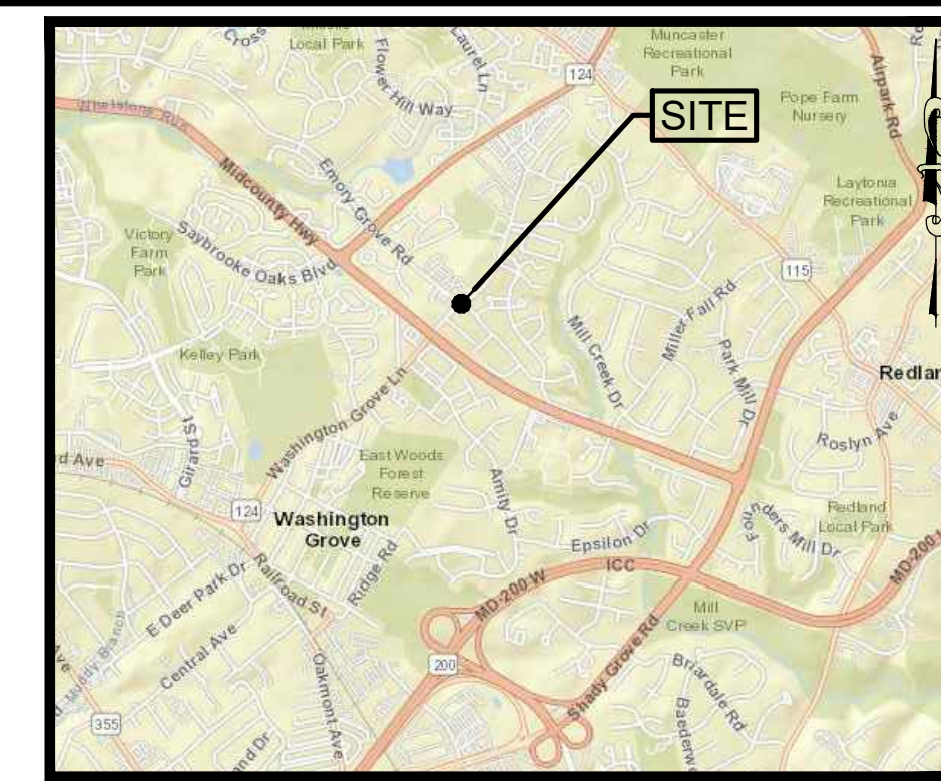
ROAD CENTERLINE	PROPERTY LINE	RIGHT OF WAY LINE	CURB LINE	CONCRETE EDGE	PAVEMENT EDGE	CHAIN FENCE	WOODEN FENCE	WETLAND LINE	TREELINE	ELECTRICAL MANHOLE	STORM DRAIN MANHOLE	SANITARY MANHOLE	TELEPHONE MANHOLE	UNMARKED MANHOLE	WATER MANHOLE	MAJOR CONTOUR	MINOR CONTOUR	SPOT ELEVATION	TOP OF CURB ELEV.	BOTTOM OF CURB ELEV.	U/G CABLE TV LINE	U/G TELEPHONE LINE	U/G ELECTRIC LINE	OVERHEAD WIRE	WATER MAIN	GAS MAIN	SAN. SEWER LATERAL	SAN. SEWER MAIN	STORM PIPE	WETLAND MARKER	TREE	ROADWAY SIGNS	TRAFFIC FLOW	MAILBOX	CABLE TV PEDESTAL	COMM. FIBER HAND BOX	ELECTRIC HAND BOX	FIRE HYDRANT	GAS VALVE	SANITARY CLEANOUT	TELEPHONE PEDESTAL	TRAFFIC HAND BOX	TRAFFIC SIGNAL POLE	POLE MOUNTED LIGHT	UTILITY POLE	WATER METER / WATER VALVE
-----------------	---------------	-------------------	-----------	---------------	---------------	-------------	--------------	--------------	----------	--------------------	---------------------	------------------	-------------------	------------------	---------------	---------------	---------------	----------------	-------------------	----------------------	-------------------	--------------------	-------------------	---------------	------------	----------	--------------------	-----------------	------------	----------------	------	---------------	--------------	---------	-------------------	----------------------	-------------------	--------------	-----------	-------------------	--------------------	------------------	---------------------	--------------------	--------------	---------------------------

ABBREVIATIONS

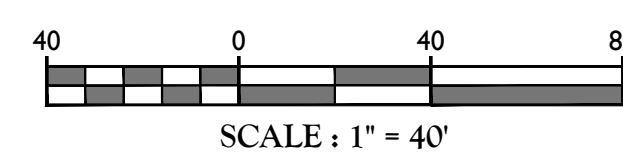
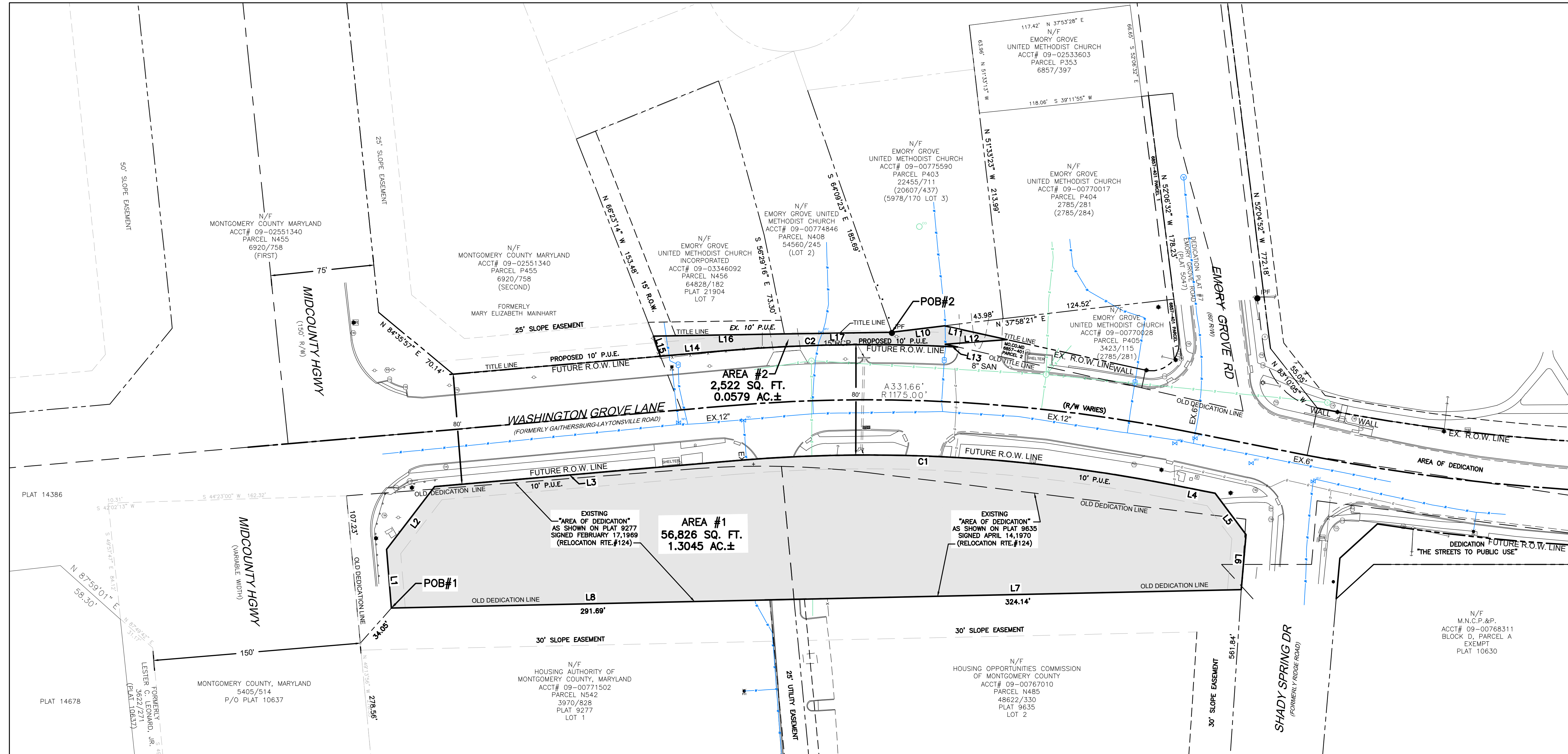
D.C. = DEPRESSED CURB	BOL = BOLLARD	FF = FINISH FLOOR	DEP. = DEPRESSED	M.H.W. = MEAN HIGH WATERLINE
BC = BOTTOM OF CURB	GRT = GRATE	UV = UNKNOWN VALVE	CL = CENTERLINE	M.L.W. = MEAN LOW WATERLINE
TC = TOP OF CURB	MB = MAILBOX	MH = MANHOLE	PM = PARKING METER	GW/TW = BOT/TOP OF WALL

SURVEY NOTES

- THIS FIELD SURVEY WAS PERFORMED BY COLLIERS ENGINEERING & DESIGN IN JULY, 2022 AND REFLECTS SITE CONDITIONS AS OF THAT DATE.
- COORDINATES & BEARINGS SHOWN HEREON WERE ESTABLISHED BY GNSS RTN (KEYNET) OBSERVATIONS AND ARE REFERENCED TO THE MD STATE PLANE COORDINATE SYSTEM NAD83(2011) ZONE 1900.
- ADDITIONAL INFORMATION SHOWN HEREON IS TAKEN FROM MONTGOMERY COUNTY GIS OPEN DATA.
- PROPERTY OWNER INFORMATION WAS TAKEN FROM PUBLIC INFORMATION FROM MARYLAND'S MARYLAND DEPARTMENT OF PLANNING "FINDER ONLINE" WEB APPLICATION AND MAY NOT BE CURRENT OR CORRECT.
- UNDERGROUND UTILITY LINES ARE TAKEN FROM PLANS OF RECORD AND DOES NOT REPRESENT FIELD DESIGNATED LOCATIONS.
- SOME OF THE UNDERGROUND WATER LINES SHOWN WERE FIELD DESIGNATED BY COLLIERS ON NOVEMBER 20, 2023.



VICINITY MAP
NOT TO SCALE
SOURCE: MD FINDER ONLINE
PARCEL VIEWER



Colliers
Engineering & Design
www.colliersengineering.com
Copyright © 2024, Colliers Engineering & Design All Rights Reserved. This drawing and all the information contained herein is authorized for use only by the party for whom the services were contracted or to whom it is certified. This drawing may not be copied, reprinted, distributed, or used in any other way without the express written consent of Colliers Engineering & Design.

Doing Business as **MASER**
CONSULTANTS

811
PROTECT YOURSELF
ALL STATES REQUIRE NOTIFICATION OF EXCAVATORS, DESIGNERS, OR ANY PERSON PREPARING TO DISTURB THE EARTH'S SURFACE ANYWHERE IN ANY STATE.
Know what's below.
Call before you dig.
FOR STATE SPECIFIC DIRECT PHONE NUMBERS VISIT: WWW.CALL811.COM

REV	DATE	DESCRIPTION	DRAWN BY	DATE
1	12/29/23	WATERLINE HOUSE CONNECTIONS	JAF	
2	1/17/24	UPDATED AREA #2	JAF	

Russell Harlold Smith
MARYLAND LAND SURVEYOR
LICENSE NUMBER: 21637
COLLIERS ENGINEERING & DESIGN

BOUNDARY SURVEY
FOR
HOUSING OPPORTUNITIES
COMMISSION
&
HOUSING AUTHORITY
OF
MONTGOMERY COUNTY
HERITAGE EMORY GROVE
ROW ABANDONMENT
PROJECT 5-20230260
MONTGOMERY COUNTY
MARYLAND

Colliers
Engineering & Design
COLUMBIA
6240 Old Dobbin Lane,
Suite 100
Columbia, MD 21045
Phone: 443.393.6021
COLLIERS ENGINEERING & DESIGN, INC.
DOING BUSINESS AS MASER CONSULTING

SCALE: AS SHOWN DATE: 8/18/23 DRAWN BY: JAF CHECKED BY: RBS
PROJECT NUMBER: 22003338A DRAWING NAME: V-ABANDONMENT

SHEET TITLE: **ABANDONMENT PLAN**
SHEET NUMBER: 1 of 8

I HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF MARYLAND AND THAT THIS SURVEY PLAT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND IS IN COMPLIANCE WITH COMAR 09.13.06.12 OF THE MINIMUM STANDARDS OF PRACTICE.

RUSSELL H. SMITH
PROFESSIONAL LAND SURVEYOR,
MARYLAND REGISTRATION NO. 21637
LICENSE EXPIRATION DATE: 12/25/2023

DATE

NOTE: DO NOT SCALE DRAWINGS FOR CONSTRUCTION.



MHG

CIVIL ENGINEERING
LAND SURVEYING
LANDSCAPE ARCHITECTURE
LAND PLANNING

9220 WIGHTMAN ROAD, SUITE 120
MONTGOMERY VILLAGE, MD 20886
301.670.0840
MHGPA.COM

Françoise M. Carrier
BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC
7315 Wisconsin Avenue, Suite 800 West
Bethesda, Maryland 20814

Re: Emory Grove United Methodist Church
The "Ethel Jones Tract" Subdivision
Montgomery County Record Plat No. 7930

Good morning, Françoise.

I am following up our meeting of yesterday, January 30, 2024, regarding the road right-of-way for Washington Grove Lane (formerly Gaithersburg – Laytonsville Road), MD Rte. 124 along the frontage of the above referenced property with this letter and attachments for your review, records and use.

I have done extensive research in the Land Records of Montgomery County for this property going back to 1879, tracing it to two deeds which make up the entirety of the property included in the above referenced Ethel Jones Tract record plat. Those two deeds are L. EBP21 @ F. 35 and EBP 23 @ F. 141. Both of these tracts were conveyed from Rozell (sp) Woodward and Eliza Woodward, his wife, to Martha Lockett, individual. Since this conveyance, the subject property has been conveyed four times, with one being an inter-family conveyance to clean up title due to a divorce between Ethel Jones and her then husband Nathan, and the metes and bounds have remained the same. The last conveyance, in the whole, was in 1951 from Charles. C. Jones to Ethel Jones and recorded in L. 1558 F. 533.

The last mentioned deed recorded in L. 1558 F. 533 is the deed included in the SURVEYORS CERTIFICATE of the Ethel Jones Tract record plat, wherein the surveyor of record certifies that the plat is a subdivision of ALL OF THE LANDS recorded therein.

Significantly, the original 1879 deeds mentioned above clearly describe the Point of Beginning for Part One as being "on the edge of the County road" and the next to last course running "to the County Road from Gaithersburg to Laytonsville" with the last course stating "then with the road," and the Point of Beginning for Part Two as being "a stone planted on the County road to Gaithersburg" and the Part Two first course as "running with the road".

Based on all the above, it is my considered opinion that the 1965 Ethel Jones Tract record plat depicts the Washington Grove Lane (formerly Gaithersburg – Laytonsville Road), as it existed in 1965 at the time the plat was made; not as it was in 1879. I believe it is safe to say that in the intervening years, the road migrated to the Southeast, away from the property.

Best regards,

Wayne F. Aubertin
Professional Land Surveyor, MD. Reg. No. 21330

