



Committee: Directly to Council
Committee Review: N/A
Staff: Glenn Orlin, Senior Analyst
Purpose: Final action – vote expected
Keywords: #Abandonment

AGENDA ITEM #15H
April 5, 2022
Action

SUBJECT

Abandonment of portions of Westbard Avenue and Ridgefield Road in Bethesda

EXPECTED ATTENDEES

Eric Willis, Chief, Property Acquisition Section, Department of Transportation (DOT)

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

Since there was no substantive objection to the abandonment by any department or agency, or by those who testified at DOT's public hearing, this matter was not reviewed by the T&E Committee and is brought directly to the Council for action.

SUMMARY OF KEY DISCUSSION POINTS

This abandonment was requested by the developers of the Westbard Shopping Center in accordance with a condition on its preliminary plan approval by the Planning Board. The abandonment would allow for the reconstruction of the intersection of Westbard Avenue and Ridgefield Road in Bethesda in accordance with the Westbard Sector Plan.

This report contains:

Executive's transmittal	© 1-2
Draft adoption resolution	© 3-4
Hearing Examiner's report	© 5-19
Location of abandonment	© 20-23
Aerial photo of location	© 24

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OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

March 10, 2022

TO: Gabe Albornoz, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: DOT Docket No. AB773 Abandonment of portions of Westbard Avenue and Ridgefield Road in Bethesda

I am attaching for your consideration, a proposed Resolution by which the County Council may approve the abandonment of portions of Westbard Avenue and Ridgefield Road in Bethesda. A summary of this abandonment request is as follows:

On May 22, 2020, Equity One (Northeast Portfolio), LLC (the “Applicant”), by and through its attorneys, Miles & Stockbridge, P.C., petitioned for abandonment of 5,891 square feet, more or less, of Westbard Avenue, and 9,123 square feet, more or less, of Ridgefield Road (collectively, the “Abandonment Area”).

The Applicant’s petition is made in conjunction with and required by development approvals granted by the Planning Board for the redevelopment of the Westwood Shopping Center. It requires the realignment of Westbard Avenue at its present intersection with Ridgefield Road, as contemplated by the Westbard Sector Plan. As contemplated, the realigned Westbard Avenue would intersect directly with River Road and replace the existing intersection of Ridgefield Road and River Road.

A public hearing on the abandonment request was held on December 15, 2020.

The following supporting materials are transmitted with this memorandum:

1. Proposed County Council Resolution
2. Public Hearing Officer’s Report and Recommendation dated January 20, 2022 recommending approval of the abandonment request.

Abandonment of Portions Westbard Avenue
DOT Docket No. AB773
March 10, 2022
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The hearing transcript and exhibits transmitted with this memorandum may be accessed through the MCDOT Property Acquisition Section web site at the following link:

<https://montgomerycountymd.gov/dot-dte/PAS/WestbardAve/index.html>

The contents contained within the above link are incorporated herein as is fully set forth as the complete record of proceedings before the Hearing Officer. A physical copy of the record can be made available upon request.

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DOT Docket Nos. AB773
Abandonment – Portions of Westbard Avenue and Ridgefield Road
Bethesda, 7th Election District

Background

1. By letter dated May 22, 2020, Equity One (Northeast Portfolio), LLC (the “Applicant”), requested the abandonment of 5,891 square feet, more or less, of Westbard Avenue, and 9,123 square feet, more or less, of Ridgefield Road (collectively, the “Abandonment Area”) in the Westwood subdivision of Bethesda.
2. The Applicant’s petition is in conjunction with and required by development approvals granted by the Planning Board for the redevelopment of the Westwood Shopping Center, which requires the realignment of Westbard Avenue at its present intersection with Ridgefield Road, as contemplated by the Westbard Sector Plan.
3. A Public Hearing to consider the abandonment proposal was held on December 15, 2020 by the designee of the County Executive.
3. The County Executive forwarded to the County Council the application for abandonment, a report based on the record of the proceedings, together with exhibits relied upon and a transcription of the hearing, and recommended approval of the proposed abandonment request subject to conditions contained in the Executive’s report.

Action

The County Council for Montgomery County, Maryland, finds that the Abandonment Area is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment subject to the following conditions which must be satisfied at Applicant’s sole cost and expense prior to the abandonment becoming effective:

- 1) That the Applicant must fully construct and dedicate to public use the right of way for the realignment of Westbard Avenue to intersect with River Road, replacing River Road’s existing intersection with Ridgefield Road, pursuant to and in compliance with Certified Preliminary Plan No. 120170170, and that such construction be

acceptable to the County, in its sole discretion, for maintenance responsibility;

- 2) That the Applicant must at its sole cost prepare and record a new subdivision plat that incorporates the Abandonment Area into the adjacent property;
- 3) That the Applicant must comply with the MCDOT conditions of abandonment stated in a Memorandum dated December 10, 2020 that is filed as Exhibit E(1) in the Hearing Record;
- 4) The Applicant must grant, prepare, and record any necessary easements for County storm drains and public utility facilities, including but not limited to gas lines, electric facilities, and water and sewer facilities to the satisfaction of the County or the public utility, as applicable, allowing such facilities to remain at their current location or relocated locations, and providing perpetual right of ingress and egress from the easement area at any time (which rights must not be subordinate to other interests).

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.

Any person aggrieved by the action of the Council for the abandonments 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.

Selena Mendy Singleton, Esq.
Clerk of the Council

OFFICE OF THE COUNTY EXECUTIVE
EXECUTIVE OFFICE BUILDING
ROCKVILLE, MARYLAND

IN THE MATTER OF:	*	DEPARTMENT OF
	*	TRANSPORTATION
PETITION OF EQUITY ONE	*	
(NORTHEAST PORTFOLIO), LLC	*	
	*	PETITION NO. AB 773
	*	
FOR THE ABANDONMENT OF A	*	BEFORE:
PORTION OF WESTBARD AVENUE	*	RICHARD DORSEY
CONSISTING OF 5,891 SQUARE FEET,	*	PUBLIC HEARING OFFICER
MORE OR LESS, AND FOR THE	*	
ABANDONMENT OF A PORTION OF	*	
RIDGEFIELD ROAD CONSISTING OF	*	
9,123 SQUARE FEET, MORE OR LESS,	*	
IN BETHESDA, MARYLAND	*	
* * * * *	*	* * * * *

PUBLIC HEARING OFFICER’S REPORT AND RECOMMENDATION

I. Introduction

On May 22, 2020, Equity One (Northeast Portfolio), LLC (the “Applicant”), by and through its attorneys, Miles & Stockbridge, P.C., petitioned for an abandonment of 5,891 square feet, more or less, of Westbard Avenue, and 9,123 square feet, more or less, of Ridgefield Road (collectively, the “Abandonment Area”). See Exhibit A. The Applicant’s petition is made in conjunction with and required by development approvals granted by the Planning Board for the redevelopment of the Westwood Shopping Center, which require the realignment of Westbard Avenue at its present intersection with Ridgefield Road, as contemplated by the Westbard Sector Plan. See Exhibit F(3). As contemplated, the realigned Westbard Avenue would intersect directly with River Road and replace the existing intersection of Ridgefield Road and River Road. Therefore, the Applicant contends that following the construction, dedication and opening of a realigned Westbard Avenue at River Road as contemplated by the Westbard Sector Plan, the

criteria necessary for the County Council to abandon the Abandonment Area would be fulfilled.

This report and recommendation relies upon the public hearing record that may be found at the following link:

<https://montgomerycountymd.gov/dot-dte/projects/ROWAB/AB773/WestbardAve.html>

(the “Hearing Record”). The Hearing Record is incorporated herein as if fully set forth. All references to “Exhibits” in this report and recommendation may be found in the Hearing Record with a corresponding exhibit label. The scope of this report and recommendation is limited to a determination of whether the Abandonment Area needs to be retained as right of way following the construction, dedication, and opening of a realigned Westbard Avenue at River Road as contemplated by the Westbard Sector Plan.

a. Area Overview and Present Roadway Network.

The subject area is best defined by River Road to the North, Massachusetts Avenue to the South, and Westbard Avenue traversing between them. Presently, as one takes Westbard Avenue in a Northerly direction from Massachusetts Avenue, one will come across a large shopping center with a Giant grocery store on the left known as the Westwood Shopping Center. Continuing north on Westbard Avenue past the Giant, Westbard Avenue intersects at a signal with Ridgefield Road. On the right-hand side of this intersection is another shopping center known as Westwood Center II. One may turn right onto Ridgefield Road at this intersection to continue to River Road. As one travels toward River Road, one will see a former nursing home known as Manor Care on the left-hand side. *See* a complete copy of the Westbard Sector Plan describing the area at the following link:

https://montgomeryplanning.org/community/westbard/documents/westbard_for_web9.1.pdf (the

“Westbard Sector Plan”).¹

The Applicant (and other entities directly related to the Applicant) are the owners of the Westwood Shopping Center, Westwood Center II and Manor Care sites. Accordingly, the Applicant owns the land adjacent to the Abandonment Area and is also the owner of the land through which the realignment of Westbard Avenue will be required to be dedicated and constructed as contemplated by the Westbard Sector Plan and as approved by the Montgomery County Planning Board in Preliminary Plan No 120170170 (the “Preliminary Plan”). See Exhibits A and F(3).²

b. Abandonment Hearing Procedure for AB 773.

Executive Order No. 127-20, dated October 16, 2020, authorized a virtual public hearing to consider the Applicant’s petition for the abandonment of the subject Abandonment Area on Tuesday, December 15, 2020, beginning at 12:30 p.m.. See Exhibit D. As required by Section 49-62 of the Montgomery County Code, notice of the public hearing was provided by way of newspaper publication (see Exhibits I and J), sign posting in the right-of-way (see Exhibit G(1)), and by mail to the property owners abutting the Abandonment Area (see Exhibits G and H), and the County solicited responses concerning the abandonment request from required government agencies and utility companies (See Exhibit E). The public hearing was convened on December 15, 2020, and statements were made and documents were received into evidence. At the

¹ The Applicant and MNCPPC referred to and submitted extract pages of the Sector Plan in their respective filings for this proceeding.

² For an easier to read copy of Preliminary Plan No. 120170170, see Exhibit F(3) at pages 47-65 of the PDF Document, or view at the following link: <https://eplans.montgomeryplanning.org/UFS/5427/26661/30-PBRESandMailingLists-%20120170170.pdf/30-PBRESandMailingLists-%20120170170.pdf>. Recommendations of Planning Staff and matters referred to in the in the conditions of approval for Preliminary Plan No. 120170170 may be found at the following link: <https://eplans.montgomeryplanning.org/UFS/5427/26659/32-SR-120170170.pdf/32-SR-120170170.pdf>.

conclusion of the public hearing, the record was held open until 5:00 p.m. on December 29, 2020 to provide an opportunity for anybody desiring to submit additional comments for the record in writing.

II. SUMMARY OF STATEMENTS MADE AT THE HEARING HELD ON DECEMBER 15, 2020.

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

Mr. 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 explained that his Office received an abandonment request by the Applicant which contended that following the dedication, construction and realignment of Westbard Avenue by the Applicant, that there would be excess right of way constituting the Abandonment Area that would no longer be necessary for public use. In addition, Mr. Willis summarized the documents and correspondence that MCDOT had received in response to the Applicant’s request for abandonment at the time of the hearing and introduced them as exhibits.

2. Ms. Erin Girard, Esq., on behalf of the Applicant.

Ms. Girard of the law firm Miles & Stockbridge, spoke on behalf of the Applicant. Ms. Girard noted that the realignment of Westbard Avenue was recommended by the 2016 Westbard Sector Plan and, that following the adoption of the Westbard Sector Plan, the Applicant submitted a preliminary plan for all of the parcels under its control as well as a site plan for the

Westwood Shopping Center that was approved, subject to the conditions of the Preliminary Plan. Ms. Girard pointed out that the timing of the Applicant's request for abandonment is driven by Preliminary Plan Conditions 18 and 20. Preliminary Plan Condition 18 required the Applicant to file this request to abandon the Abandonment Area before a Use and Occupancy Certificate would issue for the Commercial Building, and Preliminary Plan Condition 20 required the Applicant to construct and dedicate to public use the realigned Westbard Avenue as shown on the Certified Preliminary Plan before the issuance of a Use and Occupancy Certificate to the 55th townhouse unit for Site Plan 820180190. Accordingly, the Applicant's ability to proceed with certain development approvals is tied to the filing of the abandonment and the construction of a realigned Westbard Avenue that is dedicated to the County as shown on a Certified Preliminary Plan.

Ms. Girard also noted for the record that the Applicant is the owner of all the land adjacent to the Abandonment Area, and that the right of way making up the Abandonment Area was dedicated on Plats 4456 and 5026,³ such that if an abandonment were approved by the County Council, the land would revert to Applicant for its use in conjunction with development plans.

Ms. Girard, through the Applicant's Powerpoint presentation (and the Applicant's initial request for abandonment filing), asserted that the Applicant would be dedicating and constructing some 45,183 square feet for the realignment of Westbard Avenue (see delineation in red) and, that following the completion of such construction and dedication, the Abandonment Area would no longer be required (see delineation in purple) for public use under the County Code § 49-63(c)(1) criteria. *See* Exhibit A, p. 4 and Exhibit R, p. 7. In addition, Ms. Girard

³ *See* Exhibits U and V, respectively.

asserted that the § 49-63(c)(2) criteria would also be met because the request for abandonment was consistent with the Westbard Sector Plan.

3. Mr. Sam Steibel, Representative Regency Centers, parent company of the Applicant.

Mr. Steibel noted that the Westbard Sector Plan and the Preliminary Plan require the realignment of Westbard Avenue. To wit, the realignment will cut through the Applicant's Westwood Center II property and require a significant dedication of property to the County. *See* Exhibit R, p. 7 of 9. Mr. Steibel explained that the Applicant is moving through the design and permitting process for the realigned Westbard Avenue.

4. Mr. Kevin Johnson, President of Johnson Burnett Associates, on behalf of the Applicant.

Ms. Girard offered Mr. Johnson as an expert in civil engineering for this proceeding and the undersigned Hearing Officer recognizes him as such, having demonstrated that Mr. Johnson has over 30 years' experience as a professional engineer. Mr. Johnson noted that his firm prepared the plans for the realignment of Westbard Avenue and explained how the realignment would take place. Particularly, Mr. Johnson intimated that the Applicant desires the abandonment of what will become excess right of way following the construction and dedication of a realigned Westbard Avenue. Mr. Johnson confirmed that the Abandonment Area consists of 9,123 square feet from the existing Ridgefield Road and 5,891 square feet from the existing Westbard Avenue as shown in the Applicant's Powerpoint Presentation (pp. 7-8) and the Applicant's request for abandonment (pp. 4-7). *See* Exhibits R and A, respectively. Mr. Johnson explained that if the request for abandonment were approved, the Abandonment Area from Ridgefield Road would be assembled into the Manor Care site and the Abandonment Area from Westbard Avenue would be left as open space and not be redeveloped. Mr. Johnson stated that

upon completion of the realigned Westbard Avenue, the public need for the Abandonment Area will no longer be necessary.

Mr. Johnson also commented upon utility relocation and that the Applicant has been working with the various utility companies to accommodate the needs of the utility companies.

5. Ms. Phyllis Edelman.

Ms. Edelman stated that she is a resident of Springfield and the former President of the Springfield Civic Association. She noted her support for the Applicant's request for the abandonment of the Abandonment Area. Ms. Edelman stated that she participated in the charrettes for the Westbard Sector Plan and noted that the planners were aware of the difficulties that trucks travelling eastbound on River Road currently have while attempting to turn right turn onto Ridgefield Road, some of which make deliveries to the Giant at the Westbard Shopping Center. She agreed with the plan to realign Westbard Avenue because she felt that it would offer protection from the traffic volume experienced by the Springfield community on Ridgefield Road and that the realignment of Westbard would also serve as a gateway to the Applicant's development.

6. Ms. Cynthia Green, President of the Springfield Civic Association.

Ms. Green noted that the Springfield Civic Association supports the abandonment and the realignment of Westbard Avenue. She asserted that it would reduce cut-through traffic from residential streets, particularly between the existing intersection of Westbard Avenue and Ridgefield Road, where traffic may currently continue to proceed on the existing Westbard Avenue to River Road. Ms. Green stated that once the realignment is completed, the Westbard

Sector Plan allows for the closure of the road to traffic at the existing Westbard Avenue and River Road intersection and that this would make a big difference for the Springfield neighborhood.

Notwithstanding her support for the abandonment and realignment, Ms. Green expressed her concern that the realignment of Westbard Avenue does not presently require a traffic light at its newly configured intersection with Ridgefield Road and felt that this posed safety concerns.

7. Mr. Edward Hermes.

Mr. Hermes noted his support for the abandonment and the realignment of Westbard Avenue. He stated that he has been a resident of the Springfield community for 16 years and has served as its traffic chair. Mr. Hermes contended that the Applicant's proposal to abandon and realign was supported by all communities, the planning department, and the developer. He further asserted that the current road was dangerous and did not support the future development contemplated by the Westbard Sector Plan. Mr. Hermes also expressed his belief that cut-through traffic will be reduced in all surrounding communities due to the realignment of Westbard Avenue, including on the north side of River Road.

8. Ms. Patricia Johnson.

Ms. Johnson lives in the Kenwood neighborhood which is located on the north side of River Road where Ridgefield Road presently intersects it. Ms. Johnson thanked the planning staff for considering cut-through traffic issues and noted that the Sector Plan has a section dealing with Neighborhood Protection. *See p. 37 of Westbard Sector Plan.* Ms. Johnson pointed out that the Westbard Sector Plan recommends that Montgomery County Department of Transportation and the State Highway Administration should work with the Kenwood

community to develop an operations plan for the River Road/Brookside Drive intersection that better protects Kenwood from cut-through traffic without restricting safe and convenient access between the realigned Westbard Avenue and River Road. Accordingly, Ms. Johnson requested that the current signs and signal at that intersection which restrict entry during certain hours onto Brookside Drive at the existing Ridgefield Road and River Road intersection remain in place and/or be included in a realigned Westbard Avenue.

Ms. Johnson expressed her concern that the proposed development will increase cut-through traffic in her community and contended that it has already increased with the closure of other roads in the area. Ms. Johnson also expressed concern about the overall design of the realigned Westbard Avenue and the prospect of traffic back-ups due to the approved design. Ms. Johnson further stated that she did not want any taxpayer funds being devoted to the realignment of Westbard Avenue.

9. Ms. Lynne Battle.

Ms. Battle expressed that as a resident of Westbard Mews, that she is directly impacted by the proposed realignment of Westbard Avenue. She stated that it is critical to the health, safety and welfare of residents that a traffic light be put at the newly configured intersection of a realigned Westbard Avenue and Ridgefield Road. Ms. Battle wants to see a light installed at the completion of construction.

Ms. Battle also noted certain site features that she wanted to see implemented during construction such as the incorporation of a waterfall. Ms. Battle was concerned that if this were not incorporated during construction, that a waterfall feature in the park would never occur.

Ms. Battle further expressed concerns about storm-water runoff adversely affecting water quality and a new Greenway Park. Accordingly, Ms. Battle desires that the Applicant use the

Abandonment Area from Westbard Avenue for storm-water management.

10. Peter Rizik.

Mr. Rizik expressed his disapproval of the density that would be added by the Applicant's project. He noted the cut-through traffic in the Kenwood neighborhood being a problem and contended that the problems have recently been exacerbated by the closing of other roads. Mr. Rizik expressed concern that this traffic will be forced onto Brookside in the Kenwood neighborhood, which has no sidewalks but lots of pedestrian users. He contended that parking during construction is going to present problems and desires that the current signage restricting traffic at the current intersection of Ridgefield and River Roads stay and be enforced.

III. RESPONSES FROM GOVERNMENT AGENCIES AND PUBLIC UTILITY COMPANIES FROM WHICH RESPONSES WERE SOLICITED PURSUANT TO § 49-62(h) OF THE MONTGOMERY COUNTY CODE

1. Montgomery County Department of Transportation ("MCDOT"). MCDOT approves of the Applicant's abandonment request, subject to conditions set forth in its letter dated December 10, 2020 and e-mail dated November 4, 2020. *See* Exhibits E(1) and E(2).
2. Maryland National Capital Park and Planning Commission ("MNCPPC"). MNCPPC approves of the Applicant's abandonment request by letter dated November 30, 2020, with attachments. *See* Exhibits F, F(1),(2) and (3).
3. Washington Suburban Sanitation Commission ("WSSC"). By e-mail dated November 5, 2020, WSSC stated that it has no opposition to the Applicant's abandonment request, so long as its facilities are relocated by the Applicant. *See* Exhibit E(4).
4. Washington Gas. By e-mail dated October 9, 2020, Washington Gas stated that it has no opposition to the Applicant's abandonment request so long as its facilities are relocated. *See* Exhibit E(5).
5. Power Companies.
 - a. By e-mail dated December 11, 2020, Pepco provided the conditions necessary for its approval. *See* Exhibit E(8).

6. Montgomery County Police Department (“MCPD”). MCPD did not respond to the notices of abandonment. Pursuant to § 49-62(g), it is presumed that there is no opposition.
7. Verizon. By e-mail dated November 10, 2020, Verizon expressed its approval, subject to the condition that its facilities be relocated by the Applicant. *See* Exhibit E(3).
8. Montgomery County Fire and Rescue Service (“MCFRS”). MCFRS offered no comments in its e-mail dated December 11, 2020. *See* Exhibit E(6). Accordingly, it is presumed that MCFRS approves of the Applicant’s abandonment request, having already provided its Preliminary Plan approval at p. 501 of the following link: <https://eplans.montgomeryplanning.org/UFS/5427/26659/32-SR-120170170.pdf/32-SR-120170170.pdf>.
9. Montgomery Department of Permitting Services (“DPS”). By e-mail dated December 11, 2020, DPS approved of the Applicant’s abandonment request without offering further comment. *See* Exhibit E(7).

IV. ADDITIONAL CORRESPONDENCE FROM THE PUBLIC

Nine residents sent written comments for the Hearing Record. Of those, four were residents that had spoken at the hearing.⁴ The views and subject matter expressed by those four residents in writing were similar to that which was presented at the hearing. Of the other five residents who submitted comments, four were in favor of the abandonment and realignment of Westbard Avenue⁵ and, one was concerned about cut-through traffic in the Kenwood neighborhood and shared the sentiments expressed by Lynn Battle with respect to the need for a traffic light at the realigned Westbard Avenue and its newly reconfigured intersection with Ridgefield Road.⁶

V. 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

⁴ Cynthia Green, Lynne Battle, Phyllis Edelman and Patricia Johnson. *See* Exhibits K, L, L(1), O and S.

⁵ Michael Chen-Young, Peter Mitchell, Alicia and Farid Khadduri, Raquel and Sanan Shaibani. *See* Exhibits M, N, P and Q.

⁶ Jenny Sue Dunner. *See* Exhibit T.

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 as described above and provide comment.

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 right of way. While only one of the criteria needs to be met, in this case, the Applicant contends that both criteria have been so that Council may grant an abandonment pursuant to § 49-63(c)(1) or § 49-63(c)(2).

Pursuant to Article 6 of Chapter 49 of the Montgomery County Code, right of way means "... any road, street, alley, crosswalk, pedestrian walkway, shared use path, sanitary sewer, storm sewer, or storm drainage right-of-way used at any time by the public, including use by pedestrians and bicyclists." In evaluating the evidence, I find that the Abandonment Area for those portions of the existing Ridgefield Road and Westbard Avenue are clearly public rights of way, having been dedicated to public use for streets as depicted by Subdivision Plat Nos. 4456 and 5026, filed among the land records for Montgomery County, Maryland. Accordingly, the County has jurisdiction to consider the Applicant's petition for abandonment.

The Applicant's case is cogently stated and well supported. Upon the completion of the construction and dedication of a realigned Westbard Avenue pursuant to the Certified Preliminary Plan, the Abandonment Area will no longer be needed for public use. Moreover, the Westbard Sector Plan contemplates the realignment and abandonment as part of the overall scheme of development in the area. There is nothing contained within the Hearing Record that controverts those assertions. The Hearing Record reflects that the realignment and abandonment will alleviate certain existing problems while allowing further planned development to proceed in an orderly fashion. Notwithstanding, the Hearing Officer recognizes the apprehension that some residents expressed regarding the impact of future development and whether certain existing facilities such as the existing traffic light at the intersection of Ridgefield Road and Westbard Avenue will continue to be needed following the reconfiguration of that intersection as part of the realignment of Westbard Avenue. The Hearing Officer appreciates the importance of these issues to the members of our community who took time to participate in these proceedings and express their feelings and viewpoints. In my opinion, and is often the case, there is no doubt that there are going to be "growing-pains" during the construction that serves to fulfill the implementation of the Westbard Sector Plan. However, I defer to the expertise of the planners and all the government agencies who contributed to and made recommendations for the development of the area generally and with particularity to the realignment of Westbard Avenue as contemplated by the Westbard Sector Plan. Accordingly, I believe that the roadway network, circulation of traffic, and safety will ultimately be improved by the implementation of the Westbard Sector Plan through the realignment of Westbard Avenue and the abandonment of the Abandonment Area.

With respect to those who are concerned about whether there will be a continuing need

for a traffic light at the realigned Westbard Avenue and its newly reconfigured intersection with Ridgefield Road, the Planning Board accepted the recommendations of MCDOT in its Traffic Impact Study and Traffic Signal Warranty Study Letters dated February 28, 2019 and March 4, 2019 and incorporated those recommendations as conditions of Preliminary Plan approval. See paragraphs 3 and 4 of approval of Preliminary Plan No. 120170170. Those letters provide, among other conditions accepted by the Planning Board, that following future signal warrant analysis, if MCDOT determines that a new signal is warranted, the Applicant will be required to construct and install traffic signals at the Applicant's expense in accordance with MCDOT specifications. See pp. 470-482, <https://eplans.montgomeryplanning.org/UFS/5427/26659/32-SR-120170170.pdf/32-SR-120170170.pdf>.

For all of the foregoing reasons, I find that the abandonment of the Abandonment Area is permitted under both §49-63(c)(1) and §49-63(c)(2) of the County Code, and based upon a thorough review of the statements, exhibits, and the other evidence of record, I recommend that the Applicant's petition to abandon be granted, subject to the following requirements that are conditions precedent to the abandonment becoming effective:

- 1) That the Applicant must fully construct and dedicate to public use the right of way for the realignment of Westbard Avenue to intersect with River Road, replacing River Road's existing intersection with Ridgefield Road, pursuant to and in compliance with Certified Preliminary Plan No. 120170170, and that such construction be acceptable to the County, in its sole discretion, for maintenance responsibility;
- 2) That the Applicant must at its sole cost prepare and record a new subdivision plat that incorporates the Abandonment Area into the adjacent property;
- 3) That the Applicant must comply with the MCDOT conditions of abandonment stated

in a Memorandum dated December 10, 2020 that is filed as Exhibit E(1) in the Hearing Record;

- 4) The Applicant must grant, prepare, and record any necessary easements for County storm drains and public utility facilities, including but not limited to gas lines, electric facilities, and water and sewer facilities to the satisfaction of the County or the public utility, as applicable, allowing such facilities to remain at their current location or relocated locations, and providing perpetual right of ingress and egress from the easement area at any time (which rights must not be subordinate to other interests).

Respectfully submitted,

01/20/2022
Date

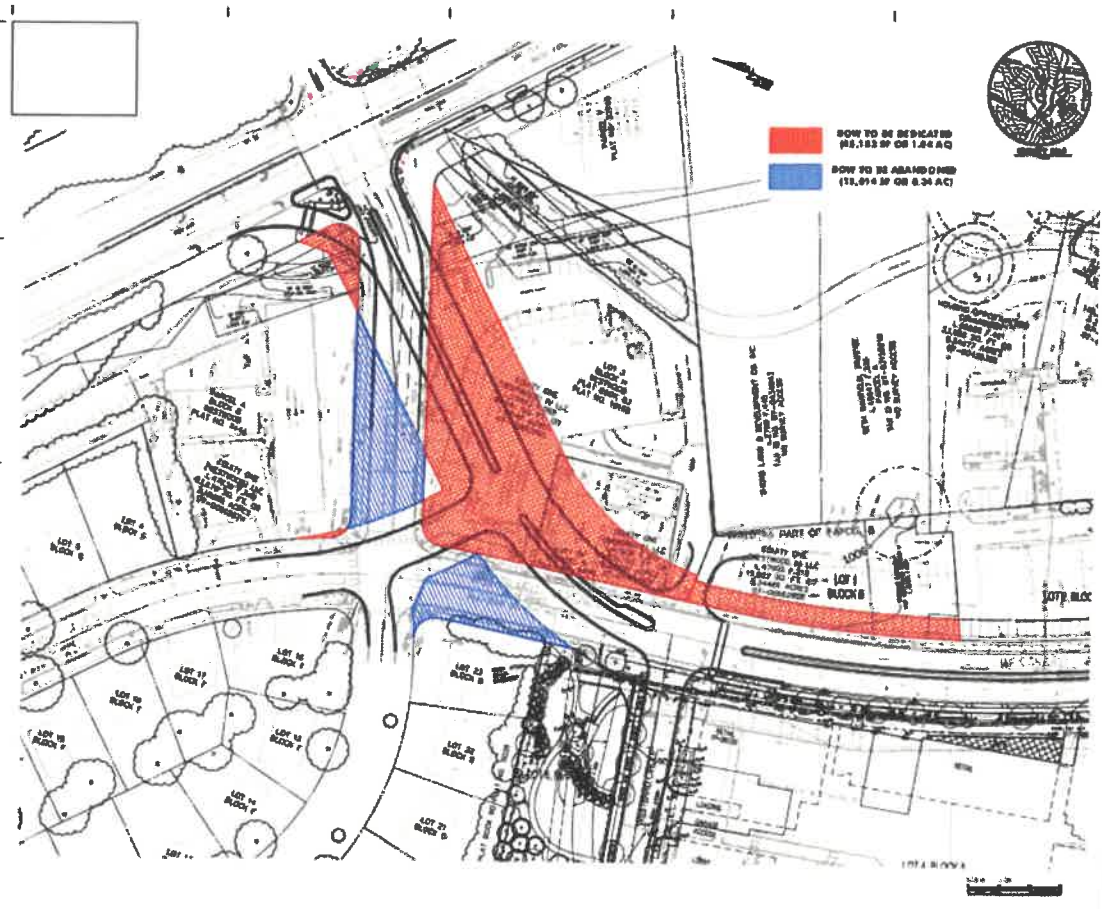
Richard C Dorsey Jr
Richard Dorsey
Public Hearing Officer

The Public Hearing Officer's Recommendations in Petition AB 773 have been reviewed and are approved.

3/10/2022
Date

Marc Elrich
Marc Elrich, County Executive

EXHIBIT "A"



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BY COPPIN & CENTER
"Engineering, Planning, & Architecture"
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Fax: 734.769.1201
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MEVA
Michigan Environmental Volunteers Association
1000 E. River Road, Suite 200
Ann Arbor, Michigan 48106
Tel: 734.769.1200
Fax: 734.769.1201
www.meva.org

LANDWEB
1000 E. River Road, Suite 200
Ann Arbor, Michigan 48106
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www.landweb.com

mv+a
Michigan Veterinary & Animal Services
1000 E. River Road, Suite 200
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Tel: 734.769.1200
Fax: 734.769.1201
www.mv+a.com

DEDICATION PLAN
APRIL 9, 2020

06D-1



**EXHIBIT B
EXISTING RIGHT-OF-WAY ABANDONMENT
7TH ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND**

Part 1

Being a strip of land crossing and being part Westbard Avenue as shown on a plat of subdivision of "Westwood Shopping Center" recorded among the Land Records of Montgomery County, Maryland, as Plat 4456, and being more particularly described as follows:

Beginning for the same at a point on the west line of Westbard Avenue, said point being South 07° 07' 30" East, 27.31 feet from the Northeast corner of Parcel A-4 as shown on a plat of subdivision "Westwood" recorded among the aforementioned Land Record, as Plat 5498; thence with said Westbard Avenue

1. North 7° 07' 30" West, 108.13 feet to a point; thence
2. 26.53 feet along an arc of a curve to the left having a radius of 541.79' (chord North 08° 31' 40" West, 26.53 feet) to a point; thence
3. 34.38 feet along an arc of a curve to the left having a radius of 20.00' (chord North 59° 11' 00" West, 30.30 feet) to a point; thence
4. North 71° 33' 50" East, 5.25 feet to a point; thence
5. 21.15 feet along an arc of a curve to the left having a radius of 80.00' (chord North 63° 59' 23" East, 21.09 feet) to a point; thence
6. South 86° 39' 15" East, 34.81 feet to a point; thence
7. 56.07 feet along an arc of a curve to the left having a radius of 470.00' (chord South 45° 56' 45" East, 56.03 feet) to a point; thence
8. 132.06 feet along an arc of a curve to the left having a radius of 358.70' (chord South 25° 02' 32" West, 131.31 feet) to the point of beginning, containing 5,891 square feet or 0.1352 acre of land.

Part 2

Being a strip of land crossing and being part Ridgefield Road as shown on a plat of subdivision of "Westwood" recorded among the Land Records of Montgomery County, Maryland, as Plat 5026, and being more particularly described as follows:

Beginning for the same at a point on the north line of Westbard Avenue, said point being at the beginning of curve number 4 in Block G as shown on the aforementioned plat of subdivision; thence with said Ridgefield Road

9. North 71° 33' 50" East, 200.23 feet to a point; thence
10. South 44° 01' 12" West, 151.38 feet to a point; thence

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11. South 71° 33' 50" West, 47.35 feet to a point; thence
12. 79.41 feet along an arc of a curve to the right having a radius of 400.00' (chord North 40° 34' 27" West, 79.28 feet) to a point; thence
13. 11.90 feet along an arc of a curve to the left having a radius of 20.00' (chord North 88° 36' 50" East, 11.73 feet) to the point of beginning, containing 9,123 square feet or 0.2094 acre of land.

SURVEYORS CERTIFICATION

I hereby certify that I was in responsible charge over the preparation of this metes and bounds description and the surveying work reflected in it, all in compliance with the requirements set forth in 09.13.06.12 of the COMAR Regulations.

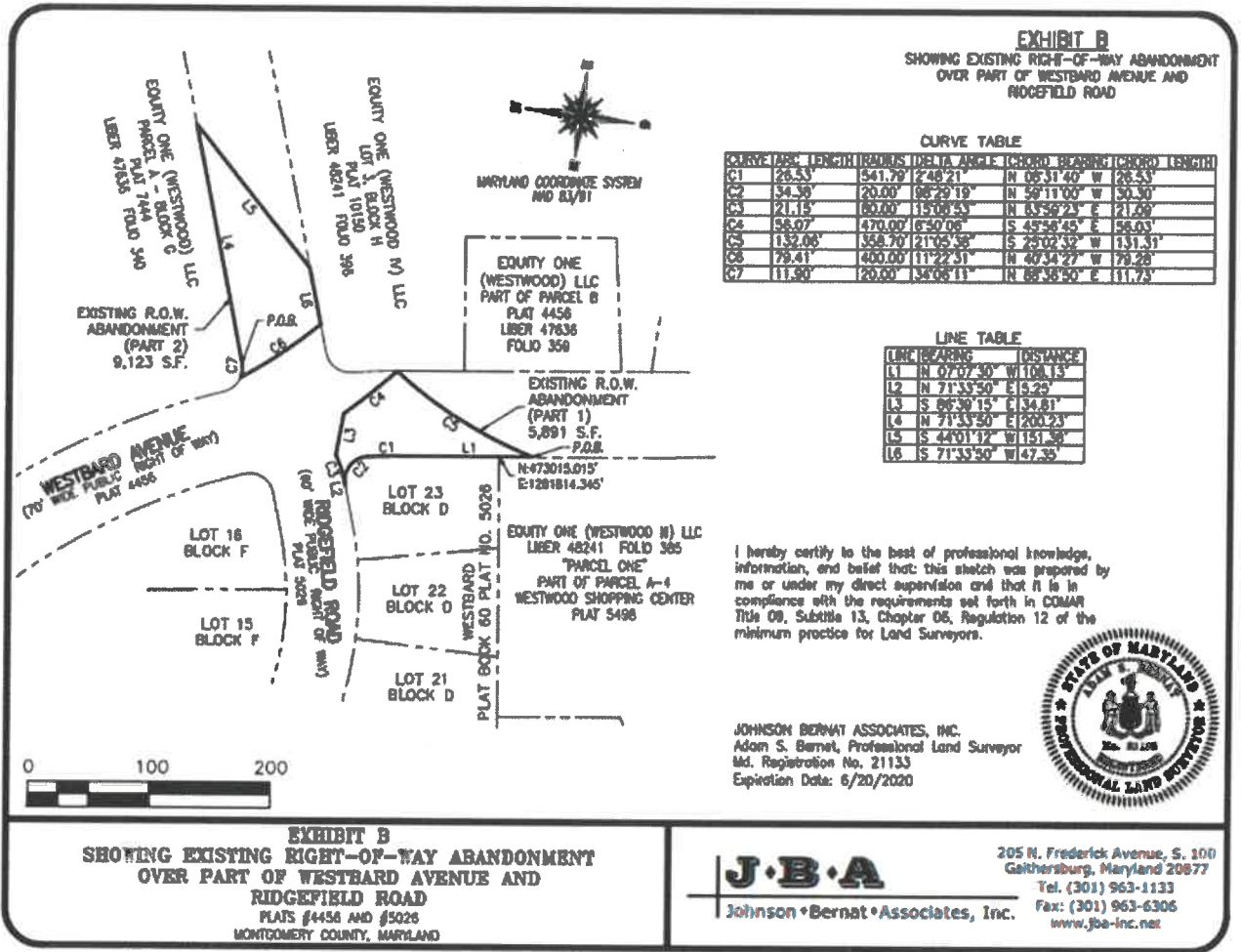
Johnson ♦ Bernat ♦ Associates, Inc.
Adam S. Bernat, L.S.

Date:



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AERIAL OF EXISTING CONDITIONS

