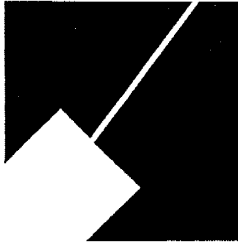


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MCPB
ITEM NO. 3
3-30-06

March 15, 2006

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Daniel K. Hardy, Supervisor *DKH*
Transportation Planning

FROM: Scott A. James, Planner/Coordinator *Saj*
Transportation Planning

SUBJECT: DPWT Docket No. AB 675
Abandonment of ten-foot-wide unimproved path between Lots 12 and 13
Hendry Estates subdivision in Bethesda, Maryland
Bethesda-Chevy Chase Master Plan

This memorandum is Transportation Planning staff's review of the request to abandon a ten-foot unimproved path in Block 8 in the Hendry Estates subdivision in Bethesda, Maryland.

RECOMMENDATION

Staff recommends that the Planning Board support **denial of the request** to abandon the subject street in downtown Silver Spring as the right-of-way is needed for current and future public use as a pedestrian path.

DISCUSSION

The subject abandonment comes under the review of the County Council since the public right-of-way provides pedestrian access between two public streets, Anniston Road and Wilmett Road in Bethesda, Maryland. The subject right-of-way, shown in Exhibit 1, is part of the original subdivision plat for the Hendry Estates subdivision, continued in the adjacent Alta Vista Terrace

subdivision, and is paired with a similar ten-foot-wide right-of-way connecting Anniston Road and Beech Avenue to the south. The subject right-of-way is approximately one-third of a mile north of Ayr lawn Local Park. DPWT Docket No. AB 675, describing the proposed abandonment, is included as Attachment A.

County Code Guidance

The County Code describes such rights-of-way as “midblock crosswalks,” reserved primarily for pedestrians (but which may also include utilities). Staff interprets the existence of these two midblock crosswalks described above as evidence of the County’s intention to provide adequate pedestrian access. Similar midblock crosswalks are found throughout Montgomery County and provide direct pedestrian access for both recreational and public use. One purpose of such paths is to preclude the obligation for pedestrians to circumnavigate long blocks.

In this case, staff must make a judgment call regarding the definition of current and future need, as there is no clear quantitative guidance or observed public use inherently defining need. Section 50-28 of the Montgomery County Code, identifies the maximum block length as 1,600 feet. However, accepted practice, especially in communities considered urban and pedestrian-friendly, has been to encourage uninterrupted block lengths in the range of 400-600 feet. Staff maintains that to ensure pedestrian access and convenience, these 10-foot wide mid-block crosswalks should be preserved for current and future use.

The length of the subject block (approximately 1,200 feet on its shorter, southern side) creates a need for pedestrian access at this location. As indicated in Exhibit 1, both blocks containing mid-block crosswalks measure longer than 1,000 feet on their shortest side. The midblock crosswalks result in pedestrian access throughout the community at a prevailing spacing of 600 feet or less. Reducing block lengths is a staff objective to encourage pedestrian access through and across developments.

Master Plan Guidance

The subject right-of-way is located in the Bethesda-Chevy Chase Master Plan area. The 1990 Bethesda-Chevy Chase Master Plan does not provide explicit guidance regarding either land uses or transportation in the immediate vicinity. The adjacent roadways are not master-planned roadways and function as secondary residential streets.

Staff must also make a judgment call regarding master plan consistency. The Master Plan discussion on land uses in the Old Georgetown Road area does state, “pedestrian path linkages (hiker/biker) should be developed to further enhance pedestrian movement and recreational opportunities and to encourage non-auto commuting” (page 62). However, while some specific references are made to using portions of dedicated but unbuilt roadway rights-of-way for pedestrian connections, none of the recommendations explicitly address midblock crossings.

Public Participation

The County held a public hearing on the abandonment on March 2, 2006. The Wyngate Citizens Association representatives expressed concerns regarding the status of mid-block crossings in the vicinity and plan to develop an association position regarding the need for the subject right-of-way prior to April 10, 2006 closing date for public and agency comments.

Arguments Favoring Abandonment

There are three pragmatic arguments that would favor abandonment. First, as stated by the applicants, the area is not currently maintained by Montgomery County and is not currently in public use. Second, the subject right-of-way has, over decades, been encroached upon so that the immediate designation and maintenance of a formal path could have adverse impacts on both adjacent property owners and mature trees. Finally, Section 50-26 of the County Code specifies that midblock crosswalks should have a minimum 20-foot-wide right-of-way, wider than the 10-foot-wide right-of-way for the subject abandonment.

Summary

Staff finds that the need to preserve future pedestrian options for the long-term outweighs the short-term pragmatic arguments favoring abandonment. Staff finds that the lack of public use is due in part to a lack of public awareness, as suggested by the Wyngate Citizens Association concerns. Similar paths within the County are not paved, but are maintained at the request of adjacent and interested residents. Staff supports the Wyngate Citizens Association efforts to evaluate and determine which, if any, of the existing pedestrian footpaths within the boundaries of their neighborhood should be maintained for current public use. Regardless of the Wyngate Citizens Association position on short-term use, staff recommends that the right-of-way be retained to preserve the option for future public use

FINDINGS

Per Section 49-63(e) of the Montgomery County Code, staff recommends denial of the proposed abandonment of a portion of the public right-of-way, a ten-foot unimproved midblock crosswalk in the Hendry Estates subdivision. The staff finding is based upon the assessment that the subject right-of-way is needed to maintain present and future public access.

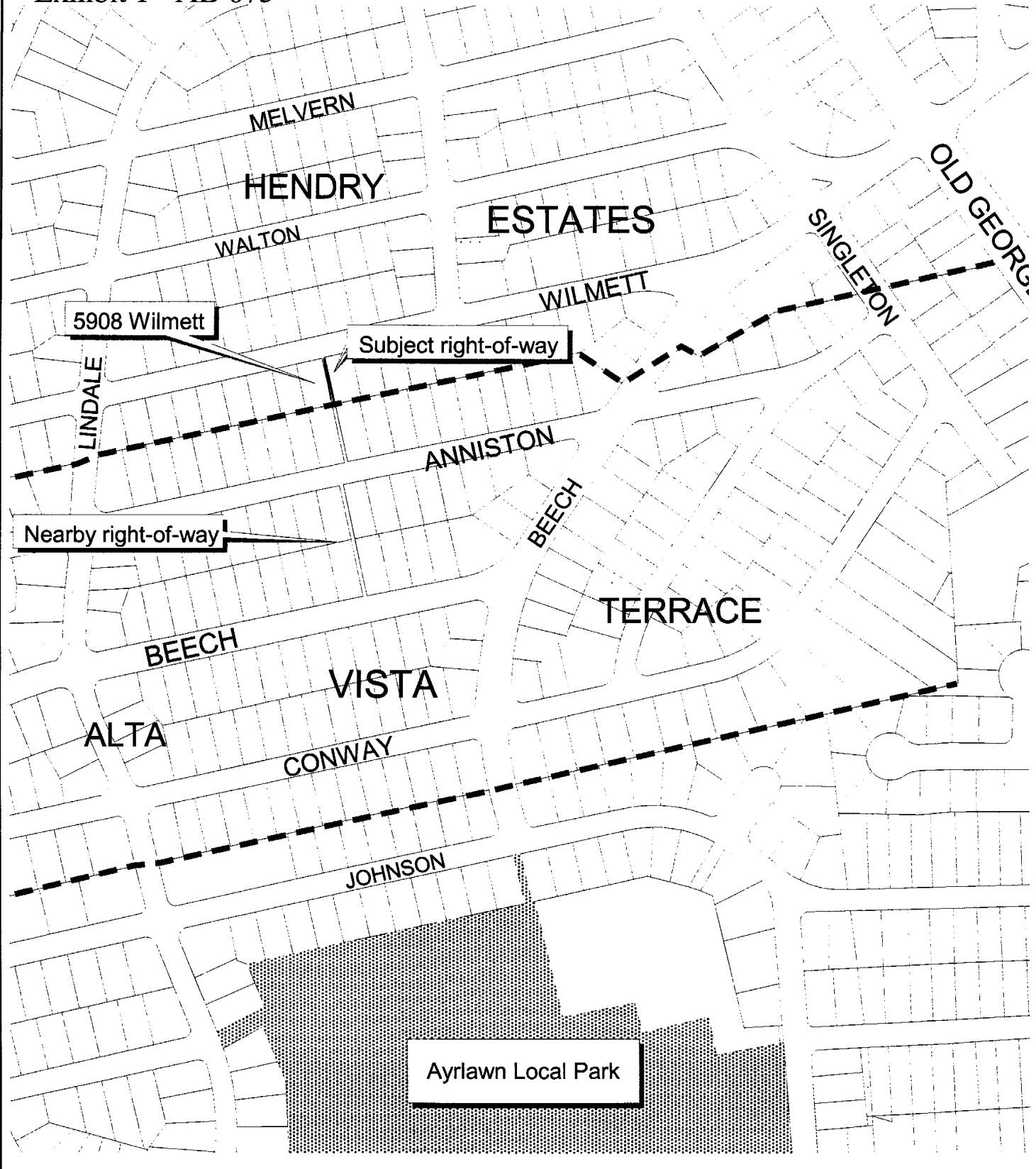
SAJ:gw

Attachments

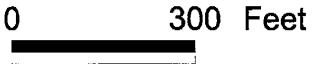
cc: Michael Cassedy
Marilyn Clemens
Tariq El-Baba

mmo to MCPB re AB 675 Hendry Estates

Exhibit 1 - AB 675



Map Compiled On 03-15-2006 at 06:17 PM
 Map Scale: 1 inch = 300 feet or 1:3600



The Maryland-National Capital Park and Planning Commission
 Montgomery County Department of Park and Planning
 Transportation Planning Unit
 8787 Georgia Avenue | Silver Spring, Maryland 20910
 301.495.4525 voice | 301.495.1302 fax | <http://www.mc-mnppc.org>

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14,000 scale aerial photography using stereo photogrammetric methods. All planimetric and property-based features are collected at 1:24,000 scale and are +/- 2.5 feet of their true location.

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DEPARTMENT OF PUBLIC WORKS
AND TRANSPORTATION

Douglas M. Duncan
County Executive

Arthur Holmes, Jr.
Director

February 10, 2006

RECEIVED
0175
FEB 13 2006

Mr. Derick Berlage, Chairman
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

RE: Request for Comments on Proposed Abandonment
AB675 – Abandonment of a 10-Foot, Unimproved Path
Block 8, Hendry Estates Subdivision, Bethesda

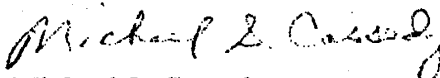
Dear Mr. Berlage:

The purpose of this letter is to request M-NCPPC comments on the proposed abandonment of a 10-foot, unimproved path in Block 8 between Lot 12 and Lot 13 in the Hendry Estates subdivision in Bethesda. The abandonment request was made by Bulman, Dunie, Burke & Feld on behalf of its clients, John A. Moore III and Brianna M. Moore, the applicants. The Moores are owners of Lot 12; the owners of Lot 13 support the Moores' application. For your reference I have enclosed a copy of the petitioner's request along with other information concerning this matter.

It would be appreciated if I could receive your comments by April 10, 2006.

If either you or your staff need additional information or have questions, please call me at 240-777-7254.

Sincerely,


Michael S. Cassedy

Enclosures



Property Acquisition

REQUEST FOR COMMENTS BY APRIL 10, 2006

AB675

ABANDONMENT OF A 10-FOOT UNIMPROVED PATH

BLOCK 8, HENDRY ESTATES, BETHESDA

Pursuant to Section 49-62 of the Montgomery County Code 2004, the County Executive or his designee shall conduct a Public Hearing

**10:30 a.m. on Thursday March 2, 2006
101 Monroe Street, EOB 10th Floor Large Conference Room
Rockville, Maryland 20850**

to consider an application received from Bulman, Dunie, Burke & Feld on behalf of its clients, John A. Moore III and Brianna M. Moore, the applicants, seeking abandonment of a 10-foot wide, unimproved path adjoining their property (5908 Wilmett Road, Bethesda, MD 20817, Lot 12, Block 8, Hendry Estates subdivision).

After the aforementioned Hearing, the Hearing Officer shall report his findings and recommendations to the County Executive for further consideration as prescribed by County Code.

**Please send your comments by April 10, 2006, to
Mike Cassidy
Real Estate
Department of Public Works and Transportation
101 Monroe Street – 10th Floor
Rockville, Maryland 20850**

If you have any questions concerning this matter, please call me at 240-777-7254 or e-mail me at michael.cassedy@montgomerycountymd.gov

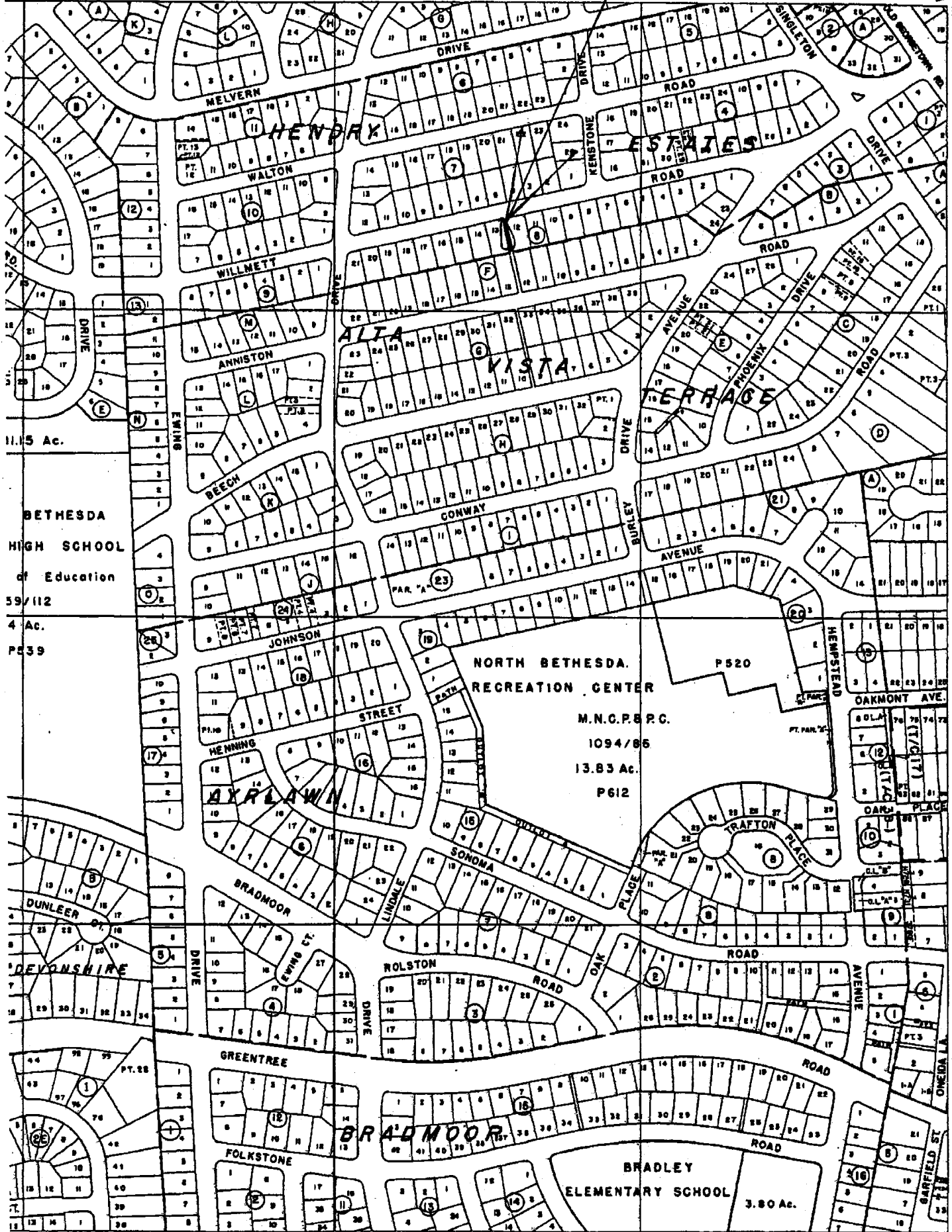
AB 675 10-Foot Path

G 6

P 562

W30000

N44000



11.15 Ac.

BETHESDA
HIGH SCHOOL
of Education
59/112

4 Ac.
P539

NORTH BETHESDA
RECREATION CENTER
M.N.C.P.R.C.
1094/86
13.83 Ac.
P612

P520

HP 121

P 1

3.80 Ac.

BULMAN, DUNIE, BURKE & FELD

CELEBRATING

OVER
65
YEARS

LAWRENCE Z. BULMAN (MD, DC)
JOHN F. BURKE (MD, DC)
ALAN S. FELD (MD, DC)
BARRY M. NUDELMAN (MD, DC)
MARK W. SHUPE (MD, DC)
NANCY B. FARREN (MD, DC)
KRISTEN M. MILARDO (MD, DC)
VANESSA E. ATTERBEARY (MD, DC)
CAROLYN E. DEWEY (MD)

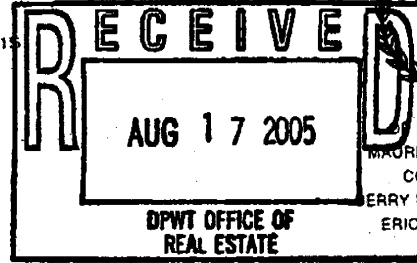
CHARTERED
ATTORNEYS AT LAW
4610 ELM STREET
BETHESDA, MARYLAND 20815

(301) 656-1177

FAX

(301) 986-9719

www.bulmandunie.com



COUNSEL:
MORDE R. DUNIE
COUNSEL:
ERRY L. GOLDSTEIN
ERIC B. YARVIN

ARTHUR S. FELD (1918-1979)
JOSEPH D. BULMAN (1908-2002)

August 16, 2005

Ext. 315

Douglas Duncan, County Executive
Montgomery County Government
101 Monroe Street, Second Floor
Rockville, MD 20850

Dear Mr. Duncan:

Please be advised that this office has been retained by John A. Moore, III, and Brianna M. Moore, the owners of property known as Lot 12, Block 8, in a subdivision known as Hendry Estates. The property address is 5908 Wilmet Road, Bethesda, Maryland 20817. Pursuant to Section 49-62 and 49-63 (2004), Montgomery County Code, my clients submit herewith this request to the County to abandonment a ten (10) foot unimproved right of way adjacent to their property. Attached hereto is a copy of the tax map with a highlighted area showing the area requested to be abandoned. I am also submitting herewith a copy of a portion of Plat No. 1955, also showing the area and the walkway. This area is not in public use and has been maintained by my clients. I am by copy of this letter to Mr. Michael Cassidy of the Department of Public Works and Transportation, requesting that proceedings be undertaken to initiate action on this request for abandonment of the right of way. A check in the amount of \$2,500, payable to Montgomery County, Maryland, has been sent to Mr. Cassidy, a photocopy is attached hereto. Thank you for your prompt attention to this request. If you require any additional information or need anything further in order to begin this process, please feel free to contact me. Thank you for your prompt attention to this request.

Very truly yours,


Alan S. Feld

ASF/br

Enclosure (copy of check)

cc: Michael Cassidy, Real Estate Analyst (check)

BULMAN, DUNIE, BURKE & FELD

CHARTERED

ATTORNEYS AT LAW

4610 ELM STREET

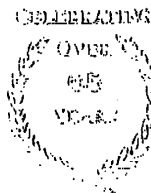
BETHESDA, MARYLAND 20815

(301) 656-1177

FAX

(301) 986-9719

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OF COUNSEL:
MAURICE R. DUNIE
COUNSEL:
JERRY R. GOLDSTEIN
ERIC B. YARVIN

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JOHN F. BURKE (MD, DC)
ALAN S. FELD (MD, DC)
BARRY M. NUDELMAN (MD, DC)
MARK W. SHUPE (MD, DC)
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KRISTEN MILARDO BARRETT (MD, DC)
VANESSA E. ATTERBEARY (MD, DC)
CAROLYN E. DEWEY (MD)

ARTHUR S. FELD (1918-1979)
JOSEPH D. BULMAN (1908-2002)

January 24, 2006

Ext. 315

Mr. Michael Cassidy
Real Estate Analyst
Department of Public Works & Transportation
101 Monroe Street, 10th Floor
Rockville, MD 20850

Re: John A. Moore, III, and Brianna M. Moore
Lot 12, Block 8, Hendry Estates / 5908 Wilmet Rd., Bethesda, MD

Dear Mr. Cassidy:

Thank you for your recent conversation and the scheduling of the hearing for abandonment of the above-captioned property. Enclosed for the record, is a copy of the Consent Release and Assignment of Rights executed by Patricia Mathews Berry, the adjoining property holder. I will present the original at the time of the hearing. Thank you for your courtesy and cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "ASF".

Alan S. Feld

ASF/br
Enclosure

cc: Mr. & Mrs. John A. Moore, III

CONSENT RELEASE AND ASSIGNMENT OF RIGHTS

This Consent Release and Assignment of Rights ("Consent"), is executed this 17th day of AUGUST, 2005, by and between, Patricia Matthews Berry (hereinafter referred to as "Berry"), and John A. Moore, III and Brianna M. Moore (hereinafter referred to as "Moore").

RECITALS

WHEREAS, Moore and Berry are neighbors, living respectively at 5910 (Lot 13) and 5908 (Lot 12) Wilmet Road, Bethesda, Maryland 20817. ; and

WHEREAS, Moore desires to seek abandonment of a ten foot (10') right of way that runs between the properties and to bear all costs associated therewith;

WHEREAS, Berry does not wish to participate in such proceedings and/or bear any expenses;

AGREEMENT

NOW THEREFORE, for and in consideration of the payment and promises discussed below, the parties agree as follows:

1. Barry does hereby consent and assign to Moore and each of their respective predecessors, heirs, successors and assigns any and all rights, title or interest she may have to any land or property resulting from the abandonment of the right of way between their property and does release Moore from any and all past and present claims, demands, controversies, executions, obligations, actions, causes of action, rights, damages, expenses and requests for compensation or payment of any nature whatsoever, whether based on tort, contract, or any other legal theory of recovery, and whether for compensatory, consequential or punitive damages or other relief or damage, whether known or unknown, whether suspected or unsuspected, whether liquidated or unliquidated that have arisen or are based upon, or may have arisen or may be based upon, or shall arise by reason of the request for abandonment of the right of way, from acquisition of the abandoned property and hereby agrees that Moore shall enjoy full right from and title to any such property.

2. Moore does hereby release and forever discharge Berry, each of their respective predecessors, heirs, successors and assigns, from any and all past and present claims, demands, controversies, executions, obligations, actions, causes of action, rights, damages, expenses and requests for compensation or payment of any nature whatsoever,

whether based on tort, contract, or any other legal theory of recovery, and whether for compensatory, consequential or punitive damages or other relief or damage, whether known or unknown, whether suspected or unsuspected, whether liquidated or unliquidated that have arisen or are based upon, or may have arisen or may be based upon, or shall arise by reason of the request for abandonment of the right of way.

3. Moore shall be solely responsible for all legal fees and costs associated with or incurred in the process of seeking the abandonment of the right of way.

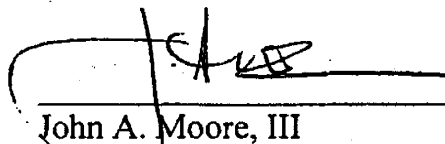
4. The provisions of this Consent must be read as a whole and are not severable and/or separately enforceable by either party hereto.

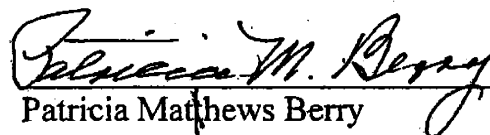
5. This Consent is not intended to confer upon any person other than the parties any rights or remedies hereunder.

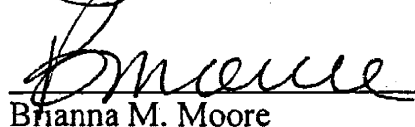
6. Each party represents that they have carefully read and fully understands all the provisions of this Consent and that it is freely, knowingly and voluntarily entering into this Agreement. Each party has been given the opportunity to have independent legal representation.

7. This Consent constitutes the entire agreement of the parties in respect of the subject matters set forth herein and may not be amended or changed except by a written amendment signed by all parties. By executing this Consent, the parties acknowledge their intent that this Consent Release and Assignment of Rights shall be effective upon execution and shall require no other or further action in order to be in full force and effect and shall immediately accomplish the purposes set forth herein.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of the day, month and year first set forth above.

 8/17/2005
John A. Moore, III Date

 8/17/05
Patricia Matthews Berry Date

 8/17/2005
Brianna M. Moore Date