

RECEIVED  
CITY CLERK'S OFFICE

2006 JUL 16 PM 2:36

My name is Noreen Bryan. I have lived at 207 S. Washington St. since 1985.

I have been involved with many of the events that have involved the Fleet St. property since the county proposed in 2000-2001 to cut down all of the trees and black top the land for a county/district court parking lot. To my knowledge in these past nine years there has never been a public forum to discuss the use of this land. For the last two months we have been hunting to find out when, who, and how the decision was made to build affordable senior housing on the site. Today we learned in conversations with representatives of the County's Dept Housing and Community Affairs that sometime in 2004 the county held a public hearing about turning over custody of the parcel to the Dept. As yet we do not have minutes of the hearing. How well people were aware of the public hearing is not known, but I am quite certain that none of my neighbors knew the implications of moving custody of this land to DHCA. Namely that this department could unilaterally pick a housing project, unilaterally chose a developer and unilaterally dispose of the property without any input from citizens or other potential developers. If the county had not agreed to follow Rockville's zoning process the project could have been executed without any further input from citizens.

The Rockville Master Plan supports a careful process for deciding land use. In Chapter Six, Recreation, Parks and Open Spaces, pg. 6-6. Critical Issues-Parkland Acquisition it says, "As more parcels are developed in Rockville, it is very important that the City identify all possible ways to preserve open space. All undeveloped parcels within existing neighborhoods should be evaluated for parkland acquisition before they are developed as infill. This is especially critical in the City's older established neighborhoods in order to increase the amount of park land in these communities." The Fleet St. property fits this statement in all ways.

I believe that this debate/ evaluation still needs to be done. The Town Center and immediately surrounding communities have a dearth of green space. Further, many things have happened since the decision five years ago. Within a block of the Fleet St. site, numerous mature trees were cut down to build the storm water management ponds for Town Center and the new Richard Montgomery HS. The destruction of these trees has been an environmental loss for our community. Pages 6-9 and 6-10 of the Master Plan speak to the need to balance the environmental impacts of development on urban forest and specifically talks to preservation of natural resources when storm water management ponds are created.

It may seem that we are too far into this process to stop and have a meaningful public discussion about the use of the Fleet St. property. But my question to you is how can we not? Once this development is initiated we will have lost forever the opportunity to preserve this piece of urban forest. We ask your help in working with the county to find a way to make this discussion possible. Time to have this discussion and time for citizens to become sufficiently knowledgeable to be meaningful participants in the discussion is so important to prevent adverse impacts on our community.

Further to have this discussion we need to suspend the decision on abandonment of Mt Vernon Place. I believe this can be done without impacting the schedule for review of

the Special Exception Application. We ask your support in moving the decision on abandonment to a later date. I would ask you to remember that the developer has been working on this proposal for at least two years, that they have ample paid staff-lawyers, architects, engineers. They have had frequent meetings with a wide range of experts on the city staff. While all of this preparation is going on citizens are not even aware. There is no outreach from city staff to make us aware of the planned development. By contrast we have had about two months to start from scratch. None of us are paid to do this work and most of the concerned participants have full time jobs as well. We do not come with the developer's expertise in zoning ordinances and county/city policies and procedures. We do not have legal staff that has spent years working in these areas. But we are citizens who care a great deal about our neighborhood and city. I believe that we and all citizens who are concerned about this development deserve to be heard in an open forum that allows full exploration of the issues. We know that many of you have been champions of citizens' concerns in the past and ask for your help in this case.

Citizens Forum, Mayor and Council Meeting, June 15, 2009

**Need More Time to Consider Impact of Road Abandonment**

Hello, I'm Alice Liu and I live at 232 Lynn Manor Dr in the Courthouse Walk townhomes. I'm here to speak about the upcoming road abandonment decision for Mt. Vernon Place. I understand there will be a Planning Commission Meeting on June 24 and then a Mayor/Council meeting on July 15.

We should not rush through this decision to abandon the road. I feel that the decision to draw the Historic District boundaries was rushed through and based on a conceptual rendering of the project and pressure from the developer. Let's take the time now to do this right.

- **It's an irrevocable decision and should have a proper discussion**
- **The citizens are still becoming educated on the issues and process**
- **The Courthouse Walk residents need time to understand the property tax and management impact of this road abandonment and this is made more difficult with people gone on vacation during this time.**
  - We don't know the property tax and maintenance implications of gaining this additional property. The Planning Staff recognized these concerns and was going to contact us but have not yet.
  - How close to the property line will Victory Housing be able to build? The parking lot is already going to abut the property. Tall trees will be lost. We need buffer space from Victory Housing.
  - How will the property line be demarcated? Will a fence need to be built and who will pay for it and maintain it?
- **If you abandon the road now without taking the time for citizen education and discussion, you're giving tacit approval for the Victory Housing project as currently designed and disregarding the other issues related to the Victory Housing project:**
  - Victory Housing is already proposing to build their parking lot right up to the property line based on their assumption that the road abandonment will give them half the road width-wise. They need this road abandonment in order to develop the property as they wish, contrary to citizens' wishes.
  - I believe there is an ordinance related to the percentage of the land that must be preserved as forest or is allowed to be developed, so by abandoning this road and increasing the size of the Fleet St property, you are giving Victory Housing permission to cut down more trees or expand the size of their development. They already expanded the size of their

parking lot between the last rendering we saw in August/Sept 2008 when the Historic District lines were voted on and the last drawing we saw in April 2009. This concerns me that you could be giving more to Victory Housing before all the issues have been analyzed.

- Courthouse Walk needs a buffer from Victory Court and our understanding is that we will gain half the road width-wise. This is still only about a foot away from where our green space ends! Is there an option for the entire road to go to Courthouse Walk? We need a larger buffer between us and Victory Housing. See attached pictures.



- If this development goes forward, we are already going to lose trees up to 80 feet high due to the development, so we're losing that buffer which protects all three stories of the townhouses from view of Victory Housing and Victory

Housing will plant only 8-10 foot trees which will take decades to grow to the height of the trees cut down.

- This has a significant impact on the integrity of the Courthouse Walk community. We homeowners were all attracted to buy in this community because of the trees in and around this development, which is rarely found in Rockville. I know of New Mark Commons as the only other development designed with the local tree preservation in mind and the intrinsic value that these trees bring to the community.
- Over-concentration of affordable housing in West End and Town Center and adjacent communities. Twenty-four percent (24%) of the current affordable housing units are in this area which comprises only 10% of the city of Rockville. With all projects in the pipeline, close to 30% of affordable housing will be in 10% of the city by area. Rushing through the road abandonment is like giving one more green light to the Victory Housing project and increasing the over-concentration of affordable housing in West End and Town Center and adjacent communities.
- The value, intent, and viability of the historic district and the historic houses are impacted by the proposed Victory Housing project. The project wants to use the parking lot in the historic district because it cannot accommodate all its own parking needs within its own property. This will reduce both the commercial and residential viability of these houses.

This is not a routine decision, as one might think given that this undeveloped road has been on the books for so long. This road abandonment is being sought by Montgomery County because without any community input they have made a unilateral decision to have Victory Housing develop the property. Given the many issues and concerns citizens have regarding Victory Housing, I ask you to not let the County or Victory Housing pressure you to rush through this decision and make every effort to engage citizens in the process.

SCA2006-00097  
Rockville Heights - Victory  
Housing  
Public Hearing

RECEIVED  
CITY PLANNING OFFICE  
JUN 17 AM 10:15



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*\* All attorneys admitted in Maryland and where indicated*

JSKLINE@MMCANBY.COM

June 30, 2008

Mr. Jim Wasilak  
Chief of Planning  
Community Planning & Development Services  
Rockville City Hall  
111 Maryland Avenue  
Rockville, MD 20850

RE: Street Closing and Abandonment Application No. SCA2006-0097;  
Application of Montgomery County, Maryland;  
Mount Vernon Place

Dear Mr. Wasilak:

It is our understanding that the City has received a request from a resident of the "Courthouse Walk" community asking that the public hearing on Street Closing and Abandonment Petition SCA2006-0097 for Mount Vernon Place be postponed from its presently scheduled hearing date of July 13<sup>th</sup>. The request, as we have heard it, is based on the fact that the party requesting deferral feels that the "Courthouse Walk" community needs more time in order to prepare for the abandonment hearing.

We don't think that we need to remind you that the abandonment application was originally filed in 2005 (albeit in conjunction with a different planned use of the adjacent Montgomery County owned land). And even though that abandonment petition may not have proceeded to public hearing, its pendency and its affect should be general public knowledge after four years.

The following factors militate against a continuance of the public hearing from its presently scheduled date of July 13<sup>th</sup>:

1. There is no complaint that the application or associated notices are deficient. The request is based on "convenience" and, as pointed out in following paragraphs, just as many people could be inconvenienced by a rescheduling of the public hearing.

2. The abandonment request has been advertised in a paper of general circulation in the City and parties other than the person requesting continuance may well have made plans to attend the public hearing.

3. The City has sent notices to all adjoining and confronting property owners who also may have already made plans to attend the scheduled public hearing.

4. Postponing the hearing date will move it to a date later in the summer when more people are likely to be inconvenienced or will be unable to attend the public hearing due to vacation plans. Therefore, public participation is likely to be reduced by a postponement of the scheduled public hearing date of July 13<sup>th</sup>. Indeed, deferral of the July 13<sup>th</sup> public hearing date may well mean that the public hearing will not be able to take place until September, 2009.

5. Today is July 18<sup>th</sup>. There are 25 days before the Council's July 13<sup>th</sup> public hearing. That is more than adequate time for interested parties to familiarize themselves with the details of the abandonment proceeding. Indeed, the applicant and its partner, Victory Housing, Inc., will take the lead in organizing such an "education session".

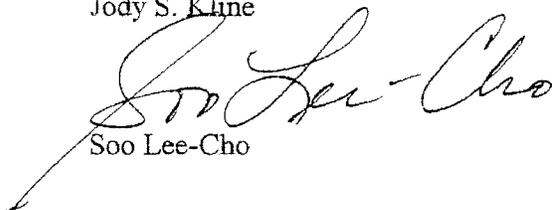
For the reasons set forth above, Victory Housing, Inc., respectfully requests that the public hearing scheduled for July 13, 2009, not be postponed or continued until a later date.

Sincerely yours,

MILLER, MILLER & CANBY

**JODY KLINE**

Jody S. Kline

  
Soo Lee-Cho

JSK/dlt

cc: Scott Ullery  
Claire Funkhouser  
Brenda Bean  
Debra Daniel, Esquire  
Cas Chasten  
Rick Nelson  
Alisa Wilson  
Jim Brown  
Jeff Blackwell  
Mike Plitt  
Logan Schutz

Planning Commission Hearing 6/24  
Susan Prince  
to:  
sswift, jwasilak  
06/19/2009 07:33 AM  
Cc:  
sullery, mayorcouncil  
Show Details

RECEIVED  
CITY OF ROCKVILLE  
JUN 19 2009 10:15

Dear Susan and Jim,

I am writing you this morning regarding the upcoming planning commission hearing on June 24<sup>th</sup>. It is my understanding that a review of the application to abandon the City's right of way behind Fleet Street is on the agenda (Street Closing and Abandonment Application SCA2006-00097) for that meeting. And subsequent to that meeting, the item will be forwarded to the Mayor and Council for review and approval.

I would like to formally request the postponement of this agenda item for 45 days.

Notification for this issue has not been sufficient to allow for review and discussion within the community. The West End Citizen's Association (WECA) has a general membership meeting scheduled for June 30<sup>th</sup> at which we are planning to review this issue and develop a position.

I appreciate your attention to this matter.

Sincerely,

*Susan Prince*

Susan Prince  
President  
West End Citizen's Association

Exhibit # 5

Attach C

Abandonment of Mt. Vernon Pl Right-of-Way  
noreen bryan

to:

Mayor & Council  
07/12/2009 09:08 PM

Cc:

Margaret Chao, Joe Jordan, Alice T Liu, Marcella Bowell, Bridget Newton, Susan Prince, Brian Shipley  
Show Details

Subject: SCA2006-00097Public Hearing Date: 7/7

History: This message has been replied to.

Dear Mayor Hoffman and Council Members:

I have spent as much time as possible in the last three days studying the latest revised staff report regarding the abandonment of the Mt. Vernon Pl right-of-way. The report was not provided until 8 July and I did not know when or if it would be available, but I have given it the best attention that I could in that short time. I find that there are significant deficiencies. The purpose of this message is to share these deficiencies with you in the hopes that you will expand your deliberations to repair these deficiencies and reach a better outcome for the citizens of Rockville.

The deficiencies are three-fold:

- <!--[if !supportLists]-->• <!--[endif]-->The staff report, which includes four options, has missed other significant options that are worthy of consideration. Inclusion of these missing options is essential to give citizens and their concerns a fair hearing.
- <!--[if !supportLists]-->• <!--[endif]-->The criteria that the report uses are incomplete and thereby omit issues that affect citizens.
- <!--[if !supportLists]-->• <!--[endif]-->Data is missing that is essential to assess and compare the merits of the options.

Further, it is clear that Victory Housing is attempting to maximize the size of its proposed development by increasing the amount of the land available to it. They are attempting to annex the land contained in the right-of-way and to annex the parking lot in the historic district between the houses at 150 Maryland Ave and 101 Fleet St. If these parcels of land are given to Victory Housing, there will be increased adverse impacts on the surrounding neighborhoods. The staff report fails to address these adverse impacts. In fact, citizen concerns are poorly addressed by the options selected by the staff and the way in which they were evaluated.

Further, critical information is missing which precludes an accurate assessment of the options. The City needs to wait until it has complete information and has shared it with citizens and given them sufficient time to fully understand and assess the impact to themselves and their properties.

### **Options Worthy of Consideration**

- Option 3A - Full abandonment of the public right-of-way, without the requested Public Improvement and Access Easement and with a Forest Conservation Easement on both halves of the right-of-way.
- Option 5 – Deny the application and retain the public right-of-way as it currently exists with a forest conservation easement on all of the area of the right-of-way and without the requested Public Improvement and Access Easement.
- Option 6- Partial abandonment of the public right-of-way. This option assumes abandonment of the right-of-way on the Courthouse Walk side of the property; and the City's retention of the public right-of-way on the Montgomery County side of the property. Further it includes a conservation easement on both halves of the right-of-way and does not include a Public Improvement and Access Easement

These additional options allow the city to explore the importance of more widespread environmental

C-9

protection and green space as recommended by the Master Plan, better buffering of existing properties, and alternative development designs that may be more in keeping with the character of the neighborhood.

### **Evaluation Criteria that are Missing and Need to be Included**

In the staff report the assessment of the options fails to consider:

- <!--[if !supportLists]-->• <!--[endif]-->Economic factor – specifically the impact on the property values of the historic properties on Fleet St. As stated in the description of the Rockville Historic District Commission, the establishment of historic districts as stated in the Annotated Code of Maryland, Article 66B 18.01 (b), shall be for five purposes, one of which is stabilizing and improving property values within these districts.
- <!--[if !supportLists]-->• <!--[endif]-->Economic factor – specifically the impact on the property values of existing houses in the surrounding neighborhoods
- <!--[if !supportLists]-->• <!--[endif]-->Impact on the character of the neighborhood
- <!--[if !supportLists]-->• <!--[endif]-->Health and Safety of residents living in existing properties
- Environmental impact on this area of Rockville. This is particularly important because of the large canopy of trees that was cut down to build the new Richard Montgomery High School which is located within a block of the proposed Victory Court development. This area of Rockville has already seen significant deforestation recently. Protecting the environment and saving green space is the policy and recommendations of the Master Plan which states:

#### **“Environmental Protection**

Master Plan p 6-3

Concern for protecting and improving the environment is an important issue nationwide and of great interest to Rockville residents.”

#### **CRITICAL ISSUES**

##### **Parkland Acquisition**

“As more parcels are developed in Rockville, it is very important that the City identify all possible ways to preserve open space. All undeveloped parcels within existing neighborhoods should be evaluated for parkland acquisition before they are developed as infill. This is especially critical in the City’s older established neighborhoods in order to increase the amount of park land in these communities.” Master Plan p.6-6

### **Data that is Missing, but needed to accurately assess the options**

**Easements-**In both staff reports regarding this abandonment there is reference throughout to easements for forest conservation, for public improvement and access, and for protection and maintenance of the existing storm drain. Easements are not general documents that apply in all cases. One forest conservation easement is not necessarily the same as another forest conservation easement. Without having the specifics of an easement fully defined including any incursions or exceptions it is not possible to accurately assess the relative merits of the options.

**State Law Re: abandonments-** Does state law restrict how the acreage of the right-of-way is shared between abutting property owners when the property is abandoned? Is a 50:50 split required by state law? If yes, then certain options may not be viable.

**Recommendations of the Historic District Commission Re:** Parking lot in historic district

**Decision of the Board of Appeals Re: Special Exception application for Victory Court.**

Until this decision is made it is unknown whether the proposed development will be approved or, if it is, what will be its size, height, parking needs, set-backs, etc. Without knowing this information the need for abandonment of this right-of-way can not be assessed accurately.

**Updated letters from the respective utility companies**

## **Age and Condition of the existing storm drain**

### **Interaction with the Community**

In the 24 June meeting the Planning Commission recommended that City staff should clearly explain the public benefit of abandonment of the right-of-way via holding a public information session. I strongly recommend that this be done to provide citizens with the expertise of the city staff who have so generously shared their time and knowledge with the developer, but have shared little with citizens.

Finally, it is my request that you direct the staff to include the options stated above, to expand the evaluation criteria so that all the benefits/adverse impacts to the community are addressed, to gather all missing data, to interact with members of the community just as they do with the developer, and then, to conduct a new, more accurate assessment of the merits of abandonment.

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<!--[endif]-->

Routed To:

Council

City Attorney

Hello, I'm Alice Liu. I live at 232 Lynn Manor Dr in Court House Walk. I'm a Planning Specialist at City Clerk's Office. I'm using [redacted] to address the Mt. Vernon Place road abandonment.

City Clerk  
 City Manager

Planning Specialist  
 Other

*Public Record - SCA 2006-0009*

I've read the updated Staff Report on the web site. We disagree with the Staff Recommendation of Option 4. This option does not address the community's concerns, because it does not increase the buffer space, it leaves room for a future bike or pedestrian path that increases risk for the community, and it provides for less control and certainty. We need time as a community to work with City Staff and the County to explore all the options and come to a solution. Of the options presented so far, Option 3 looks like the best, but I would rather reserve judgment until there is a Public Information Meeting and until we have engaged our own legal counsel, which is in progress.

With my limited time I am going to focus on three issues:

- We do not want a Public Improvement and Access Easement that would allow any road, bike path, or pedestrian path
- We MUST have a public information meeting as recommended by the Planning Commission
- Mayor and Council must allow City Staff to do the FULL analysis for the uses of this right of way before abandoning it.

Regarding the PIE and bike/pedestrian path:

1. We do not want a bike or pedestrian path of any kind on any part of the road, whether it's abandoned or not, for reasons of security, privacy, and the nuisance that will be created.
  - This path will be just 20-30 feet from our backyards. There is a real security risk – the only burglary in the neighborhood was because some kinds were walking behind our townhouses and saw an open sliding glass door.
  - Privacy is related to security. If a path is there, I would be inclined not to keep my blinds open because then someone would see my computer or TV equipment.
  - Having a path there will bring in people from outside the neighborhood who do not necessarily know to not let their dog poop back here. I have stopped at least one person walking their dog to introduce myself and found out they didn't live in the neighborhood.
  - We already pick up trash along our sidewalk on Monroe St and the path along S. Washington St. The city is not cleaning this up. Now you're potentially creating a third dumping ground which the City hasn't cleaned up. We do the cleanup ourselves.
  - My neighbor Jonathan Lock will elaborate on this further because there is very real cause for our concern. We see no benefit of a Public Improvement and

**Exhibit #** 6  
**Subject:** SCA 2006-0009  
**Public Hearing Date:** \_\_\_\_\_

Access Easement, only increased risk to our security, reduced privacy, and an increase in litter in our yards.

2. Regarding the Public Information Meeting:  
At about 5:15 or so I received a call from Craig Simoneau, the director of Public Works, and Mark Wessel, a civil engineer. We had a very good discussion and it reinforced the need for a public information meeting. They've seen Noreen Bryan's testimony submitted earlier today, which I'm very familiar with, and it turns out we were mistaken about several points. When we looked at the site plan, we thought the proposed PIE would be alongside or next to the storm drain easement, when in fact it would be above it. We thought that the space allocated for the bike path could instead be turned into forest with a forest conservation easement on it. It turns out that the storm drain easement will cover the entire southern half of the road, rendering all of the options presented by Noreen moot. There can be no forest conservation easement on the southern half of the road. Clearly there is much for us to learn and understand, and I believe Craig Simoneau and Mark Wessel are in agreement that a public information meeting is needed.
3. Third point, in that call they said that no one has analyzed the need for a bike path and that this analysis should be done and all potential uses of this land should be analyzed and exhausted before abandonment. Abandonment is irreversible, so I strongly urge you to allow the City Staff to thoroughly analyze all potential uses of this land.

Lastly I'd like to raise another issue related to the letter from the applicant's attorney that is attached to the Staff Report. Frankly, I was offended that the lawyer attempted to speak for Courthouse Walk, describing what he thought the costs and benefits of the road abandonment are for my community. Does anyone think he can objectively and authoritatively speak for my community? How many parties does he represent now – Victory Housing, the County, and now Courthouse Walk? I ask you to disregard this portion of the letter pertaining to the cost/benefit for Courthouse Walk. This went above and beyond the Staff's request to submit additional information addressing why Montgomery County seeks abandonment of the public right-of-way.

Exhibit # 7 Attach C

More direction needed from M&amp;C regarding the road abandonment

Alice T. Liu

to:

Mayor &amp; Council

07/15/2009 03:01 PM

Cc:

jwasilak, Cas Chasten, CSimoneau, cfunkhouser, BBean, noreen bryan, joe jordan, Margaret Chao, restrada

Show Details

Subject: SCA2006-00097

Public Hearing Date: \_\_\_\_\_

I'm not sure who all should receive this so please forward this to anyone I've missed.

I'm writing because I believe the Mayor and Council did not take all the action requested and needed at the Monday July 13 M&C meeting on the road abandonment issue and am requesting that this issue be fully addressed at next Monday's M&C meeting. The public hearing date was set without taking into account the need for a public information meeting and without a staff report that fully analyzes all the possible uses for the road. Unfortunately you were directed by Planning Staff only to set the public hearing date, but on page 6 of the staff report (page number of my printout from the city web site), bottom half of the page, #3 refers to the Planning Commission recommendation to hold a public information meeting, and the bullet says:

"Staff believes that from the Mayor and Council's July 13, 2009 meeting and discussion on this matter, it will be determined whether holding additional public informational sessions will be required."

So at the M&C meeting Monday night Staff should have asked you also to decide on this meeting. I think this meeting should have been decided in conjunction with the public hearing, so that the meeting dates could be coordinated. I don't recall any discussion amongst M&C of the need for a public information meeting and of course by this point in the agenda citizens could not speak to make sure the road abandonment discussion did not conclude without addressing this question.

After the meeting Monday night I spoke with Jim Wasilak, Cas Chasten, and Craig Simoneau, and they're willing to hold the meeting. Craig Simoneau and Mark Wessel were in agreement that such a meeting needs to be held when they called me at about 5 pm on July 13. But they're struggling with the date because if we have it in August, people will complain because they're on vacation, and if they hold it in September, people will complain that there isn't enough time before the September 14 public hearing. That is why Mayor and Council should have discussed the public information meeting - we need to have the public information meeting BEFORE the public hearing on September 14 so that everyone can take the discussion from the public information meeting into account when preparing for the public hearing.

The other issue unaddressed was that the staff needs to explore ALL potential uses for this right-of-way before deciding to abandon the road. Craig Simoneau had told me that the bike path was just an idea, that it has not been analyzed. The Staff Report contains no such analysis detailing every possible use and why it is or isn't needed, substantiated with facts and data, and therefore it needs yet another revision to provide the full analysis of ALL potential uses. The community would like to engage in this analysis with the Staff so that there is some community input to the possible uses - road, bike path, park, green space, etc.

I think the sequence of events should be as follows and ask that you put this on the agenda for next Monday's M&C meeting to decide (these dates are mainly examples to show how much time I'm

C-14

guessing is needed for each step and takes into account the summertime being a difficult time to get citizen review and input):

- Staff does first draft of analysis of ALL potential uses of the ROW - completed Sep. 1, 2009 (hypothetical date)
- Staff schedules public information meeting - Sep. 16, 2009
  - This needs to be beyond Courthouse Walk residents because we should talk about ALL POTENTIAL uses of the ROW, and hear why the City thinks a bike path might be needed instead of keeping it green space. The Staff report makes an assertion about an expected increase in foot traffic due to the expansion of the Town Center which is not substantiated with any data (see page 3 second paragraph of the Staff report).
- Staff incorporates comments from public info meeting, revises analysis and finalizes staff report for public hearing - Sep. 30, 2009
- Public hearing is held Oct. 19, 2009

The public hearing is the last and final discussion on the road abandonment, and I heard at least two council members, Piotr Gajewski and John Britton, say we must go slowly. Courthouse Walk is not necessarily opposed to the abandonment but we should be deliberate and not hasty in our decisions. Road abandonment is irreversible so I hope you will seriously consider my request to schedule this for next week's M&C meeting.

Thank you,

Alice

--

Alice T. Liu  
home/office: 301.340.7032  
cell: 202.236.1485  
Skype id: alicetliu

Exhibit # 8 Attach C

Subject: SCA2006-00097

Public Hearing Date: 9/14/09



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*\* All attorneys admitted in Maryland and where indicated*

JSKLINE@MMCANBY.COM

September 28, 2009

2009 SEP 28 PM 4: 33

Mayor and Council of Rockville  
Rockville City Hall  
111 Maryland Ave.  
Rockville, Maryland 20850

RE: Street Closing and Abandonment Application No. SCA2006-00097,  
Mount Vernon Place (between Maryland Avenue and Monroe Street)

Dear Mayor Hoffmann and Members of the City Council:

While the record is open, the Applicant would like to submit written comments in response to some of the questions that were asked during the September 14<sup>th</sup> public hearing on Abandonment Application No. SCA2006-00097. These comments supplement the answers that we offered at the hearing (although, in hindsight, not as precisely as we would have liked).

1. Forest and Tree Conservation Easement and Declaration of Covenants.

Mr. Britton asked several questions about the form of the forest conservation easement that would apply to part of the area proposed to be abandoned, as well as to a significant portion of the land owned by Montgomery County. We believe that your Staff will be submitting in its comments a copy of the standard Forest and Tree Conservation Easement and Declaration of Covenants agreement (hereinafter referred to as the Forest Conservation Easement) that is universally used by the City. But, we have also attached a copy of the standard form agreement and have several observations that, we believe, address Mr. Britton's concerns.

First of all, the Forest Conservation Easement itself does not specifically designate particular trees, or even percentages of trees, to be preserved on the property. The Forest Conservation Easement will cover and protect specified areas shown on a Final Forest

Conservation Plan, areas that must be approved by the City Forester in accordance with the City's Forest and Tree Preservation Ordinance. As can be seen in paragraph 2.b. of the standard Forest Conservation Easement, no removal of trees is permitted within the easement area without permission of City Planning Staff. Experience tells the Applicant that the only trees that can be removed within the designated forest conservation area would be trees that are, for some reason, dangerous (about to fall over, or with limbs about to break off) or diseased and potentially damaging to the entire forest. Individual trees retained and/or planted on the property that are identified/proposed on the Final Forest Conservation Plan are further protected under paragraph 3 of the Forest Conservation Easement.

The last full paragraph of the Forest Conservation Easement makes clear that the easement constitutes a covenant that runs with the title of the subject property and specifically binds any heirs, successors and assigns of the Grantor/Applicant.

In summary, the following conclusions can be drawn from the language of the City's standard Forest Conservation Easement and the manner in which it is applied. Those are:

- A. The City already has an effective tool for forest protection in the form of its standard Forest Conservation Easement and that document is rarely "watered down" as a result of discussions with an applicant.
- B. All forest area identified on plans approved by the City is subject to the protection of the Forest Conservation Easement.
- C. There is no discretionary removal of trees within the designated forest area without approval by the City Forester. Therefore, the quality of the forest cannot be eroded at the discretion of the property owner/Grantor due to the protections contained in the standard Forest Conservation Easement.
- D. The Forest Conservation Easement will run with the property and will be binding on all future owners of the land.
- E. If the City Council feels that the standard Forest Conservation Easement needs to be stricter because of unique circumstances related to this case, then the Council could provide guidance to the Staff to negotiate a tougher Forest Conservation Easement than is achieved by the standard document.

## 2. Forest Retention.

Councilmember Gajewski asked a series of questions which I was not able to answer as precisely as I would have liked.

Since the September 14<sup>th</sup> public hearing, we have reviewed the calculations for forest preservation in a manner that addresses Mr. Gajewski's simple question of: "Will granting the abandonment result in fewer trees on the Victory Court property?" Knowing

that this was an important issue to the Council, we performed the following calculations to obtain an answer to that question.

There is 0.28 acre (12,196.8 square feet) of forest located within the northern half of the Mount Vernon right-of-way. If abandonment is granted and the 0.28 acre of forest within the Mount Vernon right-of-way is therefore included in the total land area owned by Montgomery County that is required to comply with the City's forest conservation requirements, then 0.86 acre (37,461.6 square feet) of on-site forest would be protected under a forest conservation easement. Under the scenario whereby abandonment is not granted, the same 0.28 acre (12,196.8 square feet) of forest within the Mount Vernon right-of-way area would remain as is, along with 0.75 acre (32,670 square feet) of on-site forest protected under a forest conservation easement. (The difference in "on-site forest protection" between 0.86 acre and 0.75 acre being attributable to the lesser land area subject to analysis without inclusion of the abandonment area).

Comparing the two calculations, the scheme that does not include abandonment retains a modestly greater amount of overall forest area by approximately 0.17 acre (7,405.2 square feet). However, the scheme that includes abandonment results in a greater amount of forest area protected by a recorded Forest Conservation Easement – by 0.11 acre (4,791.6 square feet).

[NOTE: The City could NOT both keep the Mount Vernon right-of-way (i.e., deny abandonment) AND self-impose a forest conservation easement or otherwise designate the area as perpetual green space without arguably violating the original purpose for which the land was granted by the original landowners and received by the City, which was for use as a future right-of-way.]

### 3. Forest Preservation and Enhancement.

The purpose of the City's Forest and Tree Preservation Ordinance is not only to retain as much forest area as possible but to make sure those areas are preserved in a manner that enhances their quality and enables them to thrive.

Retention of existing forest is not necessarily the only goal that should be considered when evaluating the Applicant's proposal. The obligation to remove non-native/exotic and invasive plants from forested areas protected under the City's Forest Conservation Easement is a standard requirement imposed by the City Forester, which will serve to enhance the long-term viability of the forest located within the Mount Vernon right-of-way.

In addition, as mentioned during our comments on September 14<sup>th</sup>, having access to and control over the abandoned area allows the Applicant to enhance the existing forest, with City Planning Staff's review and authorization, in a manner that improves the quality of the forest and improves the buffering/screening function between the proposed project and the Courthouse Walk community.

The point that I briefly tried to describe the other evening, but did not make as clear as I wished, is that the City's Forest Conservation Staff has brought to our attention that the understory planting desired by the Applicant in the canopy of the forest on the contiguous Montgomery County, Maryland property would not be as successful as we had originally anticipated. The City's forest conservation staff has advised the Applicant that supplemental plantings would be most effective if they were planted along the "edge" of the existing forest where more sun and light would allow these plantings to be healthier and more effective. It is the Applicant's intent to work with the City Forester to maximize the number of plantings especially along the southern edge of the existing forest that is located within the right-of-way of Mount Vernon Place. Therefore, abandonment of Mount Vernon Place, combined with the Applicant's proffer, to be confirmed by a special exception condition, would result in additional plantings in the optimum area (the abandoned right-of-way) and in a manner that would enhance the quality and buffering/screening function of the forest.

In summary, selecting the option that merely provides the least amount of tree clearing does not necessarily result in the best quality forest or the optimum buffering and screening between Victory Court and the Courthouse Walk townhouse community.

4. Disposition of Land Upon Abandonment.

For Councilmember Marcuccio's benefit, we have enclosed a copy of the identification plat for the area of Mount Vernon Place proposed to be abandoned. We have added a "dashed" red line down the middle of the 60 foot right-of-way showing where the right-of-way would be divided if total abandonment was granted. The land northeast of the dashed red line would revert to Montgomery County, Maryland; the land southwest of the dashed line would accrete to the ownership entity associated with the Courthouse Walk community.

The land area that will revert to Montgomery County, Maryland, will be devoted to forest conservation to the greatest extent possible. The land that reverts to the Courthouse Walk HOA will be subject to an easement for an existing storm drain.

In summary, both the County and the Courthouse Walk HOA are in agreement and support abandoning the Mount Vernon Place right-of-way in the manner described above, which would result in each receiving an equal amount of land area. The use of the land reverting to Montgomery County will be controlled by the conditions of a special exception and the conditions of approval of a site plan. The land that will revert to the Courthouse Walk HOA can be used in any manner not inconsistent with retention and maintenance of the existing storm drain located in the southern half of the Mount Vernon right-of-way.

We appreciate this opportunity to submit these supplemental comments on Abandonment Application No. SCA2006-00097.

Sincerely yours,

MILLER, MILLER & CANBY

**JODY KLINE**

Jody S. Kline



Soo Lee-Cho

Enclosures

cc: Scott Ullery  
Susan Swift  
Debra Daniel, Esquire  
Jim Wasilak  
Bobby Ray  
Castor Chasten  
Elise Cary  
Mark Wessel  
Rebecca Torma  
Jim Brown  
Jeff Blackwell  
Alisa Wilson  
Joe Giloley  
Mike Plitt  
Logan Schutz  
Alice Liu  
Norman Knopf, Esquire

[Revised 2/21/08  
to delete "Grant of" for consistency]

Parcel Identifier No.

**FOREST AND TREE CONSERVATION EASEMENT AND  
DECLARATION OF COVENANTS**

THIS FOREST AND TREE CONSERVATION EASEMENT AND DECLARATION  
OF COVENANTS is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by  
\_\_\_\_\_, a \_\_\_\_\_ (State name) \_\_\_\_\_ (corporation, limited  
partnership, limited liability company, etc.) hereinafter referred to as the "Grantor," for the  
benefit of THE MAYOR AND COUNCIL OF ROCKVILLE, a municipal corporation organized  
under the Laws of Maryland (hereinafter referred to as the "City").

WITNESSETH:

WHEREAS, Grantor is the owner of real property located within the City of Rockville,  
Maryland, described as follows:

All of that property conveyed to Grantor from \_\_\_\_\_, a \_\_\_\_\_, by deed  
dated \_\_\_\_\_ and recorded among the Land Records of Montgomery County,  
Maryland in Liber \_\_\_\_\_ at Folio \_\_\_\_\_

Said property also being Lot \_\_\_\_\_, Block \_\_\_\_\_ depicted on a plat of  
subdivision entitled "\_\_\_\_\_"; recorded among the Land Records of  
Montgomery County, Maryland in Plat Book No. \_\_\_\_\_ at Plat No. \_\_\_\_\_.

herein referred to as the "Subject Property;" and

WHEREAS, Grantor desires to develop the Subject Property, and in furtherance thereof  
has obtained final record plat approval [and/or has obtained use permit approval] and applied for  
a Rockville Sediment Control Permit and Forestry Permit; and

WHEREAS, as a condition of Final Record Plat PLT \_\_\_\_\_ [and/or Use Permit  
USE \_\_\_\_\_], Sediment Control Permit No. SCP \_\_\_\_\_, Forestry Permit FTP \_\_\_\_\_,

and other development approvals, Grantor must comply with the requirements of Chapter 10.5 of the Rockville City Code pertaining to forest and tree preservation; and

WHEREAS, in accordance with said Chapter 10.5, Grantor has prepared and received approval of a Forest Conservation Plan for the Subject Property, designated FTP \_\_\_\_\_, which plan is filed with and maintained by the Rockville City Forester (hereinafter the “City Forester”); and

WHEREAS, FTP \_\_\_\_\_ provides for the protection of existing trees and forested areas and for the installation, maintenance, and protection of certain additional trees and forested areas on the Subject Property *[this recital can be modified as appropriate]*; and

WHEREAS, Chapter 10.5 requires Grantor to subject the Subject Property to a perpetual conservation easement across the areas designated on the approved Forest Conservation Plan for forest and tree conservation and preservation; and

NOW, THEREFORE, in consideration of the issuance by the City of the necessary development approvals and permits, and for the purpose of complying with the requirements of Chapter 10.5 of the Rockville City Code, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby executes this Forest and Tree Conservation Easement and Declaration of Covenants and does hereby grant and convey to the City, its successors and assigns, forever and in perpetuity, a conservation easement across the entire Subject Property (hereinafter "Conservation Easement"), for the purpose of protecting and preserving forested areas and individual trees on the Subject Property consistent with the approved Forest Conservation Plan FTP \_\_\_\_\_ and applicable laws and regulations.

The Conservation Easement encompasses forest retention and conservation area(s) (hereinafter “Forest Conservation Area(s)”) described in Exhibit A and shown on Schedule A,

and individual landscape trees planted generally across the Subject Property as shown on Schedule B (hereinafter “individual trees”).

The said Conservation Easement is hereby intended to be granted and conveyed together with all the rights, privileges, appurtenances, and advantages thereto belonging or appertaining to its proper use and benefit forever by the City, its successors and assigns.

AND the Grantor covenants and agrees for itself, its successors and assigns to abide by the following terms, restrictions, and conditions:

1. The foregoing recitals are incorporated herein.
2. With respect to the Forest Conservation Area(s) as described and shown on Exhibit A and Schedule A, respectively:

- a. The Conservation Easement across the Forest Conservation Area(s) is for the purpose of: protecting and preserving existing and future forest cover, individual trees, streams and adjacent buffer areas, wetlands and other sensitive natural features; maintaining existing natural conditions to protect plant habitats, water quality and wildlife; and generally protecting and preserving the topography and natural features within the Forest Conservation Area(s).

- b. No healthy, living tree within the Forest Conservation Area(s) shall be cut down, removed or destroyed without prior written consent from the City Forester or other designated agent of the City Manager (hereinafter referred to as the "City Forester"). Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after reasonable notice to the City Forester, unless such notice is not practical in an emergency situation or the removal is executed pursuant to an approved Forest Conservation Plan. Grantor shall plant any substitute trees as may be required by the City Forester in accordance with the City's Forest Conservation Manual.

c. Except for afforestation and reforestation activities pursuant to an approved Forest Conservation Plan, Grantor shall not engage in, or permit, any construction, excavation, grading, erection of any structure, or any other activity on the Subject Property in a manner that damages, kills, or injures any tree within the Forest Conservation Area(s).

d. No plant materials (including, but not limited to shrubs, brush, saplings, undergrowth, weeds and vines) within the Forest Conservation Area(s) shall be pruned, mowed or cut down, dug up, removed or destroyed without prior written consent from the City Forester, unless said activity is pursuant to the terms and conditions of an approved Forest Conservation Plan. Exotic and invasive plants as defined by the Maryland Department of Natural Resources Wildlife and Heritage Division may be removed as required by law, provided that such removal shall be limited to exotic and invasive plants only, and protective measures are taken to protect nearby trees and shrubs.

e. Grantor may replace dead trees or undergrowth within the Forest Conservation Area(s) with plantings that are characteristic of trees or undergrowth native to the piedmont of Maryland.

f. The following activities may not occur in the Forest Conservation Area(s) unless provided for in an approved Forest Conservation Plan or first approved in writing by the City Forester:

- i. Construction, excavation or grading or depositing of fill;
- ii. Erection of any building, fence, retaining walls, or structural improvements on or above ground, including but not limited to sheds and dog pens;
- iii. Construction of any roadway or private drive;

iv. Activities that in any way could alter or interfere with the natural ground cover or drainage;

v. Location or installation of any component of a septic system;

vi. Installation of utility lines, pipes or cables;

vii. Dumping of unsightly or offensive material, including trash, construction material and debris. Prior approval is not required for the dumping of ashes, sawdust or grass clippings in a properly designed, managed or maintained compost pile. Upon written approval of the City Forester, suitable fill and other stabilization measures may be placed to control and prevent erosion, provided that the fill is properly stabilized;

viii. Posting of any advertising, including signs and billboards;

ix. Excavation, dredging or removal of loam, gravel, soil, rock, sand and other material;

x. Diking, dredging, filling or removal of wetlands;

xi. Any other activity that damages forests or trees, streams or water quality, plant or wildlife habitats, or the natural topography.

g. All rights reserved by, or not prohibited to, Grantor shall be exercised so as to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the Forest Conservation Area(s).

h. Nothing in this Forest and Tree Conservation Easement and Declaration of Covenants precludes the use of the area within the Forest Conservation Area(s) for passive recreational activities, such as hiking or nature study, provided that no construction or grading shall occur in connection with such activity without the prior written approval of the City Forester.

3. With respect to the individual trees:

a. No individual trees retained and/or planted on the Subject Property, as designated on FTP \_\_\_\_\_, shall be destroyed, removed, moved or pruned without the prior written permission of the City Forester. Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after reasonable notice to the City Forester, unless such notice is not practical in an emergency situation or the removal is executed pursuant to an approved Forest Conservation Plan. Grantor shall plant any substitute trees as may be required by the City Forester in accordance with the City's Forest Conservation Manual.

b. Grantor shall not engage in, or permit, any construction, excavation, grading, erection of any structure, or any other activity on the Subject Property in a manner that damages, kills, or injures any tree retained or planted in accord with the requirements of FTP \_\_\_\_\_. Utilities may be installed on the Subject Property only with the written permission of the City Forester and other required City permits.

4. The City Forester and other representatives of the City may, at reasonable hours and without prior notice, enter upon the Subject Property and the Forest Conservation Area(s) for the purpose of making inspections to ascertain whether there has been compliance with the terms, restrictions, and conditions of this Forest and Tree Conservation Easement and Declaration of Covenants. This Forest and Tree Conservation Easement and Declaration of Covenants does not convey to the general public the right to enter the Subject Property or the Forest Conservation Area(s) for any purpose whatsoever.

5. Grantor further agrees to specifically refer to this Forest and Tree Conservation Easement and Declaration of Covenants in a separate paragraph of any subsequent deed, sales

contract, mortgage, or other legal instrument (including a lease agreement) by which any interest in the Subject Property is conveyed.

6. The City shall have the right, but not the obligation, to enforce the provisions, conditions, and restrictions contained in this Forest and Tree Conservation Easement and Declaration of Covenants in accordance with any statutory authority, including, but not limited to, the imposition of civil monetary fines and penalties, and by injunction or other appropriate relief in any court of competent jurisdiction, including the right to restore the Subject Property and Forest Conservation Area(s) to a condition consistent with FTP \_\_\_\_\_ or approved modification thereof, and to recover damages in an amount sufficient to cover the cost of such restoration and court costs and reasonable attorneys' fees.

7. No failure on the part of the City to enforce any provision of this Forest and Tree Conservation Easement and Declaration of Covenants shall waive the City's right to enforce the same provision at a later date or to enforce any other provision of this document.

8. This Forest and Tree Conservation Easement and Declaration of Covenants in no way obligates the City to maintain the trees on the Subject Property or within the Forest Conservation Area(s), nor does it render the City liable for any damage to persons, property, or the environment, resulting from the use of, or activity on, the Subject Property or within the Forest Conservation Area(s), whether or not such use or activity is approved by the City or in accord with this Forest and Tree Conservation Easement and Declaration of Covenants.

9. Grantor will warrant specially the Conservation Easement granted herein and will execute such further assurances as may be requisite.

10. Grantor hereby certifies that there are no suits, liens, leases, mortgages, or trusts affecting the Subject Property, other than those for which the holder in interest has signed this



be the person whose name is subscribed to the within instrument, who acknowledged himself to be the President of XYZ Corporation, a Maryland corporation and Managing Member of ABC LLC, a Maryland limited liability company, and who did further acknowledge that he, in such capacity and being authorized so to do, executed the foregoing Forest and Tree Conservation Easement and Declaration of Covenants on behalf of the ABC LLC for the purposes therein contained, by signing the name of ABC LLC, by himself as President of XYZ Corporation, its Managing Member .

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

CONSENT OF TRUSTEES

The undersigned trustee(s) named in a certain deed of trust dated \_\_\_\_\_, securing repayment of a loan from \_\_\_\_\_, and recorded among the Land Records of Montgomery County, Maryland, in Liber \_\_\_\_\_, Folio \_\_\_\_\_, with the consent of the holder of the note secured by said deed of trust, does hereby consent to the foregoing Forest and Tree Conservation Easement and Declaration of Covenants and agree that his/her interest in the Subject Property shall be subordinate and subject thereto.

\_\_\_\_\_  
Trustee Date

\_\_\_\_\_  
(Print or type name)

\_\_\_\_\_  
Trustee Date

\_\_\_\_\_  
(Print or type name)

STATE OF MARYLAND;

SS:

COUNTY OF MONTGOMERY:

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned officer, personally appeared \_\_\_\_\_ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Forest and Tree Conservation Easement and Declaration of Covenants and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF MARYLAND:

SS:

COUNTY OF MONTGOMERY:

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned officer, personally appeared \_\_\_\_\_ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Forest and Tree Conservation Easement and Declaration of Covenants and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

***[Note: The signature block and notary forms are examples. Although documents submitted for review need not be signed, they should contain a correct, full and complete ownership block, notary forms and consent of trustees, including the appropriate pronouns and the names and titles of all persons who will be signing the document.]***