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July 1, 2009

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;
Mount Vernon Place;
Application of Montgomery County, Maryland;

Dear Mr. Wasilak:

We understand that the City Council meeting of July 13th is now intended to be a "discussion opportunity" rather than a public hearing of Abandonment Application No. SCA2006-00097. You have advised us that Staff is preparing a report for the Council's consideration outlining issues that arose during the Planning Commission's review on June 24th and providing the Council with an analysis of numerous options that it can consider in conjunction with this Street Closing petition.

On behalf of the adjacent owner and applicant, Montgomery County, Maryland, and its development partner, Victory Housing, Inc., we would like to provide you with the following information that may assist you in preparation of your Staff analysis.

I. BACKGROUND.

Street Closing and Abandonment Application SCA2006-00097 was filed in 2006 by Montgomery County in conjunction with a plan proposed by its then-development partner Eakin Youngentaub & Associates (EYA). That project did not proceed but the abandonment petition was not withdrawn.

When Victory Housing became partnered with Montgomery County, it elected to resurrect the dormant abandonment proceedings for a number of reasons which basically broke down into two categories – benefits to the proposed "Victory Court" project and benefits to the adjacent "Courthouse Walk" community. At the Planning Commission's meeting on June 24th a number of residents of "Courthouse Walk" testified that they were unfamiliar with and were unsure that there were any benefits to their community. For that reason, we have invited the residents of "Courthouse Walk" (and others who testified at the June 24th meeting) to a meeting on the evening of July 6th when we will explain the benefits and, we believe, the absence of negatives if abandonment occurs and one-half of the dedicated Mount Vernon right-of-way reverts to the HOA's ownership and control. At the meeting on July 6th, we will provide the attendees with the following information.

II. WHAT ARE THE COSTS TO THE "COURTHOUSE WALK" COMMUNITY IF ONE-HALF OF THE ADJACENT MOUNT VERNON RIGHT-OF-WAY REVERTS TO THE HOA?

We have identified three items that may affect the costs of operation of the "Courthouse Walk" community in the event that it acquires additional land. Those items, analyzed below, are:

A. Real Property Taxes.

Attached is a copy of an information sheet published by the State Department of Assessments and Taxation. This form shows that the HOA land presently owned by the Association is "Exempt" from real property taxes and has no assessed value.

From this information, we conclude that acquiring one-half of the right-of-way of Mount Vernon Place will have no effect on property taxes paid by the association.

B. Insurance.

It is our belief, based on the experience of our law firm in both creating and representing homeowners' associations, that the HOA's insurance bill is not determined by the amount of land that the association owns but, rather, the improvements installed on that land. Accordingly, we conclude that the Association's insurance bill will not increase upon acquisition of additional land.

C. Maintenance.

Acquisition of additional land area will mean more ground to be mowed and trees to be maintained by the HOA. We do not have access to the Association's records for grounds' maintenance expenses so we can not estimate or predict the amount of increase, if any, for those services. However, it was noted by witnesses testifying at the Planning Commission meeting that the Association already mows some of the dedicated right-of-way so the incremental increase in maintenance cost may not be large.

III. WHAT ARE THE BENEFITS TO THE "COURTHOUSE WALK" COMMUNITY IF ONE-HALF OF THE ADJACENT MOUNT VERNON RIGHT-OF-WAY REVERTS TO THE HOA?

Basically, the exposure of the "Courthouse Walk" community to either repair work within the dedicated right-of-way, or to new improvements constructed within the right-of-way, does not materially change whether the adjacent land is in public or private ownership.

A. Current situation or if abandonment does not occur.

Today, the dedicated right-of-way of Mount Vernon Place is under the absolute control of the City which can at any time enter upon the property to perform maintenance, repair or replacement work of the existing 54" storm drain under whatever procedures and practices (e.g., notice, protective measures, days and hours of construction, "clean-up", etc.) the City has adopted at the time of the construction.

Similarly, the City has an unfettered right to construct a public improvement of its choosing (e.g., walkway, bike path) within the right-of-way although City officials have indicated that such action would not occur without first there being some form of public discussion, such as adoption of a funding item in the City CIP, or some other form of neighborhood outreach.

B. If abandonment occurs.

If abandonment occurs, a recommended condition is that the land abandoned be covered by an easement that allows the City the right to enter the HOA's gained property to perform maintenance, repair or replacement of the existing storm drain. Therefore, the City will be able to perform the same functions that it has the unrestricted ability to do today but must do so under the terms of the reserved easement (which may contain additional procedures – such as prescribed advance notice – that might not occur otherwise).

Similarly, Staff has recommended that the City secure a public improvements easement in the southern half of the abandoned ROW in the possibility that the City might wish to install a public improvement (e.g., walkway, bikeway) in the abandoned right-of-way. Again, all the City's rights remain unchanged. They will just be exercised under a different set of requirements, specified in the PIE document, instead of under the *status quo* arrangement.

Accordingly, if the northern half of the ROW reverts to Montgomery County, Victory Housing has proffered that it will provide supplemental landscaping within that area to reduce the visibility of the "Courthouse Walk" townhouses and the "Victory Court" building from each other. Victory Housing would not be inclined to plant on land not under its control.

C. Summary.

While the City's rights to make improvements within the abandoned right-of-way are unaltered by abandonment, the HOA may enjoy an improved situation after abandonment because the required storm drain easement and PIE will specify the terms and conditions under which maintenance, repair and replacement work can occur. Such specificity might give the community a higher level of comfort notwithstanding the best intentions of the City when exercising its rights over land which has been dedicated to public use.

IV. WHAT ARE THE BENEFITS TO THE "VICTORY COURT" COMMUNITY IF ONE-HALF OF THE ADJACENT MT. VERNON RIGHT-OF-WAY REVERTS TO MONTGOMERY COUNTY?

As indicated in our testimony before the Planning Commission, having or not having the additional land area from one-half the adjacent Mt. Vernon right-of-way incorporated into the Victory Court special exception area does not impact the density, size, mass or height of the U-shaped building being proposed on the site for senior housing. (The Mixed-Use Transition (MXT) zone within which the site is located does not have an FAR or other density limit based on net lot area.)

The additional land area would, however, allow for additional flexibility in how certain other improvements are laid out or provided on the site.

A. Additional Parking.

Primarily, the abandonment of one-half the adjacent right-of-way would afford the project with the opportunity to provide more than the minimally required number of parking spaces prescribed by the Zoning Ordinance for a senior housing community. The City's parking requirement for the proposed 86-unit Victory Court community is only 1 space for every 3 units, or 29 parking spaces. The recently filed special exception application proposes a total of 53 parking spaces.

The inclusion of parking spaces above what is minimally required by the City's code is based on Victory Housing's experience at numerous other senior housing communities throughout Montgomery County. Victory Housing has found that over time, as their residents age in place, the need to maintain/accommodate their own means of transportation becomes less of an issue. But a higher percentage of today's seniors, especially when they enter the community, are looking to have their own means of transportation on site at least initially; thereby, creating a need for additional parking. The abandoned one-half of the right-of-way would allow additional land area on which the project can meet its forest conservation requirements (in terms of compliance with required on-site plantings) in order to do so.

Abandonment would further allow the project to provide supplemental plantings and other screening mechanisms determined to be appropriate within its one-half

of the abandoned right-of-way area that would serve to mitigate any perceived negative impacts caused by the additional parking.

B. Stormwater Management Facility.

Currently a small portion of Victory Court's underground stormwater management facility is designed within the County's one-half of the Mt. Vernon right-of-way. The stormwater management facility could be redesigned and located outside of the right-of-way area, but approval of the abandonment (at least the County's one-half) would afford some flexibility in this regard.

C. Rear Setback.

If the abandonment is not granted, then the proposed building as currently shown on the special exception site plan would need to be shifted slightly to the north away from the rear property line by 2.6 feet in order to meet the 40 foot building restriction line applicable to the property. Again, the rear setback of the proposed building is something that could be adjusted, but regarding which if the abandonment is granted would afford the community more flexibility.

D. Summary.

The overall benefits that flow to the Victory Court project from the abandonment do not relate to size, mass, height or location of the proposed building. They do relate to the optimum program for elderly residents and a significant feature of that program – additional parking – which does not have a negative impact on the surrounding land uses.

V. ADDITIONAL CONSIDERATIONS.

A number of other abandonment and development options were discussed at the Planning Commission's June 24th hearing or have been identified since that meeting. These alternatives are:

A. Abandon only the northern half of Mount Vernon Place and leave the southern portion remaining in public ownership and available for public usage as determined by the City.

This option has the overall benefit of giving Montgomery County /Victory Housing the additional land area that it seeks but does not "saddle" the HOA with any land that it may not want. There is no legal or practical problem with abandoning only one-half of the ROW.

B. Forego abandonment, but allow the parking lot for "Victory Court" to encroach into the dedicated public right-of-way a limited distance (approximately 8 feet per the current plans) under a license agreement or an easement for such an encroachment.

This option, which was first described by Planning Commissioner Hill as a potential means of eliminating the need for the abandonment if the physical

encroachment of the proposed parking facility is otherwise made allowable in the right-of-way, does not address the larger "forest conservation" issue related to the additional parking proposed.

C. Allow payment of a "fee in lieu" for any shortfall in "forest" that cannot be achieved on the existing County land so that abandonment is not essential.

By incorporating the northern half of the abandoned right-of-way into the project area, the applicant is able to meet its forest conservation requirements on the "expanded" site and that allows Victory Housing to install the number of parking spaces that it believes that its residents will require. If abandonment does not occur, then the Applicant will increase its on-site plantings but will likely fall short of satisfying its forest conservation requirements on site. If the City would accept a "fee in lieu", which is provided for under the forest conservation regulations, then abandonment is not necessary but adequate parking to support the proposed seniors' housing will still be provided.

Thank you for this opportunity to provide background information to assist you and your Staff in preparation of an "options" memorandum to be submitted to the City Council for its June 13th meeting.

Sincerely yours,

MILLER, MILLER & CANBY

JODY KLINE

Jody S. Kline

Soo Lee-Cho

Soo Lee-Cho

JSK/dlt

cc: Cas Chasten
Mark Wessel
Nazar Saleh
Debra Daniel, Esquire
Joe Giloley
Alisa Wilson
Jim Brown
Jeff Blackwell
Mike Plitt
Logan Schutz

Maryland Department of Assessments and Taxation
MONTGOMERY COUNTY
Real Property Data Search (2007 vw2.3)

Go Back
View Map
New Search

Account Identifier: **District -** 04 **Account Number -** 02461410

Owner Information

Owner Name: COURTS OF TOWNE CENTER

Use: EXEMPT
Principal Residence: NO

Mailing Address: HOMEOWNERS ASSOCIATION INC
326-A LYNN MANOR DR
ROCKVILLE MD 20850

Deed Reference: 1) / 6611/ 145
2)

Location & Structure Information

Premises Address
LYNN MANOR DR

Legal Description
PAR A ROCKVILLE HEIG
HTS

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
GR32				225		3		1	Plat Ref:

Special Tax Areas
Town ROCKVILLE
Ad Valorem
Tax Class 50

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		154,296.00 SF	740

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2007	Phase-in Assessments As Of 07/01/2008	As Of 07/01/2009
Land	0	0		
Improvements:	0	0		
Total:	0	0	0	0
Preferential Land:	0	0	0	0

Transfer Information

Seller:
Type: IMPROVED ARMS-LENGTH
Date: 12/21/1984
Deed1: / 6611/ 145
Price: $0
Deed2:

Seller:
Type:
Date:
Deed1:
Price:
Deed2:

Seller:
Type:
Date:
Deed1:
Price:
Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2008	07/01/2009
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: COUNTY AND STATE
Exempt Class: OTHER

Special Tax Recapture:
* NONE *