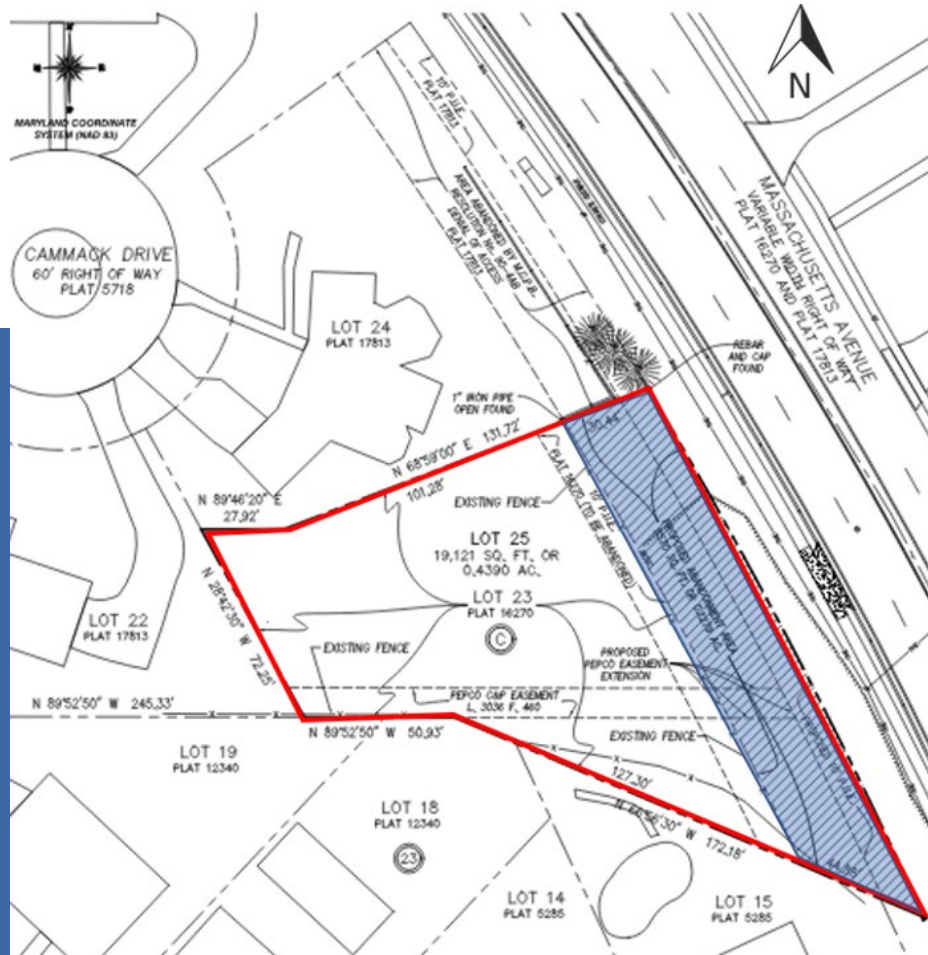




5212 MASSACHUSETTS AVENUE

PRELIMINARY PLAN NO. 120220170



Description

A request to abandon unused right-of-way for Massachusetts Avenue (5,570 square feet), and incorporation of the area back into a lot on the subject property (existing Lot 23).

No. 120220170
 Completed: 9-16-2022

MCPB
 Item No. xx
 09-29-2022

Montgomery County
 Planning Board
 2425 Reedie Drive, Floor 14
 Wheaton, MD 20902

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LOCATION/ADDRESS

5212 Massachusetts Avenue, Bethesda

MASTER PLAN

1990 Bethesda-Chevy Chase Master Plan

ZONE

R-60

PROPERTY SIZE

13,551 square feet (0.31 acres)

APPLICANT

Peter Turza

ACCEPTANCE DATE

June 1, 2022

REVIEW BASIS

Chapter 49 Section 68 of the Montgomery County Code



Summary:

- Staff recommends approval of Preliminary Plan No. 120220170 with conditions.
- The Subject Property consists of a recorded, vacant lot and a portion of unused right-of-way (5,570 square feet) along Massachusetts Avenue. The Applicant requests to abandon the unused right-of-way along Massachusetts Avenue and incorporate it into the existing recorded lot. If approved, Massachusetts Avenue will consist of 120 feet of right-of-way, as master planned.
- The abandonment area consists of a parcel that has not been improved or used for the purposes for which it was intended or dedicated, located on Massachusetts Avenue.
- No development is proposed as part of the Preliminary Plan.
- The Preliminary Plan Application is for right-of-way abandonment purposes only. Therefore, findings for preliminary plans found in Chapter 50 are not required and the Applicant has been reviewed based on findings in Chapter 49-68.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN 120220170

Staff recommends approval with conditions of the Preliminary Plan to abandon unused right-of-way for Massachusetts Avenue, and incorporation of the area back into a lot on the subject property (Recorded Lot 23, proposed to be Recorded as new Lot 25). All site development elements shown on the latest electronic version of the Preliminary Plan No. 120220170 as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions.

GENERAL APPROVAL

1. This Preliminary Plan will increase the existing lot size from 13,551 square feet to 19,121 square feet.

PLAN VALIDITY PERIOD

2. The Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

OUTSIDE AGENCIES

3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter June 15, 2022 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
4. The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration (“MDOT SHA”) in its letter August 19, 2022 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDOT SHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

RECORD PLAT

5. The record plat must show the abandonment of 5,570 square feet (0.13 acres) of previously dedicated but unimproved right-of-way in Massachusetts Avenue, as shown on the Certified Preliminary Plan.

6. The record plat must show the PEPCO Easement and the 10-foot Public Utility Easement (PUE) along the Site frontage, as shown on the Preliminary Plan.

CERTIFIED PRELIMINARY PLAN

7. Prior to approval of the Certified Preliminary Plan, the Applicant must show resolutions and approval letters on the certified set.

SECTION 2: SITE DESCRIPTION

VICINITY

The Site is located within the SpringHill residential neighborhood of the greater Bethesda area, approximately a quarter mile north of the County's border with Washington, D.C.

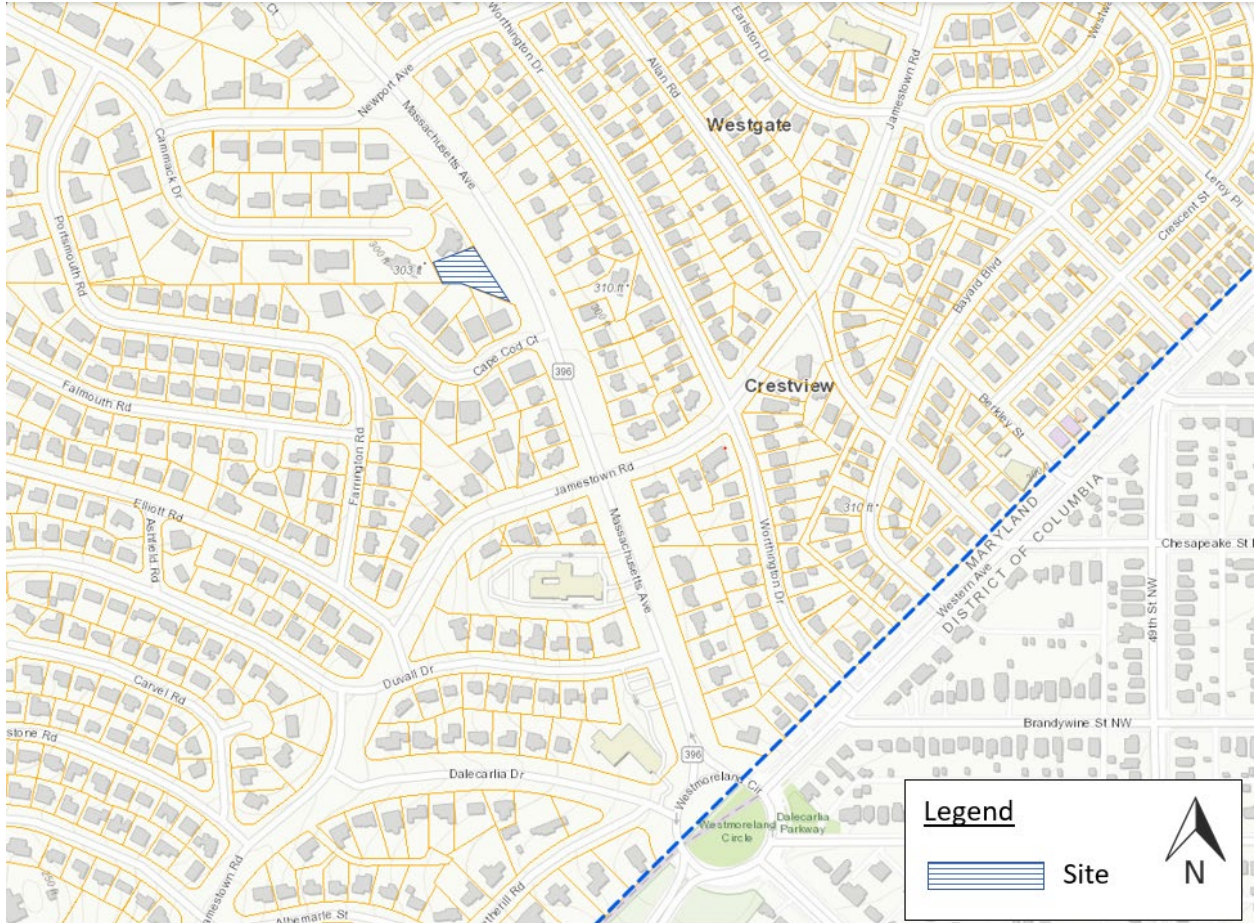


Figure 1 - Vicinity Map

The Site is zoned R-60 and is surrounded by single-family dwelling units, also zoned R-60.

The total dedicated right-of-way width along Massachusetts Avenue varies between Little Falls Parkway (north of the map extents) and the Washington, D.C. border from 180 feet to 120 feet. South of the Site, the dedicated right-of-way is consistently 120 feet until the Washington D.C. border. There are several driveways connecting to Massachusetts Avenue on the east side and fewer on the west side.

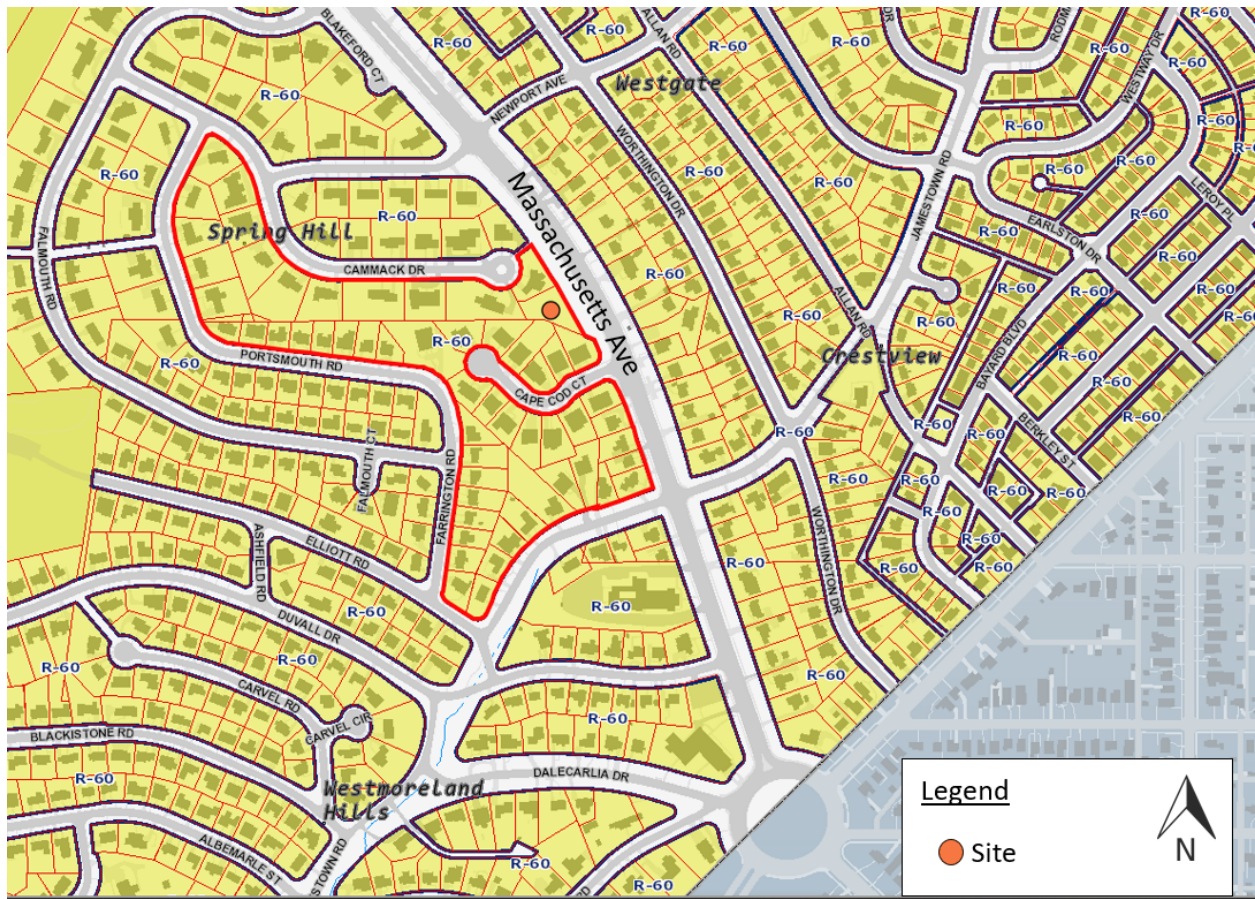


Figure 2 – Surrounding Zoning

PROPERTY DESCRIPTION

The Site is located at 5212 Massachusetts Avenue, and is legally identified as Lot 23, Block C, Summer Park Subdivision (Plat 5718). The Applicant purchased the Property in 2021 as a buildable lot. The Property has frontage only on Massachusetts Avenue and access is provided by an existing curb cut, approved by MDOT SHA, located along the southern frontage portion of the Property.



Figure 3 – Subject Property

SECTION 3: PROJECT DESCRIPTION

RELEVANT PREVIOUS APPROVALS

The Applicant also owns the northern adjacent property, 5102 Cammack Drive. In 1989, the Planning Board approved Preliminary Plan 119891420 to abandon a portion of previously dedicated but unused public right-of-way along Massachusetts Avenue (30 feet in width) that was adjacent to that property. Similar to the Subject Application, the area was dedicated public right-of-way that had never been improved or used for access and determined not to be needed for future public use. The abandonment was effectuated by Record Plat 17813, creating Lot 24.

PROPOSAL

The Applicant is requesting abandonment of a portion of previously dedicated but unused right-of-way along the west side of Massachusetts Avenue, which forms the eastern boundary of Lot 23. As shown on Plat 5718, Massachusetts Avenue consists of 150 feet of public-right-of-way (Attachment B). According to the 1990 *Bethesda-Chevy Chase Master Plan*, the master-planned right-of-way with envisioned for Massachusetts Avenue is 120 feet. This was confirmed in the 2018 *Master Plan of Highways and Transitways*. Therefore, according to Plat 5718, there is an excess of 30 feet of right-of-way located entirely along the west side of Massachusetts Avenue (adjacent to the Site).

The 2018 *Bicycle Master Plan* does not recommend designated bicycle facilities along the Site frontage; however, the *Complete Street Design Guide* does recommend buffered sidepaths on both sides of the street. Staff has determined that an 11-foot sidepath with an 8-foot street buffer will fit within the remaining public right-of-way, if the Subject Application is approved.

The buffered sidepath, as recommended by the *Complete Street Design Guide* could be constructed as part of a Capital Improvement Project (CIP), built by MCDOT or MDOT SHA in the future.

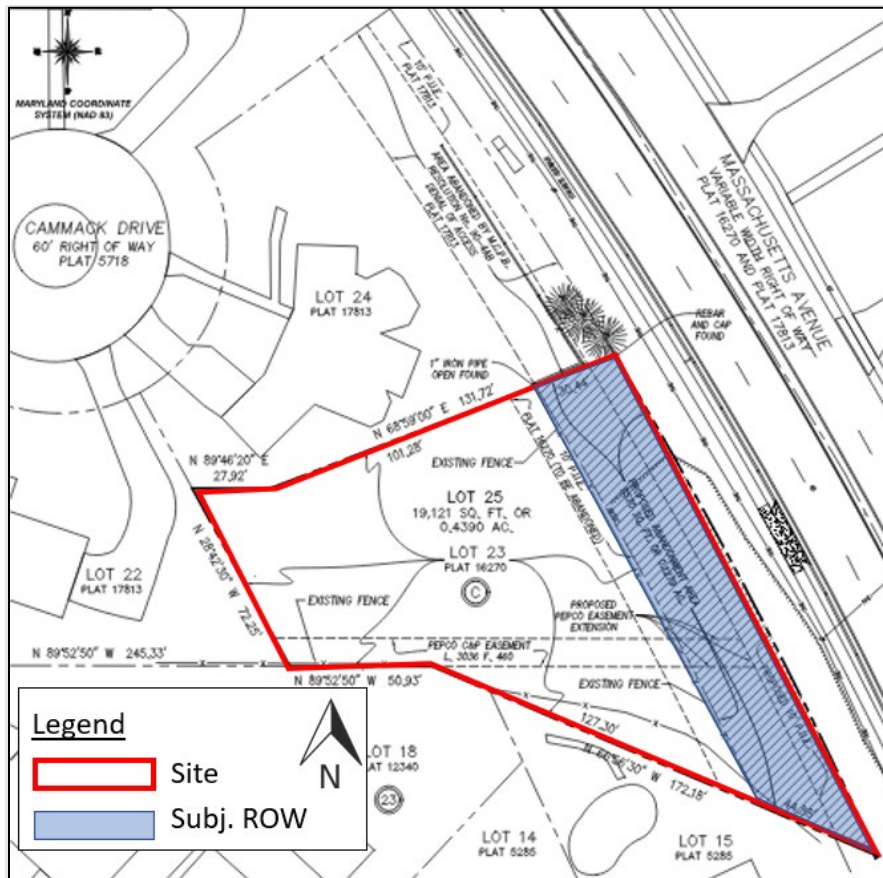


Figure 4 – Subject ROW Abandonment

As shown in Figure 4, the previously abandoned public right-of-way along the adjacent lot to the north (Lot 24, 5102 Cammack Drive) is the same width and aligns horizontally with the Subject right-of-way abandonment. South of Cape Cod Court, Massachusetts Avenue has a dedicated right-of-way of 120 feet, which complies with the 1990 *Bethesda-Chevy Chase Master Plan* and the 2018 *Master Plan of Highways and Transitways*.

It is also important to note that approval of the right-of-way abandonment adjacent to Lot 24, 5102 Cammack Drive, was conditioned on not providing access to Massachusetts Avenue (as noted in Plat 17813). Restricting access on Massachusetts Avenue is not appropriate in this case because the Site does not have frontage or access to other roadways. Additionally, MDOT SHA has already approved an access permit and a curb cut has been installed on the Site's Massachusetts Avenue frontage.

As shown in Figure 5, the area behind the existing sidewalk along Massachusetts Avenue has not been improved or used for public access in any way. The area is overgrown and unmaintained.

The 30 feet of dedicated public right-of-way exceeds the master-planned right-of-way width for Massachusetts Avenue, as envisioned in the 1990 *Bethesda-Chevy Chase Master Plan* and the 2018 *Master Plan of Highways and Transitways*.



Figure 5 – Photo of Right of Way Abandonment from Massachusetts Avenue

If approved, the lot is proposed to be recorded as Lot 25 with a total site area of 19,121 square feet, which exceeds the minimum lot size of 6,000 square feet for a lot in the R-60 zone.

SECTION 5: PRELIMINARY PLAN 120220170 FINDINGS AND ANALYSIS

No development is proposed as part of the Subject Application and the Site is already a recorded lot. The purpose of the Subject Application is to abandon the unused public right-of-way and incorporate it into the lot. The established lot meets the minimum development standards for the R-60 Zone with or without the abandonment of the public right-of-way. The Site is smaller than 40,000 square feet and therefore Chapter 22A Forest Conservation of Trees is not applicable (Section 22A-4.(b)). Therefore, no additional analysis for Adequate Public Facilities (APF), access, forest conservation, stormwater management, sediment control, or fire access, etc. is required.

The Preliminary Plan would grant the abandonment of 5,570 square feet of previously dedicated but unused right-of-way along Massachusetts Avenue. This Application has been reviewed for compliance with the Montgomery County Code, Chapter 49 Section 68, Abandonment of previously unused rights-

of-way. As stated in the Code, “If any right-of-way, except a right-of-way located entirely in a municipality which has independent zoning and subdivision authority, has not been in public use, one or more abutting property owners may petition the Planning Board to abandon the right-of-way. The petition must take the form of a preliminary plan for the subdivision of land and must state the reason for the proposed abandonment and show any proposed relocation or realignment of the right-of-way, where applicable.”

The Application has been reviewed by other applicable State, County, and City agencies.

Section 46-68(c)

(c) The Planning Board must solicit the comments of each notice recipient, and then promptly determine whether:

(1) the right-of-way previously was improved or used for the purposes for which it was intended or dedicated; and

(2) the right-of-way is necessary for anticipated public use.

The Subject portion of right-of-way along Massachusetts Avenue has existed as an unattended piece of land that has never been in public use. The area today is overgrown and unmaintained.

The 1990 *Bethesda Chevy Chase Maser Plan*, and the 2018 *Master Plan of Highways and Transitways* confirm that the envisioned right-of-way width for Massachusetts Avenue is 120 feet. If the Subject Application is approved, 120 feet of right-of-way along Massachusetts Avenue will remain.

All recommended transportation facilities as envisioned by the 1990 *Bethesda Chevy Chase Master Plan*, the 2018 *Bicycle Master Plan* and the 2021 *Complete Streets Design Guide* can be implemented regardless of whether or not the Subject Application is approved. The Project has also received approval letters from MCDOT and MDOT SHA. Therefore, the right-of-way is not necessary for anticipated public use.

49-68(e) If the Planning Board finds that the right-of-way is not necessary for anticipated future public use or that an alternative alignment or location will not adversely affect the public interest, the Board may authorize the right-of-way to be abandoned by incorporating the abandoned land into an amended plat of subdivision. The amended subdivision plat must require the dedication of any land needed for rights-of-way, easements, and other public uses.

As stated above, the right-of-way is not necessary for anticipated future public use, therefore the abandoned area can be incorporated into the amended plat of subdivision and no further dedication of land is necessary.

SECTION 7: COMMUNITY OUTREACH

The Applicant has complied with all noticing and signage requirements. As of date of this Staff Report, no written correspondence has been received; however, staff has answered three phone calls from neighboring residents asking for additional information on the Project.

SECTION 8: CONCLUSION

As conditioned, Preliminary Plan No. 120220170 satisfies the findings under Sections 49-68, and the land area is not needed for future public use and can be incorporated into the adjacent lot. Therefore, Staff recommends approval of Preliminary Plan No. 120220170 with the conditions specified at the beginning of this report.

ATTACHMENTS

Attachment A: Preliminary Plan

Attachment B: Plats 17183 and 5718

Attachment C: Agency Letters