

**IN THE MATTER OF:
KEMP MILL ESTATES COMMUNITY SIDEWALK PROPOSAL**

CIP Project No. 0506747 / Annual Sidewalk Program

BEFORE: Richard Dorsey, Public Hearing Officer, Department of Transportation

PUBLIC HEARING OFFICER'S RECOMMENDATION

I. BACKGROUND

The Montgomery County Department of Transportation (MCDOT) proposed to construct a sidewalk that will provide safer pedestrian travel along the following roadways in Silver Spring, Maryland:

- North side of **Hermleigh Road** from **Stonington Place** to **Kemp Mill Road**;
- South side of **Stonington Place** from **Lovejoy Street** to **Hermleigh Road**;
- East side of **Lovejoy Street** from **Hyde Road** to **Stonington Place**; and
- The path between **Lovejoy Street** and **Auth Lane** located between **11710 Lovejoy Street** and **11712 Lovejoy Street** and ending between **11725 Auth Lane** and **11729 Auth Lane**.

This project is located in the Kemp Mill Estates community of Silver Spring, within the thirteenth election district of Montgomery County, Maryland. The proposed sidewalk will be a five-foot wide concrete sidewalk with a variable greenspace of zero to three feet.

Displays were presented at the public hearing showing the proposed sidewalk relative to the existing network of sidewalks, synagogues, a swimming pool, Ride-On bus stops, the Kemp Mill Elementary School as well as the Big Learning Youth Club. Additional displays revealed a typical

cross-section of pavement and sidewalk for each Hermleigh Road, Stonington Place and Lovejoy Street, demonstrating the amount of public right-of-way available for construction of the sidewalks.

This project will cost an estimated \$600,937.80, including administrative and construction inspection costs. It will be funded through the County's Annual Sidewalk Program – CIP No. 0506747. No properties are considered to be specially benefitted by the project, and, therefore, no properties are expected to be assessed.

Pursuant to Section 49-53 of the Montgomery County Code, a public hearing was scheduled on March 25, 2020 at 7pm in the All-Purpose room of the Kemp Mill Elementary School located at 411 Sisson Street, Silver Spring, Maryland 20902. Due to the onset of the COVID-19 pandemic, however, the hearing was postponed and held virtually on Wednesday, April 22, 2020 at approximately 7:00pm. Public notice of the hearing was provided to adjacent property owners, as well as those neighboring across the street. Notice to the public was, likewise, published in the Washington Post on March 10th and 16th as well as April 7, 2020. Notice was, additionally, posted on MCDOT's web calendar and was the subject of a Montgomery County government press release circulated on April 6, 2020.

The virtual hearing was recorded and may be viewed at:

https://montgomerycounty.adobeconnect.com/p2ooyg9ycpyo/?OWASP_CSRFTOKEN=76d13b00ce4340e43eaed224dc2e719a597e7a9afacd8961857866a338eb6ff1. Following the hearing, the public record was held open until 6:00 p.m. on Wednesday, May 13, 2020, to allow for written testimony to be submitted.

II. SUMMARY OF TESTIMONY, WRITTEN COMMENTS AND EXHIBITS

A. Project Description

A description of the proposed sidewalk project was presented by Tim Cupples, Chief of MCDOT's Division of Transportation Engineering. Sidewalk installation had been previously proposed

on Hermleigh Road approximately ten years ago, however, there was no support for the project at that time. Sidewalk installation was re-requested on Hermleigh Road on October 30, 2018; the request having been submitted with a petition signed by 17 residents of Hermleigh Road. Sidewalk installation was requested on Stonington Place by multiple residents dating back to 2014, and the Lovejoy Street sidewalk and path between Lovejoy Street and Auth Lane were requested in March of 2019. Concerns expressed in the requests include school children walking to and from the Kemp Mill Elementary School or to their respective bus stops, residents walking to and from the Ride-On bus stops, walking to and from synagogue and to visit friends, family and neighbors. Mr. Cupples described the project's history and the improved safety that would be created for the entire community. He explained how the proposed sidewalk will provide safer access for commuters utilizing the County's Ride-On buses, stops for which are located along Kemp Mill Road. Mr. Cupples also discussed the improved safety the sidewalks will provide for residents walking to and from synagogue, to visit friends, family and neighbors and to amenities such as the Kemp Mill Swim Club and Big Learning Youth Club.

Mr. Cupples provided a project vicinity map showing approximately 6,247 linear feet of proposed sidewalk in the Kemp Mill Estates community of Silver Spring. Hermleigh Road, Stonington Place and Lovejoy Street each offer 60-feet of public right-of-way dedicated for public use.

B. Testimony and Written Comments

The Kemp Mill Estates Community Sidewalk Proposal is unique in that many of the impacted and neighboring residents are opposed to the potential construction, while the surrounding community provided overwhelming support. As is true of many of the Annual Sidewalk Program's proposals, the main opposing argument from residents on Hermleigh Road is the removal of trees. Ms. Varda Makovsky of 701 Hermleigh Road summarizes the arguments of many residing Hermleigh Road residents when she wrote:

"The reason I chose to purchase my home (and waited nearly a year until they owner was ready to sell it) was because of the stunning & majestic 2 huge trees on my property near the street. These are old & mature & the character of my home & yard would be very different if they were removed (& perhaps property value) . . ."

The property located at 401 Hermleigh Road is owned as a rental property by PETA (People for the Ethical Treatment of Animals). While the renters of 401 Hermleigh Road signed the original petition requesting sidewalk installation, Mr. Pete Raffetto of PETA wrote in to oppose the tree removals, stating:

"I must emphasize that the work involved in clearing trees would be a major disruption to the habitat in this neighborhood. The amount of wildlife here is a treasure, and that would definitely be impacted by what would be a huge and disruptive undertaking in cutting down all of these trees throughout the proposed route. . . ."

Multiple and duplicate submissions of oppositional comments and written testimony were received by the "Hermleigh Residents" email address, purporting to speak on behalf of "most" of the residents on Hermleigh Road. It was later discovered that the "Hermleigh Residents" were actually being submitted by one household who created the email address in order to create the appearance of higher oppositional numbers, submitting comments individually and as the "Hermleigh Residents."

Residents of Stonington Place were more receptive of the sidewalk proposal, acknowledging the greater pedestrian safety the sidewalks will provide, however, multiple residents admitted concern regarding the loss of off-street parking. This concern is made clear in the comments received by Mayer and Sharon Samuels, who reside at 11723 Stonington Place:

"The most immediate impact of the sidewalk proposal would be the effective shortening of the driveways along the south side of the street by 8 feet. Many on the 11700 block of Stonington have relatively short driveways and can barely fit two cars as it is. Many of the people on our block have larger vehicles like minivans and SUVs. For some with longer driveways, more cars are parked. IT seems that most residents are regularly utilizing the full length of their existing driveways. If the sidewalk proposal is enacted, those of us living on the south side of the street will each lost the ability to park on of our vehicles on our own driveways. By rough estimation, this will mean that unless all the affected properties expand their driveways (at their own personal expense) that about 14

additional cars will be parked regularly on our block. (There are 14 driveways along the south side of the street on this block, serving 14 residences).”

Noam Parness of 11727 Stonington Place further explains the disruption of additional cars parked on the street due to inadequate driveways when he stated:

“But this problem is compounded on my block in specific. We have a big hill in the middle of the block, and visibility is already not the greatest when cresting the hill. Drivers have to be careful there isn’t a car coming up the other side- and hope there is room for one of the cars to pull over and the other one pass. More vehicles parked on the street means more times when there won’t be room for the two cars to pass – and one will have to back down the hill (often at night) to get to a clear passing zone. That’s a very unsafe thing to have to do.”

There were few oppositional comments regarding sidewalk installation on Lovejoy Street, even less for the path between Auth Lane and Lovejoy Street. Conversely, though, Gloria and Arnold Sherman wrote in with particular concern over the liability they would incur by living adjacent to the path.

“We reside at 11710 Lovejoy Street which is adjacent to the proposed path, and we have several concerns. When it rains, the current path becomes a raging river. We do not know where the water comes from, but we want to be assured that the water will not affect our property in any way and that proper drainage is constructed. . . .

We do not want to be responsible for the maintenance of the path including, but not limited to removal of snow. We want the County to provide in writing that we do not have that responsibility. We are an elderly couple and cannot shovel. We do not want the increased liability that comes with responsibility with the path and require the County to provide written guarantee that we have not legal obligation so we cannot be sued.”

In contrast to the opposition received by many impacted residents, the support from within the surrounding community of the sidewalk proposal has been immense. The final tally numbers following the first comment period, considering only impacted and neighboring residents, are as follows:

Hermleigh Road	13 Supporting	21 Opposing
Stonington Place	4 Supporting	9 Opposing
Lovejoy Street	8 Supporting	6 Opposing
Path (Auth-Lovejoy)	5 Supporting	0 Opposing

Totals

30 Supporting

36 Opposing

The additional comments from the surrounding Community, however, brings the final numbers to **58 Supporting** and **38 Opposing**. The overwhelming support is coupled by the vote taken by the Kemp Mill Civic Association on the sidewalk proposal, the final tally being 44 to 22 in support of the proposal. Likewise, multiple religious institutions, schools and politicians all wrote in to support the sidewalk installation in Kemp Mill Estates. These include:

- Kemp Mill Elementary School
- Col. E Brook Lee Middle School
- St. Andrew Apostle Catholic Church
- Chabad Silver Spring
- Charles E. Smith Jewish Day School
- Melvin J. Berman Hebrew Academy
- Yeshiva of Greater Washington
- Milton Gottesman Jewish Day School of the Nation's Capital
- Serenity Gardens Assisted Living, LLC
- Montgomery County Councilmembers Nancy Navarro and Hans Riemer
- The Maryland General Assembly Legislative District 19 (Montgomery County/4 Delegates)

The common thread expressed in all supporting comments is the need for greater pedestrian safety in Kemp Mill Estates. Councilmember Hans Riemer wrote:

“ I am writing to offer my support for the sidewalk proposal known as the “Kemp Mill Estates Community Sidewalk Proposal. As a strong supporter of better/safer streets for pedestrians and cyclists (and the County’s Vision Zero goals, writ large), I believe this sidewalk proposal has real merit.”

Likewise, Naomi Reem, Head of Milton Gottesman Jewish Day School of the Nation’s Capital wrote:

“I am writing to express support of Milton Gottesman Jewish Day School for the proposed project to bring sidewalks to the Kemp Mill community along Stonington Place, Lovejoy Street, and Hermleigh Road. Our School has two bus routes that travel through Kemp Mill on a daily basis. There are two stops at Lamberton/Lovejoy and at Hermleigh/Auth Ln. In addition to the dozens of families who live in this neighborhood, the two stops alone service 26 students across 16 households.

Our students range in grade from pre-K to eighth grade. Children of all ages, together with their parents and siblings, often wait at our bus stops for several

minutes. The addition of a sidewalk would provide a safer environment in which to wait and load/unload the bus.”

III. ANSWERS TO FEEDBACK and CHANGES TO THE PROPOSAL

Many residents of Hermleigh Road questioned the decision to propose the sidewalk on the northern side of Hermleigh Road, which has more utility poles and similar obstructions. When questioned by this hearing officer, Field Supervisor, Rick Holley, explained that both Hermleigh Road and Stonington Place each have a side with utility poles, though they are opposite from each other. Stonington Place’s utilities are on the southern side. Regardless of the side selected, therefore, a segment will need to be constructed on the side with the most obstructions. That said, the next deciding factor is to select the side of the street which poses the least amount of pedestrian crossings. With the sidewalk proposed on the northern side of Hermleigh Road, the southern side of Stonington Place and the eastern side of Lovejoy Street, the sidewalk will lead the pedestrian directly to each, the Ride-On bus stops on Kemp Mill Road, the Kemp Mill Swim Club and Chabad of Silver Spring safely and continuously on the sidewalk without having to cross the street.

The western end of Hermleigh Road presents construction complications in meeting the driveway slope requirements set by the A.D.A. To alleviate this problem, Hermleigh Road will be reduced in width by 3-feet beginning at the eastern property line of 709 Hermleigh Road through the roadway’s intersection with Kemp Mill Road. Due to the width adjustment, on-street parking will be prohibited in this section of Hermleigh Road.

Tremendous support has been shown for the path between Lovejoy Street and Auth Lane, however, paving the path presents multiple difficulties. Although there exists a storm drain on Lovejoy Street in the area of the path, rainwater instead runs down the driveway of 11710 Lovejoy Street. In inclement and cold weather, this flow of water into the driveway often becomes a sheet of ice. In

addition, standing water in and around the area of the path is noted during and after each rainstorm. The Annual Sidewalk Program, therefore, will install drainage improvements to ensure the flow of water runs directly into the storm drain, eliminating the water that currently flows down the driveway of 11710 Lovejoy Street. The path will be paved in its entirety from Lovejoy Street to Auth Lane with A.D.A.-compliant ramps installed at both ends. Lighting will not be provided.

Residents of the 17000 block of Stonington Place expressed concern that, when and if a sidewalk is installed, they will not be able to park both of their vehicles in their driveway without parking slightly on the sidewalk. While the County will not give written consent to break the law, as was requested, residents were assured that tickets are not given in residential areas so long as there remains 3-ft of sidewalk, or, according to A.D.A guidelines, a 3-ft "passing zone." Regardless, some residents have requested driveway improvements to alleviate this worry. It is the policy of the Annual Sidewalk Program to install a concrete apron, the sidewalk and any concrete replacement required within the County's right-of-way. Any driveway improvements beyond the County's right-of-way are made to private property, and, therefore, expenses related to such improvements are to be paid by the property owner. Residents will have the opportunity to negotiate private property improvements with the County's construction team, D & F Construction, at County concrete prices.

IV. CONCLUSIONS AND RECOMMENDATIONS

The purpose of conducting a public hearing, as well as the comment period which follows, is to provide sound, factual information. The information collected is used to prepare a recommendation which is presented to the Director of the Department of Transportation. The Director reviews the recommendation and determines a final decision based on the public need and appropriateness of the project.

It is very common for sidewalk projects to raise diverse views on the necessity for construction of sidewalks. The opposition to construction of sidewalks generally includes concern over increase in responsibility and liability in inclement weather, the reduction of front lawns and driveways of impacted properties where the sidewalk is proposed, the impact to trees and other landscaping, the addition of impervious surfaces, the impact to the aesthetics of the community, etc. The proposed sidewalks in Kemp Mill Estates are no exception.

In my opinion, however, the public interest for the proposed project *is* adequately demonstrated. “Public interest” is a broad concept that manifests itself in a variety of contexts. When a construction project is involved, the project will be considered to be in the public interest if it will do such things as promote the general health and safety of the citizenry, protect the environment, preserve open space or otherwise advance the community’s quality of life. This includes providing for the safe and efficient flow of vehicular and pedestrian traffic. The County has, in recent years, focused on the need for pedestrian safety through the creation of a pedestrian safety task force and the tracking of pedestrian safety data through CountyStat. Sidewalks are an established means of reducing pedestrian-vehicle conflicts.


This sidewalk project is proposed under the Annual Sidewalk Program, which is a continuing program to provide pedestrian facilities throughout the County. Though written comments and testimony offered for the project reflect a strong element of opposition from impacted residents, exhibits, supporting comments and the support of the Kemp Mill Civic Association, Councilmembers Navarro and Riemer, the Legislative District 19 Delegates Kramer, Cullison, Crutchfield and Stewart and the multiple schools serving the community provide adequate justification to establish that constructing the proposed sidewalks will create a safer mode of travel for all pedestrians. The sidewalks will provide a clear-cut and firm separation between the roadway and pedestrian travel. The sidewalks

will be constructed entirely within the public right-of-way without needing acquisition of additional property.

The proposed sidewalk will give the entire community a safe option for pedestrian travel, connecting the pre-existing network of sidewalks on and south of Lamberton Road to those stemming from Kemp Mill Road. The sidewalks will complete the network, providing safe connections to county and school bus stops, area synagogues and churches, amenities such as the Kemp Mill Swim Club and the Kemp Mill Elementary School.


Upon thorough review of all the testimony and evidence presented in the public record, I conclude that there is sufficient basis to find that the Kemp Mill Estates Community Sidewalk Proposal project will be in the best interest of the public. I, therefore, recommend that the Director of the Department of Transportation authorize the project be constructed by MCDOT as modified herein.

Respectfully submitted,


Richard Dorsey
Public Hearing Officer

The Public Hearing Officer's Report and Recommendation for construction of the Kemp Mill Estates Community sidewalk project has been reviewed and the project is hereby authorized for construction.

Date: 6/24/20


for Christopher Conklin, Director
Department of Transportation