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25 Recorded By: Mike Pietanza



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1 Public Hearing, conducted virtually.

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12 Pursuant to Agreement, before Mike Pietanza,

13 Court Reporter.

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1 A P P E A R A N C E S

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3 JOSE THOMMANA - (Hearing Officer/County
4 Executive, MCDOT)

5 DAVID HARRIS (MCDOT)

6 PATRICIA HARRIS, ESQUIRE (Lerch, Early & Brewer)

7 JEFF ROBERTSON (CAS Engineering)

8 ROB BIRENBAUM

9 MATT HIGGINS

10 TIARA MCCRAY

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1 P R O C E E D I N G S
2 (Whereupon, the court reporter was duly
3 sworn.)
4 MR. HARRIS: -- but it looks like we are
5 plenty covered.
6 MR. THOMMANA: Okay. So good afternoon
7 to everybody. It is now 1:04 on July 24th, 2023,

8 and we are conducting this hearing virtually via
9 Zoom, and we are here for a public hearing on the
10 Abandonment Petition AB 785 to consider an
11 application received from Bradley and Sophie Buslik
12 to abandon a portion of the public right-of-way
13 located at the eastern end of Northfield Road. My
14 name is Jose Thommana, and I am the County
15 Executive Designated Hearing Officer with the
16 County Department of Transportation.

17 This Right-Of-Way Abandonment hearing is
18 being conducted -- is being conducted pursuant to
19 Article 4962-F of the Montgomery County Code, and
20 my role in the abandonment process is to receive
21 testimony concerning the abandonment request, and
22 then write a report and recommendation to the
23 County Executive concerning the Applicant's
24 Petition for Abandonment. In order to do this, I
25 will consider statements made during this hearing;

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1 written comments received within the comment period.

2 Comments will be accepted until August
3 7th, 2023, at 5:00 p.m., as well as documents

4 submitted to Mr. Harris to support or explain a
5 position on this abandonment case. My report and
6 recommendation will then be forwarded to the County
7 Executive for consideration, and the County
8 Executive will then forward the report, and the
9 County Executive's recommendation to the County
10 Counsel. It is the County Counsel that will decide
11 whether to grant or deny the Applicant's Petition
12 for Abandonment. For those who wish to submit
13 written comments, please submit them to Mr. David
14 Harris at the Montgomery County Department of
15 Transportation, 100 Edison Park Drive, 4th Floor,
16 Gaithersburg, Maryland 20878, or via e-mail to
17 David, D-A-V-I-D, .harris, H-A-R-R-I-S,
18 @montgomerycountymd.gov by August 7th, 2023.

19 There are a few ground rules that we must
20 cover before Mr. Harris introduces the abandonment
21 petition in the record. First, please turn off or
22 silence all cell phones. Second, as an issue of
23 decorum, all participants must be given due
24 consideration. Those seeking to offer comment
25 following the close of Petitioner's case for

1 abandonment are asked to be mindful of the time and
2 limit their comments to relevant matters. If an
3 interruption occurs, I will give that individual
4 their first warning, and if there is a second
5 interruption, I will give that individual a second
6 warning, and they will be muted. If that same
7 individual receives a third warning, that person
8 will be removed from the call. And if there are
9 several people making interruptions, I may have to
10 close the hearing.

11 Following Mr. Harris' introduction, the
12 Applicant will submit its case for why it believes
13 the right-of-way should be abandonment -- should be
14 abandoned. After the Applicant has completed its
15 case, those who have registered to speak will be
16 afforded the opportunity to make relevant comments.
17 So with that, I'm going to turn it over to Mr.
18 Harris.

19 MR. HARRIS: All right. Thank you, Mr.
20 Thommana. Good afternoon, everyone. My name is
21 David Harris. I'm a Real Estate Specialist with
22 the Property Acquisition Section from Montgomery
23 County DOT. My section is responsible for
24 administering requests for the abandonment of

25 public rights-of-way. As Mr. Thommana noted

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1 earlier, this process is governed by County Code
2 Article 49, Section 6. The County Code details the
3 County Counsel's authority to abandon a public
4 right-of-way if it finds that, (1) the right-of-way
5 is no longer needed for public use or anticipated
6 future public use, or (2) the abandonment is
7 necessary to protect the health, safety, and
8 welfare of the residents near the right-of-way to
9 be abandoned.

10 The Applicants, Brad and Sophie Buslik,
11 currently own property located at 5423 Northfield
12 Road and 8401 Moreland Lane in Bethesda, Maryland
13 20817. The property was created as Lots 2 and 3 in
14 Block C by plat of Subdivision Number 1064,
15 entitled Greenwich Forest in 1939. The plat shows
16 the Northfield Road right-of-way terminating at the
17 eastern property line of Lot 3, the 5423 Northfield
18 Road property. While the right-of-way was
19 anticipated to be for public vehicular use, the
20 Applicant, in their petition, explains that it has

21 never been used as a public road, and, instead,
22 functions as a driveway for the applicant's
23 property.

24 The Applicants also note that the
25 right-of-way has not been constructed to meet

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1 public use standards and argues that the County has
2 never maintained the subject portion of the
3 Northfield Road right-of-way. At the termination
4 of the Northfield Road right-of-way is a
5 neighborhood park. On March 21st, 1972, the
6 Maryland National Capital Park and Planning
7 Commission purchased the 3.76-acre parcel. MNCPPC
8 developed the site as the Greenwich -- Greenwich
9 Neighborhood Park. The proposed abandonment area
10 consists of 3,405 square feet of the northern
11 portion of this right-of-way, as shown in the
12 proposed abandonment, which I will read later as
13 Exhibit A. The southern portion of the
14 right-of-way provides pedestrian access to
15 Greenwich Neighborhood Park and will continue to do
16 so without being impacted by the proposed

17 abandonment.

18 The Applicants assert in their petition
19 that the public right-of-way no longer serves
20 current or future public use. As part of the
21 administrative process, we have provided the
22 requisite notices to other public agencies,
23 abutting property owners, and the public at large.
24 During this process, we have collected a number of
25 exhibits that I will now introduce into the hearing

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1 record. Exhibit A, we have the Applicant's
2 Petition for Abandonment. In this application, we
3 do have their Exhibit A, which is their abandonment
4 plan, which shows the abandonment area.

5 (Exhibit A was marked.)

6 MR. HARRIS: Okay. Exhibit B is Plat
7 1064, which establishes the right-of -way of the
8 Northfield Road which was established in 1939.

9 (Exhibit B was marked.)

10 MR. HARRIS: Exhibit C, Executive Order
11 Number 082-23, this is authorizing today's public
12 hearing.

13 (Exhibit C was marked.)

14 MR. HARRIS: Exhibit D is an abandonment
15 aerial, which highlights the petition area of
16 right-of-way.

17 (Exhibit D was marked.)

18 MR. HARRIS: Exhibit E, comment
19 solicitation e-mails for County agencies; these
20 were submitted April 21st, 2023.

21 (Exhibit E was marked.)

22 MR. HARRIS: Exhibit F, comment
23 solicitation e-mails for public utility companies;
24 this was also submitted April 21st, 2023.

25 (Exhibit F was marked.)



1 MR. HARRIS: Exhibit G, Washington Times
2 Ad Number 74182; the advertisement ran on July 13th
3 and July 20th, 2023, advising of this public
4 hearing.

5 (Exhibit G was marked.)

6 MR. HARRIS: Exhibit H, public -- public
7 hearing traffic sign; the request for the sign was
8 submitted June 21st, 2023, and installed June 28th,

9 2023.

10 (Exhibit H was marked.)

11 MR. HARRIS: Exhibit I, Go Montgomery
12 advertisement, which ran on July 19th, 2023,
13 advising of this public hearing.

14 (Exhibit I was marked.)

15 MR. HARRIS: Exhibit J, the MC-DOT
16 calendar event submission, submitted July 18th.

17 (Exhibit J was marked.)

18 MR. HARRIS: Exhibit K, the HOACA and
19 certified mailing list; this list includes all HOA
20 members, and the adjoining property owners. The
21 adjoining property owners are listed in yellow --
22 or highlighted in yellow.

23 (Exhibit K was marked.)

24 MR. HARRIS: Exhibit L, comment
25 solicitation and public hearing notice for HOACAs;

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1 these e-mails were submitted on June 7th, 2023.

2 (Exhibit L was marked.)

3 MR. HARRIS: Exhibit M, general public
4 notice and mailing list of certified mail

5 recipients. Receipts of certified mails were sent
6 out to June 7th, 2023, and they were delivered on
7 June 13th.

8 (Exhibit M was marked.)

9 MR. HARRIS: Exhibit Q, the Department
10 of Transportation, Division -- Division of
11 Permitting Services, Fire and Rescues comments.
12 The comment was received April 27th, 2023, from
13 Maria LaValle and has no comment.

14 (Exhibit Q was marked.)

15 MR. HARRIS: Exhibit R is
16 Maryland-National Capital Park and Planning's
17 comments, which was dated June 8th, 2023, and
18 received by Attorney Katherine via e-mail, and it
19 supports the abandonment with conditions that are
20 described in the report.

21 (Exhibit R was marked.)

22 MR. HARRIS: And the final is Exhibit S,
23 WSSC's comments, which was dated June 22nd, 2023,
24 and provides consent to vacate the petition of
25 right-of-way on the condition that they secure the

1 area with -- the abandonment area with an easement.

2 (Exhibit S was marked.)

3 MR. HARRIS: As for the other departments
4 and public utility companies, I did not receive
5 additional comment from them. And with that, the
6 -- the exhibits have been read into record. Thank
7 you, Mr. Thommana. I turn this hearing back in
8 your direction.

9 MR. THOMMANA: Okay. Thank you. So
10 does the Applicant now want to go ahead and present
11 its case?

12 MS. HARRIS: Certainly. Good afternoon.
13 Pat Harris with Lerch Early Brewer for the record.
14 I'm here on behalf of the property owners, Brad and
15 Sophie Buslik. Also with me is Jeff Robertson of
16 CAS Engineering, the civil engineering. As noted,
17 we're requesting the abandonment of the northern
18 portion of Northfield Road. It's 3,405 square
19 feet. And it's the area north of the center line.
20 The submission -- petition that we submitted on
21 January 25th, provides the details of the
22 situation, but we will hit some highlights this --
23 this afternoon. And the property involved -- and
24 I'm going to be referring to the Staff Report, and,
25 in fact, I will share that -- the Park and Planning



1 Staff Report, which was attached to the Planning
2 Board's letter or -- of recommendation. And I
3 can't recall what exhibit that was, but if you can
4 see my screen, so the property in question is the
5 northern portion of Northfield Road. The lots
6 owned by the Busliks are Lots 2 and 3. The -- this
7 property has the address of 8401 Moreland, and then
8 the rear property is the 5423 Northfield Drive. We
9 --

10 MS. MCRAJ: Excuse me, Ms. Harris. I'm
11 sorry. I didn't mean to interrupt. Were you
12 sharing your screen? You made reference to
13 something, but I didn't see --

14 MS. HARRIS: Can you not see my -- you
15 can't --

16 MS. MCRAJ: No, ma'am. Sorry.

17 MS. HARRIS: Okay. Can you see it now?

18 MS. MCRAJ: Yes, ma'am.

19 MR. HARRIS: There we go.

20 MS. HARRIS: Sorry. Okay. So I was
21 referring to the -- I just referenced the property.

22 So very briefly, this is at 8401 Moreland Drive --
23 Moreland Lane property, and then behind that is the
24 5423 Northfield Road. The area to be abandoned is
25 the northern portion of this extension of



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1 Northfield Road. And here's the park that was --
2 into the -- east of that is the park that was
3 referenced. The owner intends to demo this; the
4 existing house on the Northfield Road's property
5 and combine the lot into one single record lot.

6 The southern half of this right-of-way is
7 the only portion of the right-of-way that has ever
8 functioned at all as a right- of-way, and then it
9 was only for pedestrian purposes to allow people to
10 walk to the park. The northern portion, which is
11 the portion being requested to be abandoned, has
12 never functioned as a public right-of-way. And in
13 fact, the owners have maintained this portion of
14 the right-of-way. They've shoveled -- shoveled the
15 snow; they have maintained it -- maintained it by
16 resurfacing it with gravel several times; and they
17 also bring their garbage cans out to -- sorry --

18 out to -- they also bring their garbage cans out
19 to Moreland
20 Lane.

21 And so, the -- the area that's dotted in
22 red is approximately half -- is the area to be
23 abandoned, though, as shown on the screen. It --
24 it reads as if it's more than half of the
25 right-of-way width, but it's not. The photographs

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1 contained in the staff report show the situation.
2 The gravel portion is the northern portion to be
3 abandoned that has never functioned as a
4 right-of-way. And then you can see the pedestrian
5 path on the right-hand side of the screen that
6 leads to the -- to the park. And then I will refer
7 you to that picture where that shows it in even
8 greater detail.

9 The abandonment request satisfies
10 the section of 4963-1 of the Code, which states
11 that the right-of-way is no longer necessary for
12 present use or anticipate -- or anticipated public
13 use in the foreseeable future. As noted, the

14 northern portion has never been used for a public
15 right-of-way, or for public use. There's no need
16 for it for the -- in the future. The Parks
17 Department has no intention of opening that area up
18 for vehicular access. To do so would compromise
19 the -- the size of the existing park, which is only
20 3.76 acres to begin with, and the County has stated
21 on the record that they have no intention to --
22 plans to extend the vehicular access from
23 Northfield Road to Old Georgetown Road. The -- as
24 also noted, the right-of-way has never been
25 improved to public use or right-of-way standards,



1 and that was -- the Staff Report also noted that.

2 The Applicant accepts the recommendations
3 of approval set forth by the Planning Board. The
4 southern portion of the right-of-way will be
5 retained for public access. The Applicant will
6 coordinate with the utilities to provide any
7 necessary easements as determined needed for either
8 sewer or gas. The house on Lot 2, going back to
9 the sector plan, will be demolished prior to the

10 subdivision occurring. And before issuance of any
11 building permits, other than the demo permit, the
12 Applicant must record the plat consolidating Lots 2
13 and 3.

14 Applicant urges the Hearing Examiner
15 support recommendation of the abandonment. It's
16 supported by the Planning Board, Fire and Safety
17 noted that they had no comment, and WSSC indicated
18 their report. We satisfied the -- the criteria of
19 the Code. There's no current use of the
20 right-of-way, and there's also no foreseeable use
21 for the -- the northern portion of the right-of-way.

22 We do have one request, and that is
23 the Applicant is looking forward to being able to
24 utilize the entire consolidated lot for many years
25 to come, and, therefore, we are hopeful that the



1 report and recommendation of the Hearing Examiner
2 can be issued in a timely fashion. And with that,
3 as I noted, both the owner and the engineer are
4 here for any questions, and I can also answer any
5 questions. Thank you.

6 MR. THOMMANA: Thank you, Ms. Harris.
7 Are there any current utilities or anything in that
8 area?

9 MS. HARRIS: I'm going to let the
10 engineer, Jeff Robertson, answer that question.

11 MR. ROBERTSON: Hi, Jeff Robertson with
12 CAS Engineering for the record. There are water
13 and sewer mains in the right-of-way. Yeah, that
14 exhibit there shows those colorized. The -- the
15 water is -- excuse me -- just south of the
16 abandonment area, and the sewer is within the
17 abandonment area, so there'll be an easement
18 provided for the sewer. There's also an existing
19 gas service in that abandoned portion of the
20 right-of-way, and the easement will be provided for
21 that as well.

22 MR. THOMMANA: Okay. I don't have any
23 other questions at this time. Are there any -- is
24 there anybody registered to speak, or -- on this
25 from -- from the public or anybody else?

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1 MR. HARRIS: There was -- there was no

2 one additional signed up to make any comments at
3 the end of the -- of the hearing, no.

4 MR. THOMMANA: Okay. Well, it seems
5 like, at this time, there's -- you know, we have
6 everything already entered into the record, and
7 you've -- you've provided your case of why this
8 should be abandoned. We'll consider all the
9 information that has been provided to date. And
10 we'll wait until August 7th at 5:00 p.m. for any
11 other comments that may arrive, and we'll make our
12 decision based on all of that information that we
13 do receive. So if there are no other questions or
14 comments, we can close this hearing.

15 MR. HARRIS: Okay.

16 MS. HARRIS: Thank you.

17 MR. BIRENBAUM: Just one quick question.
18 On the slideshow that I'm seeing here, was this --
19 was the -- this -- are all those slides part of the
20 Planning Report, or is that a slideshow that was
21 separately prepared, where you've got the --

22 MS. HARRIS: The -- the exhibit that's
23 on the screen now was additional. I don't believe
24 that --

25 MR. ROBERTSON: Okay.



1 MS. HARRIS: -- was in the Staff Report.

2 The other images that I showed were part of the
3 Staff Report.

4 MR. ROBERTSON: Okay.

5 MS. HARRIS: So if -- if you would like,
6 we can certainly submit this to the record as well.

7 MR. ROBERTSON: Yeah; I'd suggest that
8 you do. All right.

9 MS. HARRIS: Absolutely.

10 MR. ROBERTSON: Okay. Thank you.

11 MR. THOMMANA: All right. Thank you,
12 Rob. And if nothing else, we can stop recording, I
13 guess.

14 MS. HARRIS: Thank you.

15 MR. THOMMANA: I should do that.

16 MR. HARRIS: Okay, cool.

17 (Off the record at 1:24 p.m.)

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1 CERTIFICATE OF COURT REPORTER

2 I, Mike Pietanza, the officer before
3 whom the foregoing proceedings were taken, do
4 hereby certify that said proceedings were
5 electronically recorded by me; and that I am
6 neither counsel for, related to, nor employed by
7 any of the parties to this case and have no
8 interest, financial or otherwise, in its outcome.

9

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11 _____

12 Mike Pietanza, Court Reporter

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1 CERTIFICATION OF TRANSCRIPT
2 I, Karen M. Galvez, do hereby certify
3 that the foregoing transcript, to the best of my
4 ability, knowledge, and belief, is a true and
5 correct record of the proceedings; that said
6 proceedings were reduced to typewriting under my
7 supervision; and that I am neither counsel for,
8 related to, nor employed by any of the parties to
9 this case and have no interest, financial or
10 otherwise, in its outcome.

11
12
13 _____

14 Karen M. Galvez

15 Planet Depos, LLC

16 August 8, 2023

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