

**Montgomery County Department of Transportation (MCDOT)  
Property Acquisition Section**

**Public Hearing on Abandonment Case AB 788  
(Portion of Public Right of Way off of Broad Street)  
September 10, 2024**

**Written Statement of Corey and Sandra Salsberg, Petitioners**

Thank you very much for the opportunity to submit this statement in support of our petition for abandonment of a portion of the unimproved section of the public right-of-way off Broad Street. We appreciate MCDOT's consideration of our petition, and thank the Department and its staff for the work and time it has put into this process on our behalf, as well as the guidance it has provided to help us navigate the process.

**The Abandonment Area**

As described in our petition, the subject land ("Abandonment Area") is a roughly 4,500 square-foot area that includes a portion of our driveway and a privately maintained and landscaped area of grass, trees and vegetation that abuts our property at 6401 Broad Street, forming a natural extension of our home frontage. A photograph of the Abandonment Area follows:



As the photograph illustrates, the Abandonment Area sits at the terminal end of the right-of-way, and was never constructed for public thoroughfare. Immediately beyond the landscaped area is a steep forested slope that runs into Conservation land, making it unsuitable for use as a transportation right-of-way. The Abandonment Area is also not maintained by the County, as indicated by the below pictured signage, and to the best of our knowledge has never been so maintained:



As a result, as the owners of the adjoining property since January 2017, we have been left to maintain the Abandonment Area at substantial private expense and effort, in order to keep it safe, to protect our property, and to ensure safe entrance, egress and access to our driveway and home. In addition to landscaping, these activities and costs include regular tree pruning, mowing, weeding, leaf removal, snow removal, and the clearing of frequent debris from trees, none of which is performed by the County. It is our understanding that the previous owners likewise maintained the Area at their personal expense for many years prior.

## **Reasons for Granting the Petition**

Section 49-63(c) of the Montgomery County Code provides two alternative grounds for granting a petition for abandonment of a right-of-way: 1) that “the right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future,” or 2) “the abandonment . . . is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned.” We believe both grounds are independently met here.

With respect to the first ground (§ 49-63(c)(1)), as the documents of record show, the Abandonment Area has never been used as a right-of-way, and cannot in the foreseeable future be used as such, because the area ends in a steep forested slope that is not suitable for use as a road or other right-of-way. Because the Area includes a portion of, and leads to, our driveway, and abuts only our home at the terminal end of the right-of-way, there is also no reason why this portion of the right-of-way is, or will ever foreseeably be, needed for public thoroughfare or for access to anything other than our home and property. As such, we believe the Section 49-63(c)(1) standard is readily met.

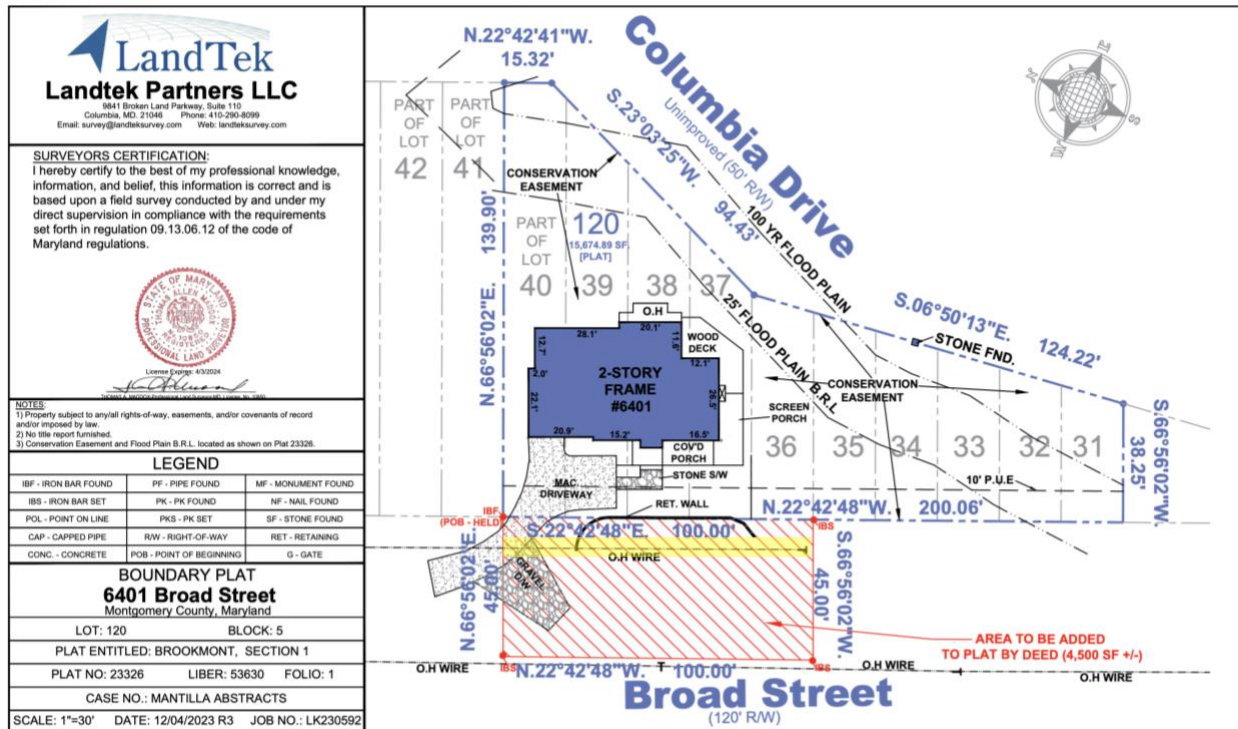
As an additional or alternative reason for granting the petition, we believe the facts and circumstances here also satisfy the grounds for abandonment under Section 49-63(c)(2). The Abandonment Area runs along the entire frontage of our home, and includes a gravel and paved area that forms a portion of our driveway, which provides entrance to and egress from our house. Both the paved areas and the green areas require regular maintenance and care to ensure that they remain clear of obstructions and safe from hazards, such as leaves, fallen tree debris, weeds and snow. The trees also must be regularly pruned to prevent damage to property and potential threats to life and health from dead limbs, storm damage and the like. As previously noted, the County does not perform this or any other maintenance on the Abandonment Area, which has left us to perform these vital services ourselves at substantial private expense. Critical as these services are for our safety and welfare (and for the safety and welfare of visitors, mail carriers and other service providers), under the present circumstances, our stewardship of the Area is completely voluntary. Granting our petition will enable us to continue maintaining and keeping the Abandonment Area safe, while also enabling us to secure insurance for the Area, and to make necessary decisions about tree pruning and removal, repaving of the full driveway when needed, and similar safety and maintenance decisions.

For the same reasons, we believe granting our petition is in the public interest, as it will ensure that the Abandonment Area continues to receive the care and maintenance it requires, formalizing our stewardship, and relieving the County of any such maintenance obligations over the Area. In addition, the proceeds from the abandonment will benefit the County.

## **The Proposed Condition**

We last wish to address the Planning Department’s formal comments, dated July 8, 2024. In its report, the Planning Department agrees that the criteria for abandonment are met, and recommends approval of our petition with one condition, namely, that the abandonment “not take effect until the Applicant records a maintenance and access easement as well as a sufficient Public Utility Easement (PUE) for the existing utility poles and overhead wires in the land records with Pepco, if determined necessary by Pepco.” Before commenting on this proposed condition, we first wish

to correct the record, as the presence of utility facilities in the Abandonment Area is actually significantly more limited than either we or the Planning Department understood at the time the Planning Department submitted its report. Specifically, as Landtek has now confirmed and reflected in its revised survey, there is only a single utility pole and a single overhead wire in the Abandonment Area, not multiple wires and poles as the Planning report suggests. The revised survey follows (pole and wire highlighted in light yellow):



Given these corrected facts and circumstances, to the extent MCDOT and/or the County conclude that an easement is needed as a condition to granting our petition, we would ask that such condition be framed in a way that ensures that such easement is no broader than necessary to enable Pepco to access and maintain its limited current facilities (namely, the existing single utility pole and wire). To further clarify, while we support and are readily amenable to recording a simple easement that allows the existing facilities to remain where they are, and that ensures that Pepco has the access it needs to service and maintain those facilities, such an easement should be limited in location to the part of the Abandonment Area where the pole and wire run, and should be no larger in size than what is necessary and customary for facilities of this type.<sup>1</sup> In terms of scope, to the extent any rights are deemed necessary beyond access to and maintenance of the existing facilities—which we do not think to be the case—we believe any resulting easement should be substantially more limited than a standard public utility easement (PUE). Standard PUEs are typically created in very different circumstances, and include broad rights, such as the right of any utility company to install and construct unspecified new facilities in the area in perpetuity. Rights of that scope are neither necessary nor appropriate here.

<sup>1</sup> We note that there is already a 10-foot general public utility easement on our current property, as indicated in the above survey. To the extent an additional easement is deemed necessary for the Abandonment Area for basic access to the existing wire and pole, this existing easement should be taken into account when determining its size.

In short, given the limited presence of a single utility wire and pole, and the other circumstances present here, we believe a simple access and maintenance easement should suffice. Ultimately, it is important that any easement condition not undermine or negate the very reasons for granting the petition in the first place, which include ensuring that we are able to continue to safely and freely access our existing home and property from the Area, and that we are able to control and decide how to maintain the Area and keep it safe. A limited easement for Pepco's existing facilities that ensures that it has access to maintain those facilities should provide Pepco all it needs, while also giving due effect to the grounds and reasons for granting our petition.<sup>2</sup>

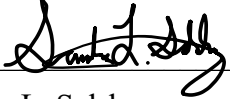
**Concluding remarks**

We again thank MCDOT, the Planning Department, and the County for its due consideration of this petition. Should you have any follow-up questions, please feel free to contact us.

Respectfully submitted,

  
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Corey A. Salsberg

Dated: 9/9/24

  
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Sandra L. Salsberg

Dated: 9/9/24

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<sup>2</sup> To the extent it would reduce or obviate the need for an easement, we would also be amenable to moving the boundary of the Abandonment Area slightly to fully exclude the one utility pole, leaving a single overhead wire as the only facility in (i.e. over) the Area.