

NAME

Planet Draft™ | Hearing; AB 788 – A Portion of Public Right of Way on Broad Street -
9/10/24 (Job 537327)

DATE

September 11, 2024

DURATION

30m 14s

5 SPEAKERS

(speaker)

Mr. Souders

Mr. Oberc

Mr. Salsberg

The Reporter

START OF TRANSCRIPT

[00:00:01] (speaker)

We are recording in progress. You may proceed.

[00:00:08] Mr. Souders

Greetings. Greetings. Good afternoon. It is now 105 on September 10th, 2024. We are conducting this hearing virtually via zoom. We are here for a public hearing on abandonment. Excuse me. Abandonment petition AB 788 to consider an application received from Corey and Sandra Salzberg to abandon a portion of the public right of way abutting 6401 Broad Street in Bethesda, Maryland. My name is Jeremy Souders, and I am the county executive's designated hearing officer with the county's Department of Transportation. This right of way abandonment hearing is being conducted pursuant to 49 Dash 62 F of the Montgomery County Code. My role in the abandonment process is to receive testimony concerning the abandonment request, and then write a report and recommendation to the County executive concerning the applicant's petition for abandonment. In order to do this, I will consider statements during made during this hearing and written comments received within the comment period. Comments will be accepted until September 17th, 2024 at 5 p.m., as well as documents submitted to Mr. Oberc to support or explain a petition on this abandonment case. My report and recommendation will then be forwarded to the County Executive for consideration. The executive will then forward the report to the County Executive's recommendations to the County Council. It is the county councils that will decide whether to grant or deny the applicant's petition for abandonment. For those who wish to submit written comments, please submit them to Mr. Demetrius Oberc at Montgomery County Department of Transportation, 100 Edison Park Drive, fourth floor, Gaithersburg, Maryland, 20878. Eight. Or you can email them to demetrius.org, which is d e m e t r i e s dot o b e r c at montgomerycountymd.gov by 5 p.m. on September 17th, 2024. There are a few ground rules that I would like to cover before Mr. Holbrook introduces the abandonment petition in the record. First, turn off or silence your cell phone or computers. Second, as an issue of decorum, all participants must be given due consideration. Those seeking to offer comment following the close of the petition case for abandonment are asked to be mindful of the time and limit their comments to relevant matters. If an interruption occurs, I will give that individual the first warning. If there is a second interruption, I will give that individual a second warning and then they will be muted. If that same individual receives a third warning, that person will be removed from the call. And if there are several people making interruptions. I may close the hearing. Following Mr.. Burke's introduction, the applicant will submit its case for why it believes the right of way should be abandoned. After the applicant has completed its case, those who have registered to speak will be afforded the opportunity to make relevant comments. Demetrius.

[00:03:16] Mr. Oberc

Thank you, Mr. Sanders. Good afternoon everyone. My name is Demetrius Burke. I am a real estate specialist with the property acquisition section for Montgomery County Department of Transportation. My section is responsible for administering request for the abandonment of public rights of way. As Mr. Sanders noted earlier, this process is governed by County Code article 49, section six. The county code details the county council's authority to abandon a public right of way if it finds that one, the right of way is no longer needed for public use or anticipated future public use, or two. The abandonment is necessary to protect the health, safety and welfare of the residents near the right of way to be abandoned. The applicants, Corey and Sandra Salzburg, currently own the property located at 6401 Broad Street in Bethesda, Maryland. The abandonment area was dedicated to public use by plat of subdivision number 305, entitled Brookmont in 1925. The plat shows the Broad Street right of way contains a width of 120ft. This right of way has since been split into a primary road and a parallel local road, both named Broad Street. County maintenance ends in front of 6405 Broad Street, and the paved road terminates at the northern property line of 6401 Broad Street. There is no residential access beyond the applicant's property. While the right of way was anticipated to be used for public vehicular use. The applicants in their petition explained it has never been used as a public road and instead functions as a driveway to the applicant's property. The applicant also notes that the right of way has not been constructed to meet public use standards, and argues that the county has not maintained. The subject portion of Broad Street of the Broad Street right of way. The applicant also explains in the petition that the right of way terminates with a steep, forested ravine that cannot support a road. The proposed abandonment area consists of 4500ft² of the eastern portion of this right of way, 45ft in width, as shown on the proposed abandonment plan, which I will later read into the record as part of exhibit B, the remaining 75ft of right of way width contains the primary road, also named Broad Street, as well as a pedestrian sidewalk and green space between the two roads. The applicant, the applicants, assert in their petition that the public right of way has not and will not serve current or future public use as part of the administrative process, we have provided the requisite notices to other public agencies, the abutting property owner, and the public at large. During this process, we have collected a number of exhibits that I will now introduce into the hearing.

[00:06:12] Mr. Souders

Okay.

[00:06:13] Mr. Oberc

They've got it all up. Exhibit A pages two through eight is the applicant's abandonment petition received to me February 26th, 2020 for exhibit B, page nine is the revised abandonment plat. Exhibit C, pages ten through 11 is the plat number 305 subdivision plat dated July 7th, 1925 and entitled Brookmont. Exhibit D, page 12 is the Executive Order number 63 Dash 24, which authorizes today's public hearing. Exhibit E, page 13 is the Abandonment Aerial map, which shows the portion of public right of way to be abandoned on Broad Street. Exhibit F, pages 14 through 15. Comment solicitation emails for county agencies requested submit requests submitted May 17th, 2020 for exhibit G, pages 16 through 17. Is the Fire Department access and water supply comment. No objection. Dated May 17th, 2024. Exhibit H, page 18, Department of Transportation, Division of Traffic Engineering and Operations. Commenting No Objection, dated July 7th, 2024, exhibit I, pages 19 through 35. Montgomery County Planning Comment dated July 8th, 2024. Conditionally approving if but if deemed necessary by Pepco, the abandonment will not take effect until the applicant records a maintenance and access easement, as well as a sufficient public utility easement for the existing utility pole and overhead wire. Exhibit J, pages 36 to 37. Department of Transportation Development Review Committee comments dated July dated August 9th, 2024, recommending conditional approval for maintenance of the abandoned portion to be the responsibility of the applicant. Subject abandonment will not take effect until the applicant coordinates with Pepco to record a maintenance and access easement, as well as a sufficient perpetual utility easement for the existing utility poles and overhead wires in the land records, if determined necessary by Pepco. Exhibit K, pages 38 through 43. Comment. Solicitation emails for the Public Utility Companies request submitted May 17th, 2024. Exhibit L, pages 44 through 45. Washington Gas Comment dated June 17th, 2024. Have no no objection. Exhibit M, page 46. Wssc comment dated June 18th, 2024. Conditional approval permission is required from the City of Falls Church. Later determined the utilities were owned by falls. Fairfax Water no longer Falls Church. And exhibit N, pages 47 to 48. Fairfax Water uh Falls Church no longer owning the facility.

[00:09:24] Mr. Oberc

Selling. Selling the facilities to Fairfax Water in 2014. Fairfax Water has no objection. Exhibit O, pages 49 through 51. Pepco comment dated July 31st, 2024. Not recommended should the abandonment request be approved. Easements are required over the entire portion. Uh, exhibit P, pages 52 to 60. Common solicitation and public hearing notice to property owner, homeowner's association, and civic associations. Uh, mailings and emails went out July 3rd, 2024. No comments at that time. Um, exhibit Q, pages 61 to 63. Washington Times AD numbers 86 119. Advertisement was ran on August 23rd and August 30th. Notifying the public. Exhibit R, pages 64 through 68. Public hearing traffic sign installation request was submitted August 7th, 2024 and installed on August 22nd 22nd. Yes. Exhibit S, pages 69 through 71. Go Montgomery advert ad was posted on August 26th. Exhibit T page. Page 72 end CDot Calendar Event Submission submitted on August 12th. Notifying of today's public hearing. That is all of the exhibits and I go ahead and give it over. Back to Mr. Sanders.

[00:11:02] Mr. Souders

Thank you, Mr. Abbott. After reviewing the agency comments in the exhibits, it is unclear what type of easement Pepco is requiring and exactly where those easements would be placed within the abandoned area. I suggest dot obtain clarification on the types of easements and their and their areas before I can complete my recommendations on the abandonment. We will now turn to the applicants who wish to present their case for abandonment. Mr. Salzberg, you can present.

[00:11:30] Mr. Salsberg

Great. Thank you. Um, sorry. Let me just find how to do the sharing. One moment. And. Are you able to see the screen?

[00:11:49] Mr. Oberc

Yes, sir.

[00:11:50] Mr. Salsberg

Great. Thank you. Uh, first, I just wanted to say thank you to all of you, to the, particularly the Department of Transportation, for the time and effort that's been put into our petition. And, um, and it's, uh, everyone's been extremely helpful in guiding us through the process. So thank you very much for that. Um, I won't be long. I just wanted to quickly walk through. I know many of you have seen this, but just to present our perspectives once again on, um, on the reasons why we believe the petition should be granted and then end with a quick comment and discussion of the easement that that Pepco is is requesting. Um, just quickly, you can see here a photograph of what we're talking about here. It is the end of the terminal portion, as the record shows, about 4500 square foot area. It includes a portion of of what is effectively our driveway. Our driveway. As you can see, there's no road here. The part behind the the retaining wall. There is already part of our property on our property line, but it curves ahead into what is the abandonment area, which includes the gravel portion, but also the paved portion that we actually need to drive across to to get to our house. And the rest of it, as you can see, is a landscaped area that has been landscaped. You know, long before we purchased the house, it was landscaped when the house was built in 2009, and I believe it was actually landscaped in green before that as well. You can see it contains trees, landscaping and again the paved area. And behind it you can see how the area just terminates with the forest. In a moment, I'll show you a picture of what that looks like behind there, the steep ravine I was mentioning before. Main point being that in practice this functions as a natural extension of our home frontage. It's effectively our front yard. Um, and, and, you know, a place that we use to access the home through, uh, with our car. So we actually need to come through here on all directions in order to get to get to our house. And there's nothing else here.

[00:13:55] Mr. Salsberg

There's no other houses past here. There's no way to get anywhere else. Um, and so, um, that leads me, I guess just a couple other quick pictures, different perspectives of the same parcel. The one on the left is pretty much the same as what you saw before. The one on the right is just a different view on the head. On view of the home. You can see the green area there as well. Um, I want to just also hit on this point. Um, I know Mr. Oberg mentioned this, but there is no county maintenance of any of this area. Not the road, not not the driveway, not the green area that I showed you either. It's marked and county maintenance. And in practice, the county does not mow, does not remove snow, does not remove leaves, does not do tree pruning. Um, none of that happens on on from the county. And that has left both us and the prior homeowners before us to take care of this area and maintain it and keep it safe at our own expense. I have a list there, as you can see on the screen, of the different things we've had to do. But the landscaping, like I said, was there, you know, when we bought the home. So we maintained that. But obviously, you know, like any, any um, you know, piece of, of green area, it requires mowing, weeding, leaf removal. There's a lot of trees around, snow removal, tree pruning, debris clearing and maintaining the driveway. All of this has been done for the last eight years at our private expense, and it's very substantial, as you can imagine. I mean, you add up the expenses of regular maintenance of all these types. It really is. Um, I think it's well over \$10,000 that we've spent probably more than that over the last eight years or so. Um, so that's that, you know, important facts because we really, as you'll see next, the grounds for granting this petition. This is something that has to be done. So there's let me just revisit the two grounds. I know Mr. Oberg mentioned this, and I know that you all know this in your capacities working for the county.

[00:15:53] Mr. Salsberg

But just to explain briefly why we believe both of the conditions are met. Number one, the right of way has never been used as a right of way in terms of, you know, for thoroughfare, it's not a road. No one else accesses it or needs to access it because there's nowhere to go. It basically just becomes our driveway. You can see on the right bottom right photograph there that's, you know, a picture of where the the driveway portion runs into our driveway behind the retaining wall. So there's nowhere else to go aside to aside from our house on the left. You can see I went into the woods behind the parcel to show you can't really see how steep it is, but it's quite steep. And it goes, um, it's really a straight down slope right to the watershed area. There it's all conservation easement. So there's there's really no possibility of building a road. And as far as we understand from planning and others, there's there are no plans to build a road there. There'd be no reason to build a road there. So we believe that the first condition is easily met. Uh, quickly. On the second condition, it's not one that we put in our initial petition, because at the time, frankly, we didn't, um, uh, appreciate all the criteria for what had to be met. But we believe the second criteria here is met as well. Um, if this land, including the driveway portion or the paved portion itself, um, and the green area are not maintained, if they're if they're not kept clear of debris, we really do think it would pose a not only a practical hazard for being able to get into drive a car to our onto the part of the driveway that we do own. Um, and to walk even across the grass to our property, you wouldn't be able to safely go in and out. Um, but also, you know, it just things like tree pruning, keeping the snow and ice clear, mowing, you know, even for the mailman, the mail carrier package delivery, this has to be maintained and the county doesn't do it. So, you know, the I think that the health and safety and welfare component, we believe is also met because abandoning the property and adding it to to the deed would allow us to not only continue doing what we're doing, but also, I think, very important part.

[00:17:57] Mr. Salsberg

Again, I don't think I mentioned it directly in our petition, but I wanted to add it now, once we own this little, uh, part of that part of the land, we'll be able to get insurance, our insurance, homeowner's insurance to cover it for liability purposes. Right now, if anyone were to slip or fall or, you know, or any other, you know, a branch falling from a tree, that would all be the county's liability because it's part of the right of way. So I think that's another reason why it's in the public interest to to grant that for the health and safety and welfare portion. Um, so I just have one more thing to cover. Um, Demetrius. Uh, sorry, Mr. Burke, to be formal. Um, covered this a little bit, but one important point is the original, um, uh, survey showed at the time that planning did its recommendation. And at the time that Pepco, I think, was chiming in, showed that there were multiple overhead wires on the on the abandoned portion. And there's actually not we have now confirmed you can see it in the photographs below. Pepco has now confirmed and and so has Lantiq that there's actually only one utility pole and one wire. That's it. Um, it's a very small wire. You can see it in the bottom right picture. I mean, it's a very thin wire that's hardly noticeable. And this one pole, um, over the land. Uh, to be clear, on our view of an easement, we, uh, for, for certain, you know, have no objection at all to making sure that that wire, that existing wire and the existing pole remain where they are. We understand, of course, um, that the utility runs there and that it's required to to power probably our home and the neighborhood. And we absolutely want to accommodate pepco's ability to continue to maintain and access that existing wire and pole. Um, at the same time, we do, we share the view that it's really important to to clarify with facts and not just, you know, I our understanding based on, I have to say, our prior interactions with Pepco. They have not been cooperative from the beginning. Um, they have not been willing to explain what facilities they have.

[00:20:00] Mr. Salsberg

Frankly, the exhibits, the first time I've seen them state on the record and acknowledge that it's only one pole and one utility line. And we think that their request to have a an easement to the entire abandonment area is unreasonable and unnecessary. As you can see, it's one wire and one pole that runs on the front side of the abandonment area. If this were limited to to access and maintenance, then then you know that, number one, we don't see why they would need such a broad, uh, segment for for the easement. A standard easement, we believe is ten feet. Um, that's what is actually you can see on the existing property, there's already a general public utility easement on our current property, currently owned property for ten feet. That is a standard size as we understand it. So why they would, you know, think they need 4500ft² of easement? Doesn't make any sense. And there's no precedent that I'm aware of for that. And I have looked into that. Um, the the other point I want to make really quickly is the distinction between a access and maintenance easement and a public utility easement. I think that's really important for us. We are absolutely, as I said, amenable to an access and maintenance easement to make sure Pepco can continue maintaining the current, uh, you know, limited facilities that it has. Our problem with a standard general public utility easement is that if you look at the general terms of a public utility easement, it not only allows for access and maintenance of what's there. It basically gives a perpetual right to all utilities to build and construct whatever they want on the area. That makes perfect sense when you're, you know, when you're constructing a new road or when you're, you know, when you're granting, you know, the area that that is envisioned to be where the utilities run in this situation. It doesn't make sense. There's no need for Pepco to have the right to build new things all over the abandonment area. And we would submit that if they had such broad rights, even though we understand, you know, realistically they may they would probably never exercise those rights. Our concern is that it would actually defeat the entire purpose of the abandonment petition, because, again, the grounds here are that this area needs to be kept safe.

[00:22:10] Mr. Salsberg

It needs to be kept clear of of of debris. We need to be able to maintain it and, and keep it clear so that we can access the property and that others can access the property and that it can be safely maintained. Right now, our understanding is that if Pepco wanted to build, let's say, you know, a transformer or some other facility right in the middle of the green there, they would have to go to the county and they would have to actually, you know, submit a petition for that. There would be a public hearing and they'd have to justify why they needed it and why they can't put it somewhere else. If we were to give an unrestricted general public utility easement, our concern is that, you know, it would then just be that that right, would then exist for Pepco to do whatever it wants without, you know, the county being involved anymore because it would be private land. And our only option, I think, at that point would be to go to court over it. That's not a situation that helps anyone. So again, maybe just to summarize, we are absolutely amenable to making sure that that existing power line and existing poles stay where they are and that Pepco has, you know, the access it needs to maintain and and access it in the event that it needs to be accessed and maintained. But we do want to make sure that they don't have more rights than they would currently have. Because again, this is this is not really for their benefit. This is being done for the county's benefit and for our benefit and for the public's benefit. Um, so I guess that that is, you know, really the oh, sorry, the very last point we have previously offered. But so far, Pepco has not been really very cooperative and willing to talk to us to also consider moving the proposed boundary. You see, on the right side of the survey there. We're more than happy to move that that proposed boundary. We recommended putting it there because it happens to line up exactly with the section 35 and 36 line. So it would be kind of an even partition, but if it would help the situation and reduce the need for an easement to move it over a few feet to keep that pole entirely out of the abandonment area, we'd be more than happy to do that.

[00:24:10] Mr. Salsberg

And if we did that, the only thing that would be left is that small overhead wire going over the land. There would be no reason, you know, unless it fell probably to access that. We'd again be willing to give the maintenance and access to that. But if it helps Pepco, we're also willing to move. Like I said, the line over slightly. So long story short, you know, definitely want to be, you know, accommodate be reasonable here. But we also want to make sure that, you know, that, that it's limited to what's truly needed for for the current existing facilities and not more. I'll stop there. Um, let me stop sharing the screen. Um, one moment. And we're also happy to take any questions, by the way.

[00:24:51] Mr. Souders

Thank you, Mr. Salisbury. At this time, those who have registered to speak on this abandonment case may do so. I don't know if they're all here, but.

[00:24:59] Mr. Oberc

I don't think any of them are here. Uh, three individuals who signed up to speak have are not attending. So.

[00:25:08] Mr. Souders

So who should I name? Who who spoke to? I don't see him here, any of them here.

[00:25:15] Mr. Oberc

So we can open it up for anyone else.

[00:25:17] Mr. Souders

Yeah, sure. So, um, we can obviously open it up if there's anybody else have any additional comments, please raise your hand and we can call on you to speak if you wish to. See any? I don't see any comments.

[00:25:38] Mr. Oberc

No, I think that's it.

[00:25:40] Mr. Souders

All right. Now that we've. Go ahead. Rob. Yeah. Now I have a question. So I didn't know if, uh, if you were taking questions in the comments, uh, phase here just to clarify something. Sure. So just on that, on that last, uh, slide that you had open, Mr. Salzberg, if you could reopen it, does that say overhead wire?

[00:26:03] Mr. Salsberg

Yeah. Just give me a moment to to grab that again. I'll show you the slide. And go back to the slide one moment. Um, yeah. So that you're looking at. So the highlighted area is the O wire. That's the overhead wire.

[00:26:23] Mr. Souders

And that's the overhead wire. That's the Pepco wire.

[00:26:28] Mr. Salsberg

Exactly. And you can see a photograph of the wire and the pole below it just. That's why I put it there and that's it. So that's the.

[00:26:34] Mr. Souders

That's that's the location. So that's the location of the wire within the abandonment area. And does it depict where the pole is also.

[00:26:42] Mr. Salsberg

Uh, yeah. It's the T shaped. See the highlighted O wire. It's where it ends in a T. That's the pole. Okay.

[00:26:50] Mr. Souders

Um, and do you know if there's any underground facilities for Pepco in the area?

[00:26:55] Mr. Salsberg

So we have asked Pepco that question repeatedly. They've they just refused, have unfortunately refused to answer us. Um, but my understanding is that they do not. I mean, uh, perhaps Mr.. Perhaps Mr. Burke, um, I know he received a letter. I think it only refers to a pole and a wire in that letter, but obviously that can be confirmed with Pepco. But to the best of our knowledge. There's not. It's never been marked. And if there are underground facilities, it would be really good to know that for our own safety.

[00:27:26] Mr. Souders

And in the time that you've owned the property, have you seen Pepco come out to maintain that wire?

[00:27:32] Mr. Salsberg

Uh, no. We have never once seen them come out. Um, and to the best of our knowledge, the previous homeowners also never had that experience.

[00:27:42] Mr. Souders

So there's been no tree trimming or anything around the wire.

[00:27:45] Mr. Salsberg

No, not not not in this area. They've done tree trimming. You can see on the on the survey at the top there's an overhead wire. The main the main electrical wires run outside the abandonment area on what we call the green in Brookmont. It's kind of a, you know, a walkway that goes through there that's not part of the proposed area. So they've done tree pruning there outside the, the, the abandonment area, but they've never done any tree pruning or maintenance inside. I think, frankly, the presumption of, you know, has been that, that that property they probably haven't consulted but it that it looks like our property. So it's always kind of been left to us to to maintain it. And that's what we've done. But Pepco has never even asked about doing it.

[00:28:28] Mr. Souders

And to your knowledge, do you know what that wire supports? What what sort of facilities? If it's not your own home, is it other homes in the area? Is it to deliver energy someplace?

[00:28:40] Mr. Salsberg

I to the I don't actually know. I don't have enough expertise there to know for sure, but it is, uh, I believe it's the supply line, at least to our home. Um, it does connect to another pole. You can see on the survey, it keeps going, you know, along along Broad Street, further out. So I really I probably shouldn't presume because I just don't know, it could be checked with Pepco, but that would be my presumption. Okay.

[00:29:09] Mr. Souders

Thanks. That's that's all the questions I have, Mr. Sanders. Thank you. Is there any other. Additional. Questions or comments from anybody else? I don't see any. Now that we've provided an opportunity for each participant to speak with the allocated time, I'm declaring the hearing closed. The hearing record will remain open until September 17th, 2024 at 5:00 PM to accommodate any additional comments for the record. These comments and other correspondence may be addressed to Mr. Demetrius Oberg at the Montgomery County Department of Transportation, 100 Edison Park Drive, fourth floor, Gaithersburg, Maryland, 20878. Or they may be emailed to Demetrius Oberg. That is d e m e t r i e s dot o b e r c at montgomerycountymd.gov. So with that, thank you. And the hearing is ended.

[00:30:12] The Reporter

Stand by. Thank you.

END OF TRANSCRIPT



Planet Depos