From:aileen alexTo:MCP-ChairSubject:Re: Wilgus Preliminary Plan Number 120200140Date:Tuesday, July 14, 2020 4:49:46 PM

Good afternoon. Agenda items for the July 23,2020 were not provided in the public notice. That aside I offer 2 comments that must fit within the major categories created to capture public comments.

- 1. Environment: Natural growth trees should be saved for greenhouse gas concerns as this growth can sequester the most carbon dioxide.
- 2. Greenspace: To combat disease, Thomas Jefferson proposed a plan for future urban expansion that would leave half of every development in green space. Using the example of a checkerboard, he suggested all squares of one color for homes, all squares of the other color to be left natural. Every house on the block would front on open space. While this may be impossible to fully implement retroactively in the White Flint/Pike and Rose Planning District, saving the remaining greenspace is advisable. I submit Jefferson was not referring to a green carpet or chemically-treated lawn.

Thank you for recording my comments,

Aileen "Alex" Alex 301-233-2552 c Executive Committee, <u>Bluewave Maryland Coalition</u> Operations Coordinator, <u>DMV Grassroots Coordinating Committee</u> Casey – here is my testimony for the hearing. Please have staff email me the details on setting up my computer to testify that day. Thank you,

Roslyn B Needle

301-529-6408

July 23, 2020 Hearing

My name is Roslyn Needle. I last testified in July 2019 as a representative of the 7 member Board of Directors of the Cherington Homeowners Association. Our community of 87 townhomes and 12 garden style units borders about 3.5 acres of the Wilgus development on Montrose Parkway. Wilgus proposed to build 64 townhouses on this land including 16 units directly behind the Cherington property.

Before I present our response to the Planning Office's Staff Report, I want to give a brief summary of the issues and concerns we have focused on for the past four years. First and foremost is that our community is losing a forest that is extremely valuable to us as well as surrounding areas. We strongly advocated for saving the trees, and it was gratifying to get the support of the Planning Office in 2016 when it recommended to the Planning Board that the forest behind Cherington be designated an urban park or forest. Regretfully, the Planning Board did not accept this recommendation. We turned our efforts to the County Council and brought the issue to their attention through a "Save the Trees" email campaign that was successful. Specifically, the Council included a provision in their Resolution on the White Flint Sector II Plan to pursue options for preserving all or a portion of the wooded area along Montrose Parkway for passive use. At the July 2019 Planning Board hearing we asked the Board to consider removing 16 of the townhouses behind us to leave a significant number of trees and meet the intent of the County Council's provision. The Planning Board rejected this proposal. Had they acted on this request for consideration, the Board would have demonstrated to citizens of Montgomery County the importance of a balance between economic growth and environmental concerns.

On behalf of all Cherington residents, I want to acknowledge the Planning Office staff. Thank you for meeting with us, listening to our concerns and, most importantly, accepting our comments as legitimate. This is a great example of how public officials work with a community on development projects.

Here is a summary of the issues of concern to Cherington and how the Staff Report addresses them:

1)We have reached an agreement with Wilgus and Winchester Homes, the builder, on a satisfactory buffer that meets the intent of the White Flint Sector II Plan. The final agreed upon design provides us with a year round evergreen dense treed buffer. This agreed upon design plan will be added to the Certified Preliminary Plan Approval by the Applicant.

2) We support the phased timing of the installation of the buffer, watering and care of the new plantings, and long term maintenance by the newly formed HOA for the development

3) We gained agreement from Winchester Homes to install a fence along the Wilgus property line north of the treed buffer plantings and we support the Planning Office's condition that the type of

fence would be made of a synthetic wood-like material and that the installation timing will be approved during review of the Site Plan.

4) We support the Planning Office's intent to explore the feasibility of providing a planted buffer between the row of townhomes on Castle Gate Road and Stonehenge Place Extended to further protect our community from noise and adverse lighting.

5) We have significant concerns related to water run-off into our development. Planning office staff have informed us that once the trees are removed, there will most assuredly be an increase in water run-off into our community. Therefore, we ask that 3 specific concerns be addressed in the Site Plan:

a)To prevent water run off after the trees are cut down, a berm would immediately be placed along the property line until such time as the permanent buffer/berm, fence, and other upgrades are addressed.

b) We request a permanent 18-24 inch berm when the trees are planted to raise the height of the plantings and to provide continued protection against water run-off into our community.

c) We will consider a request to extend and repair the current retaining wall behind several Cherington units. This issue will be addressed when we evaluate the plans for storm water management, water run-off, and grading in the Site Plan to make sure we do not incur increased water run-off into our property.

6) We concur on the need for the Applicant to install a traffic light at (currently named) Stonehenge Place and the Montrose Parkway. The light will greatly slow down the speed of cars and make it safer for cars to enter and exit, especially with the increased volume expected from the new development.

7. The Planning Office Report did not, to our knowledge, reference changing the name of the new street that runs North/South, connecting Montrose Parkway and Montrose Road. The Preliminary Plan calls this Stonehenge Place Extended. We request that a new name be given to this road and that the name Stonehenge Place be used only for the road that goes East/West from Cherington into the new development up to Towne Rd or thereabouts.

8)Finally, the timing of removing the forest and construction schedule is of great concern to us. We oppose removing the trees all at once and having the open land left idle with a silt fence, grass plantings, and straw on the Wilgus property for an undue time period.

The Montrose Parkway is a public thoroughfare and the land is not in an isolated area of the County. We ask that a very short time limit, i.e. 30 days be considered between cutting down the trees and beginning construction. This might mean that the trees would be cut down in stages according to building phases and not all at once, as we understand, is planned.

As we move forward, Cherington will continue to pursue goals that help to enhance both our community and the greater community at large.

Thank you,

Roslyn B Needle, Member

Cherington HOA Board of Directors

From:	Hummel, Phillip A.
To:	MCP-Chair
Cc:	Butler, Patrick; Graham, Tamika; "Bob Mazzuca"; Sears, Barbara A.
Subject:	Wilgus - Preliminary Plan No. 120200140
Date:	Tuesday, July 21, 2020 10:23:19 PM
Attachments:	image001.png
	image002.png
	image003.png
	image004.png
	image005.png
	11-22-17 Ltr to MNCPPC re- Prel. Plan Appl. to Extend APF.PDF
	11-22-17 Letter Attachment 1 - Parcels.PDF
	11-22-17 Letter Attachment 2 - N. Bethesda Garrett Park Master Plan.PDF
	11-22-17 Letter Attachment 3 - Settlement Agmt (7-28-04).PDF
	11-22-17 Letter Attachment 4 - Plat.PDF
	<u>11-22-17 Letter Attachment 5 - Planning Bd Opinion 10-27-04.PDF</u>
	11-22-17 Letter Attachment 6 - Receipt from MC Dept of Finance.PDF
	11-22-17 Letter Attachment 7 - Prel. Plan for Wilgus East.PDF
	Wilgus Settlement Agreement.pdf
	Wildus Sketch Plan Resolution (Sketch Plan No. 320190070).pdf
	4-21-20 Barbara Sears E-Mail.pdf
	Attachment to 4-21-20 Barbara Sears E-Mail.pdf
	7-15-20 Greg Ruff E-Mail.pdf
	Excerpts from DRC Comments and Responses Regarding Tree Preservation in Proposed Public Open Spaces.pdf
	Eplans Cycle 3 Comments (with DHCA comments on MPDUs).pdf
	Tree Variance Justification Statement.pdf

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Chair Anderson,

We submit the following background materials for inclusion in the administrative record for the above-reference case on behalf of Applicant Wilgus-Montrose Associates LLC:

- 11/22/17 Barbara Sears Letter (with attachments) Application to Extend Adequate Public Facilities and Preliminary Plan Validity Period for Preliminary Plan No. 199029A (Wilgus East)
- Wilgus Settlement Agreement
- Wilgus Sketch Plan Resolution (Sketch Plan No. 320190070)
- 4/21/20 Barbara Sears E-Mail (with attachment) correspondence regarding options considered by Applicant for preservation of wooded area along Montrose Parkway
- 7/15/20 Greg Ruff E-Mail (with attachments) correspondence regarding accepted landscape design for vegetated buffer
- Excerpts from DRC Comments and Responses Regarding Tree Preservation in Proposed Public Open Spaces
- Eplans Cycle 3 Comments DHCA approval of Preliminary Plan No. 1201200140's compliance with Chapter 25A
- Tree Variance Justification Statement

Due to size limitations on e-mail attachments, we will send a few additional background materials in a separate e-mail. We appreciate your attention to this matter.

Sincerely. Phil

Phillip A. Hummel

11 N. Washington Street | Suite 700 | Rockville, MD 20850-4229 D: +1 301.517.4814 | O: +1 301.762.1600 | F: +1 301.517.4814



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For COVID-19 information and resources, please visit our Coronavirus Task Force page.

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November 22, 2017

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Barbara A. Sears 301.961.5157 bsears@linowes-law.com

Scott C. Wallace 301.961.5124 swallace@linowes-law.com

BY HAND DELIVERY

Ms. Carrie Sanders Chief, Area 2 Maryland-National Capital Park and Planning Commission 8787 Georgia Avenue Silver Spring, Maryland 20910-3760

Re: Wilgus Associates Limited Partnership – Wilgus East Preliminary Plan No. 199029A (the "Preliminary Plan") – Application to Extend Adequate Public Facilities ("APF") and Preliminary Plan Validity Periods (the "Application")

BLOCHER LLP

ATTORNEYS AT LAW

Dear Ms. Sanders:

This office represents Wilgus Associates Limited Partnership ("Wilgus"), the owner of the Wilgus East property located in the southwest quadrant of Montrose Road and Towne Road in the White Flint area (the "Property"). The purpose of this Application is to request, pursuant to Section 50.4.3.J.7.e and Section 50.4.2.H.3.a of the Subdivision Regulations, respectively, extensions of the APF and Preliminary Plan validity periods for twelve years until November 27, 2029.

The Property contains approximately 6.6 acres and consists of Parcel 174 and Parcel 231 as shown on <u>Attachment "1"</u>. It is bordered to the south by Montrose Parkway, to the north by Montrose Road, to the east by Towne Road, and to the west by property also owned by Wilgus. The Property is currently zoned Employment Office (EOF) 1.5, H-75' and EOF 3.0, H-100'. It is recommended for rezoning to CR 2, C 1.0, R 1.5, H 200' in the White Flint 2 Plan update that is currently under review at the County Council (the "White Flint 2 Plan").

Pursuant to the Preliminary Plan, the Property is approved for the development of approximately 308,000 square feet (SF) of office uses on one lot (the "Approved Development"). To date, the Approved Development has not been built. The validity periods for the APF and Preliminary Plan approval for the Approved Development will both expire on November 27, 2017.

As detailed below, although Wilgus has owned the Property as part of a larger tract for approximately 40 years, it has been prevented from developing the Property for much of that time because of the County's desire to acquire land, including a portion of the Property, for

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^{**}L&B 6597181v21/00207.0032

Montrose Parkway. Wilgus, the Planning Board and the County have engaged in protracted discussions and legal actions over dedication of land by Wilgus to the County for the construction of Montrose Parkway and access to the Property. More recently, depressed demand for office space in the County, and delays in starting and processing the White Flint 2 Plan have prevented Wilgus from developing the Property. Accordingly, the request for the extensions is necessitated by actions beyond Wilgus' control that have prevented it from implementing the Approved Development within the existing APF and Preliminary Plan validity periods.

BACKGROUND

The Property has a long and complex development history, which is detailed below to provide context and support for the request to extend the APF and Preliminary Plan validity periods pursuant to the Application.

Montrose Parkway Right-of-Way Reservation

Wilgus purchased the Property in 1967 as part of a larger 40-acre tract (the "Original Tract") located east and west of East Jefferson Street. In 1970, the North Bethesda-Garrett Park Master Plan was adopted and recommended construction of the "Rockville Freeway" as a 300-foot wide six (6)-lane divided highway in the same location as the current Montrose Parkway. The proposed right-of-way ("ROW") consumed approximately 20 acres of the Original Tract, including a significant portion of the Property.

In 1976, a portion of the Property was rezoned to Commercial Office (C-O), with the balance remaining R-200. When Wilgus sought to subdivide the Original Tract for office development on the Property in 1977, the County placed approximately 20 acres of the Original Tract, including a substantial portion of the Property, into reservation for acquisition of the Montrose Parkway. This reservation restricted all development within the reserved ROW and remained in place for approximately 21 years. During this time, the County never purchased the land in reservation and, due to the extent and impact of the reservation, Wilgus was precluded from developing the Property with office uses.

Meanwhile, in December of 1992 the North Bethesda-Garrett Park Master Plan (the "1992 Master Plan") was approved and adopted. This plan continued to recommend the construction of a road, now called Montrose Parkway, within the same 300-foot wide ROW through the Original Tract, including a portion of the Property, that had been in reservation since 1977. The Montrose Parkway was recommended in the 1992 Master Plan as the primary transportation improvement to provide additional highway capacity in North Bethesda and improve vehicular mobility into and out of the planning area. *See* Master Plan, pages 151, 154-159, <u>Attachment "2"</u>. After the

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adoption of the 1992 Master Plan, despite continued efforts by Wilgus to resolve whether the Montrose Parkway right-of-way would be purchased by the County or Wilgus would be allowed to develop the Property, no action to acquire the right-of-way in reservation was taken by the County.

In 1995 Wilgus sold approximately 13.5 acres of the Original Tract to Pulte Home Corporation for development of the Cherington townhouse community. Between 1995 and June 1998, Wilgus continued to seek a resolution to the question of acquisition or development of its 20 acres of the Original Tract in reservation since 1977 with all relevant public agencies. When no resolution could be reached and the reservation term expired on June 30, 1998, the portion of the Original Tract in reservation, including a portion of the Property, was released from reservation without acquisition by the County.

The Preliminary Plan

In October of 1998, Wilgus filed the Preliminary Plan that is the subject of this Application. Specifically, the Preliminary Plan proposed two office buildings on the Property, which at that time was split-zoned R-200, C-O, and Office-Moderate Intensity (O-M). After filing the Preliminary Plan, Wilgus, the County and the Planning Board engaged in extensive discussions over the public agencies' demand that Wilgus dedicate the ROW for the Montrose Parkway. Accordingly, although filed in 1998, the Preliminary Plan was not brought to the Montgomery County Planning Board (the "Planning Board" or "Board") for a hearing until 2000.

The Planning Board approved the Preliminary Plan, with conditions, at the 2000 hearing, but did not issue the Opinion approving the Preliminary Plan for the Approved Development until August 30, 2002. The Opinion had multiple conditions, including the requirement for Wilgus to dedicate and construct the section of Montrose Parkway along the frontage of the Property. Wilgus objected to these conditions of approval of the Preliminary Plan and filed a Petition for Judicial Review with the Montgomery County Circuit Court. After filing the Petition, Wilgus agreed to a remand of the Preliminary Plan to the Planning Board to enter into settlement negotiations with the Board and the Montgomery County Department of Public Works and Transportation, now the Department of Transportation ("DOT").

For approximately the next two years, negotiations continued between Wilgus, DOT and the Board and culminated in a Settlement Agreement dated July 28, 2004 (the "Settlement Agreement"), <u>Attachment "3"</u>. Under the Settlement Agreement, in exchange for Wilgus' agreement to dedicate approximately 2.3 acres for Montrose Parkway, the Board and DOT agreed to limit Wilgus' contribution for the construction of a section of Montrose Parkway along its frontage to a maximum of \$200,000, whether the section was constructed by Wilgus or by the

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County. In furtherance of the Settlement Agreement, in May of 2005 Plat No. 23187 was recorded for the dedication by Wilgus of 2.3 acres for Montrose Parkway (the "Dedication Plat"), <u>Attachment "4"</u>. Montrose Parkway was eventually constructed by the County and opened for vehicular travel in 2010.

The Settlement Agreement included terms that were required to be approved and implemented by the Planning Board through an amendment to the Preliminary Plan. Pursuant to those terms, the amended Preliminary Plan was approved by Planning Board Resolution dated October 27, 2004 ("Resolution"), <u>Attachment "5"</u>. The Resolution included eleven (11) conditions of approval, including four related to the transportation infrastructure improvements discussed in detail below. The Resolution provided, as Condition 11, a 61-month validity period (until November 27, 2009) for the APF approval for the Approved Development and a 49-month validity period (until November 27, 2008) for the Preliminary Plan approval.¹

However, after the amended Preliminary Plan was approved Wilgus was unable to proceed with the Approved Development because of a disagreement between Wilgus and the County over the construction of an access road to the Property and the Cherington community via Cherington Road and Montrose Parkway. Wilgus could not proceed with the processing of a Site Plan for the Approved Development, and obtain the necessary record plat and building permits to validate the Preliminary Plan and APF approvals, until the access dispute with the County was resolved.

This resulted in the County's filing a condemnation action to acquire a portion of the Original Tract for the access road. This action was eventually resolved in 2011 through a Consent Judgment and Injunction (the "Consent Judgment").

The White Flint 2 Plan

During the access road dispute, the economy experienced a severe downturn and demand for office space in the County dropped significantly. In response, Wilgus sought opportunities for

¹ By Planning Board action on July 10, 2008, the Preliminary Plan validity period was extended to November 27, 2009 to be coterminous with the APF validity period. Subsequently, in response to the significant economic downturn and depressed office market in the County, beginning in 2009 the County Council granted a series of two-year extensions to all Preliminary Plan and APF validity periods. The most recent extension was approved by the County Council on June 9, 2015 in Subdivision Regulation Amendment 15-01 (the "SRA"). The SRA provides that any Preliminary Plan or APF approvals that were valid as of March 31, 2009 are automatically extended for 8 years from the date such validity periods for Wilgus East, which were both valid as of March 31, 2009, have both been automatically extended to November 27, 2017.

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mixed-use, residential and retail development on the Property, but was limited by the R-200/C-O/O-M zoning. Therefore, Wilgus anticipated seeking a recommendation for mixed-use zoning on the Property when the Planning Board began the process of updating the 1992 Master Plan for the White Flint planning area, which included the Property, in late 2006.

Initially the scope of work for the update for the White Flint area included the core area of White Flint on both sides of Rockville Pike and areas on the west side of Old Georgetown Road (including the Property) as well as the east side of the Metro tracks. However, in approximately 2007, the planning area was split into White Flint 1, which included the core area, and White Flint 2, which included the areas on the east and west sides of the core (previously defined herein as the "White Flint 2 Plan"). The Property was part of the White Flint 2 Plan.

The White Flint 1 update proceeded and was completed in 2010 with the adoption of the White Flint 1 Sector Plan. However, although the White Flint 2 Plan was originally anticipated to immediately follow the adoption of the White Flint 1 Sector Plan, the commencement of the Plan was not immediately included in the Planning Board's work program approved by the Council, and the Planning Board did not approve a Scope of Work for this plan until 2012. Subsequently, work on this plan was delayed to allow for other Master Plan updates to proceed, and did not resume until the end of 2015.

In October of 2014, the Countywide District Map Amendment which implemented the County's Comprehensive Zoning Ordinance Amendment rezoned the Property from R-200, O-M and C-O to its current EOF zoning. The EOF Zone is not flexible enough in terms of permitted uses and densities to allow Wilgus to proceed with desirable mixed-use development of the Property. Therefore, since its initiation Wilgus has actively participated in the White Flint 2 planning process seeking rezoning to the CR Zone. Wilgus envisions redevelopment of the Property as part of a combined mixed-use redevelopment project that also includes the balance of the Original Trust still owed by Wilgus, and property owned by Willco, a related company, located across Montrose Parkway from the Property. This combined redevelopment project provides the opportunity to continue the mixed-use initiative started by the White Flint 1 Sector Plan, extending the very successful development patterns of Pike & Rose while enhancing other existing and planned development in White Flint 1. This vision has been endorsed by the Planning Board and the County Council in its ongoing review of the White Flint 2 Plan update, which is anticipated to be completed by the County Council by the end of 2017.

The Planning Board supported mixed-use development of the Property under the CR Zone in the Planning Board draft of the White Flint 2 Plan, and the Planning, Housing and Economic Development (PHED) Committee of the County Council is recommending CR 2.0, C 1.0, R 1.5, and H 200' for the Property. The County Council is expected to adopt the White Flint 2 Plan update with this recommendation on December 5, 2017.

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It is likely to require at least another 6 months to implement the Sectional Map Amendment to rezone the Property to the CR Zone to extend the special taxing district to include the Property and amend the Subdivision Staging Policy to reflect the taxing district in accordance with the recommendation of the White Flint 2 Plan. Further, based on the current direction of Wilgus' planning efforts as referenced on the Sector Plan recommendation for the Property, it is anticipated that the Property will be developed in a different manner than the Preliminary Plan reflects, and over a much longer timeframe. Therefore, it is clear that the ultimate vision for the Property cannot be realized within the timeframe of the current Preliminary Plan approval and APF approval periods. Accordingly, Wilgus is seeking the extension of the APF validity period to allow Wilgus to participate fully with the County and Planning Board in completing the planning and entitlement process, and ultimately achieving the shared goal of developing the Property in accordance with the White Flint 2 Plan.

EXTENSION REQUEST

APF Validity Period – Section 50.4.3.J.7.e.i-iii

Pursuant to Section 50.4.3.J.7.e.i-iii of the Subdivision Regulations, the Planning Board may extend a determination of adequate public facilities for up to 12 more years beyond the otherwise applicable validity period if the Board finds that:

- (A) the preliminary subdivision plan for the development required a significant commitment of funds by the applicant, amounting to at least \$3 million, as adjusted annually by the consumer price index, to comply with specified infrastructure conditions;
- (B) the applicant has met or exceeded the required infrastructure conditions during the original validity period; and
- (C) the applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master plan.

The Application qualifies for an extension of the APF approval under this provision because, as more fully detailed in this letter: (1) approximately \$4,000,000 has been expended to date to comply with specified infrastructure improvements required under the Preliminary Plan, including, but not limited to, the dedication of 2.3 acres of land to the County for the Montrose Parkway in 2005, the contribution commitment to the costs of the construction of Montrose Parkway, and payment of a development excise tax; (2) all of the requirements for infrastructure improvements under the conditions of the Preliminary Plan have been satisfied; and (3)

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construction of the required infrastructure improvements provided a significant and necessary public benefit to the County by implementing infrastructure goals of the multiple Master Plans that recommended the construction of Montrose Parkway.

The Preliminary Plan was approved with four conditions of approval that required the construction of, or participation in, infrastructure improvements and programs (collectively the "Infrastructure Conditions"). Wilgus has satisfied all of the Infrastructure Conditions as detailed below.

Condition 1. Limit approval of the preliminary plan to a maximum of 308,400 square feet of office use and pay to the Montgomery County Department of Finance the balance of the expedited development approval excise tax prior to receipt of building permit(s), and provide for the following:

a) Dedicate right of way for Montrose Parkway for a minimum of 130 feet through the property frontage expanding to approximately 215 feet approaching [Towne Road] to accommodate the MDSHA's planned street grade design for the future MD355 and Montrose Road interchange. All rights of way, except for the area of reservation shown on the approved preliminary plan, shall be dedicated by the Applicant. The Applicant shall dedicate this right-of-way within six months of the mailing of this opinion but not later than December 31, 2004.²

b) Provide a concept plan showing the transition of right of way for Montrose Parkway between [Towne Road] and East Jefferson Street to accommodate the proposed roadway improvements. The right of way should be approximately 215 feet in width at "Old" Georgetown Road tapering to 130 feet at the western edge of Wilgus East per Montrose Parkway design plans and expanding to 300 feet at East Jefferson Street. The concept plan should be submitted and reviewed by the technical Staffs of M-NCPPC and [DPWT] DOT prior to the Planning Board approval of the site plan application.

c) Join and participate in the North Bethesda Transportation Management District (TMD) to satisfy traffic mitigation requirement, for the North Bethesda/ Garrett Park Master Plan.

² Towne Road was formerly known as "Old" Old Georgetown Road.

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With regard to Condition 1(a), Wilgus dedicated 2.3 acres of the Road to Montgomery County for construction of Montrose Parkway as shown on the Dedication Plat, on <u>Attachment "4"</u>. Wilgus values this land at least \$3,870,262 based on a fair market value of \$38.63 per square foot. This value was determined based on the square foot value the County paid Wilgus in 2011 to acquire the 251,050 SF of land (in fee simple and as easements) for the construction of a section of Montrose Parkway pursuant to the Consent Judgment discussed above. Based on this valuation, the 2.3 acres dedicated to the County by the Dedication Plats is worth a minimum of \$3,870,262 (2.3 ac./43,560 SF x \$38.63 SF = \$3,870,262).

In addition, the Settlement Agreement required Wilgus to pay the County up to \$200,000 for the construction of a portion of Montrose Parkway along the frontage of the Property. Finally, on June 18, 1999, Wilgus paid the County a deposit for the projected Expedited Development Approval Excise Tax in the amount of \$79,615.50, <u>Attachment "6"</u>.

Accordingly, pursuant to the requirements of the Preliminary Plan, Wilgus has contributed land and paid funds totaling well in excess of \$3,000,000 (approximately \$4,000,000) to the County for transportation infrastructure improvements that have benefited the North Bethesda area with added vehicular circulation into and out of the Planning Area.

Condition 1(b) and Condition 1(c) are not required to be satisfied until, respectively, the time of site plan and prior to building permit.

Condition 2. Applicant to participate in the construction of Montrose Parkway as provided for in the Settlement Agreement dated July 28, 2004.

As discussed above, Wilgus was committed under the Settlement Agreement to contribute up to \$200,000 for the construction of a section of Montrose Parkway along its frontage. Montrose Parkway, including the section along the frontage of the Property, was constructed by the County and opened for public use in 2010. Wilgus participated in the project as required.

Condition 3. Prior to MCPB release of building permits, Applicant to submit to M-NCPPC a reservation plat application depicting the land area located adjacent to ["Old" Old Georgetown Road] now [Towne Road] and Montrose Road, shown by the November 2001 SHA Environmental Assessment to be located within the alternative roadway alignment of the Montrose Road and MD 355 intersection improvements as may be updated before recordation of plat. The right of way area is to be placed in reservation for a period not to exceed, by this action, three (3) years.

Wilgus has not applied for any building permits for the Approved Development on the Property and, therefore, the requirement to submit a reservation plat for ROW for possible intersection

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improvements at "Old" Old Georgetown Road, now called Towne Road, and Montrose Road pursuant to this Condition has not been triggered. Further, neither the approved White Flint 1 Sector Plan nor the White Flint 2 Plan update pending final approval to the County Council does not recommend a realignment at the Montrose Road and Towne Road intersections. At the time of redevelopment of the Property pursuant to the White Flint 2 Plan update, when approved, Wilgus will comply with any applicable and lawful conditions of approval for road improvements required to support redevelopment.

Condition 4. All roads shown on the approved preliminary plan shall be constructed by the Applicant to the full width mandated by the applicable Master Plan, except for the road identified as the Montrose Parkway, which shall be constructed in accordance with the terms of the Settlement Agreement referenced above in New Condition #2.

The approved Preliminary Plan, attached as <u>Attachment "7"</u>, showed a private temporary access through the portion of the Property dedicated for the Montrose Parkway (which would be extinguished once Montrose Parkway was constructed). With the construction of Montrose Parkway in the location of the temporary access road, this condition is no longer applicable. Access for future development on the Property will be determined at the time of applicable approvals for such development.

In summary, Wilgus has satisfied all of the Infrastructure Conditions of the Preliminary Plan that are required to be satisfied at this point in the development approval process. In satisfying the Infrastructure Conditions, Wilgus has provided land and funds totaling approximately \$4,150,000 in value for the construction of Montrose Parkway and other County transportation projects.

Moreover, Wilgus has provided a significant and necessary public benefit to the County in furtherance of a central objective of the 1992 Master Plan to provide additional transportation capacity and enhanced mobility in the planning area through the construction of Montrose Parkway. *See* Master Plan, pages 151, 154-159, <u>Attachment "2"</u>. Accordingly, Wilgus has satisfied all of the criteria of Section 50.4.3.J.7.e for extension of the Preliminary Plan validity period.

In addition to meeting the technical requirements of Section 50.4.3.J.7.e and as set forth above, the Application furthers the intent of the extension provision to allow projects adequate time both to develop in a thoughtful and deliberate manner and to recoup the costs expended for infrastructure improvements that provide a significant public benefit. Wilgus' goal of developing the Property as a vibrant mixed-use community as envisioned in the White Flint 2 Plan update cannot be accomplished within the existing APF and Preliminary Plan validity

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periods. The extensions requested in the Application will allow Wilgus to develop the Property in a manner that furthers the planning and economic development objectives of the County to foster the growth in the White Flint area.

Preliminary Plan Validity Period – Section 50.4.2.G.3

ANDI BLOCHER LLP

As noted above, the Preliminary Plan validity period expires on November 27, 2017. Pursuant to Section 50.4.2.G.3 of the Subdivision Regulations, a "preliminary plan or phase of a preliminary plan is validated when the applicant has secured all government approvals necessary to record a plat, and a plat for all property shown on the plan or in that phase has been recorded in the County Land Records." If not validated within the validity period, the preliminary plan will expire unless extended by the Planning Board.

In order to record a record plat for the approved lot and validate the Preliminary Plan, Site Plan approval for the Approved Development would be required before November 27, 2017. As Wilgus is not able to validate the Preliminary Plan by that date due to actions and events beyond its control as detailed above, it is seeking an extension of the Preliminary Plan pursuant to Section 50.4.2.H.3.a of the Subdivision Regulations.

Section 50.4.2.H.3.a of the Subdivision Regulations provides that the Planning Board may grant a request to extend the validity period of a preliminary plan if the Board finds that:

i. delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or

ii. the occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended.

Both criteria for the extension of the Preliminary Plan validity period are satisfied in the instant case. First, as detailed above, Wilgus was prevented from meeting the terms and conditions for validating the Preliminary Plan, and moving to record plat, by the actions of the County and the Planning Board in its initial approval of the Preliminary Plan in 1998 with conditions deemed by Wilgus to be illegal and arbitrary, which necessitated the filing of the appeal of the original

LINOWES AND BLOCHER LLP ATTORNEYS AT LAW

Ms. Carrie Sanders November 22, 2017 Page 11

Preliminary Plan in 1998. In order to resolve these issues, Wilgus, the County and the Planning Board entered into protracted negotiations that culminated in 2004 with the Settlement Agreement and the approval of the amended Preliminary Plan.

Following this approval, Wilgus was still unable to proceed to Site Plan approval, a prerequisite to record plat, because of a protracted dispute with the County over access to the Property. This dispute was not resolved until 2011 when the County and Wilgus entered into the Consent Judgment and Injunction. By the time these disputes with the County and the Planning Board were ultimately resolved, the County experienced a significant drop in the demand for office development in the White Flint area that has continued to the present day. In response, Wilgus diligently pursued rezoning the Property to a mixed-use zone, which would allow for economically feasible development, but encountered delays in the White Flint 2 Plan, which to date has still not been completed. Accordingly, these events beyond the control of Wilgus support the requested extension of the Preliminary Plan validity period under this criteria.

Further, the extensive delays caused by the actions of the public agencies detailed above were highly unusual and unanticipated by Wilgus, and certainly beyond its control as it sought to exercise its lawful right to develop the Property in accordance with applicable laws and the Preliminary Plan approval. In fulfilling the conditions of the Preliminary Plan approval, Wilgus expended funds and contributed land valued at approximately \$4,000,000 for construction of Montrose Parkway, which has been open to the public since 2010 and provides significant congestion relief and capacity to the traffic network serving the North Bethesda/White Flint area. Moreover, although unable to develop the Property because of the actions of the relevant public agencies, Wilgus was required to expend significant sums in real estate taxes for the Property for many years, and also in engineering consultants and legal fees for both the preparation of the Preliminary Plan and in the ensuing litigation over the approval conditions and the access issue. If the Preliminary Plan and APF approvals are not extended pursuant to this Application, then Wilgus would be denied the benefit of these expenditures, as well as its financial contributions to the area-wide transportation improvements, resulting in a significant undue and unfair hardship to Wilgus.

Accordingly, for the reasons stated above, Wilgus requests an extension of the APF and Preliminary Plan validity periods for 12 years or until November 27, 2029. In view of the delays beyond its control, the significant transportation infrastructure expenditures and dedications pursuant to the Preliminary Plan in excess of \$3,000,000 and the changes in zoning, Wilgus should be given the opportunity to amend the Preliminary Plan utilizing this capacity it created and retained through these expenditures and dedications. Enclosed with this letter is an Extension Application with all required supporting materials, an Adjoining and Confronting Property owners list with a set of mailing labels, and the required application fee.

Ms. Carrie Sanders November 22, 2017

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ATTORNEYS AT LAW

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Page 12

If you have any questions regarding this matter, please do not hesitate to call. Thank you for your assistance.

Very truly yours, LINOWES AND BLOCHER LLP ual Barbara A. al M.

Scott C. Wallace

Enclosures

cc: Mr. Richard Cohen Mr. Jason Goldblatt



· · · ·

Attachment "1

MASTER PLAN

approved & adopted 1992

NORTH BETHESDA GARRETT PARK



INCORPORATING STAGING AND CONFERENCE CENTER AMENDMENTS

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Attachment "2"

TRANSPORTATION IN NORTH BETHESDA	
THE PLAN STRATEGIES FOR IMPROVED	
	IDENTIFICATION OF MAS

Predominant
Auto/Highway
Emplasize 1-270, and 0 Md 355 for through tups 1-270 spur expansion 0
Montrose Parkway Intersection improvements TMD emphasis Rock Spring Park- I-270 Interchanges
Intersection Intersection Montrose Parkway Rook Spring Park- I.270 Interchanges
o Intersection improvements o Provide new local oriculation roads o

page **151** A station with the state

NORTH BETHESDA/GARRETT PARK APPROVED & ADOPTED

TABLE 10



- Data collection: require employers to collect and submit data on employee commute characteristics for use in planning and monitoring programs, or to cooperate with TMD surveys.
- Information dissemination: require employers to provide employees with information on alternative commute modes, alternative work hours, and other ridesharing measures. This information could be prepared by the TMD staff.
- Transportation coordinators: require employers to designate an employee as a transportation coordinator to implement the traffic reduction programs.

Encourage transit accessible land-use patterns. The layout and orientation of development can have a major bearing on the decision by workers and residents to use transit. This policy entails a variety of different actions, some of which are being developed as part of the Transit- and Pedestrian-Oriented Neighborhood Study currently underway in the Planning Department. This Master Plan encourages appropriate modification to regulatory procedures and guidelines and the development of transit accessible patterns in North Bethesda.

- Hold fare increases to the minimum. Transit ridership in an auto-oriented environment such as North Bethesda is very sensitive to transit fares. Most riders have a choice between transit and the auto and make this choice based on a variety of factors, with fares usually weighted very strongly. Even with improved service levels, higher fares will make increasing ridership difficult.
 - Increase or institute parking charges and decrease parking supply. There is a good deal of evidence that the cost and availability of parking is a critical variable in estimating the level of auto versus transit use in an area. Free parking, or relatively inexpensive parking, makes the choice to drive very easy. This Master Plan recommends that a mechanism be instituted in North Bethesda to ensure that free parking for commuters is virtually eliminated for both new and existing development. If possible, any money collected through surcharges or other means by the public should be used to keep fares low.

Roadway System Improvements

Construct the Montrose Parkway from Montrose Road to Veirs Mill Road and maintain the remainder of the right-of-way to the west side of the connection to Montrose Road for a possible future transitway. This Master Plan envisions a divided four-lane parkway with a wide landscaped median in a portion of the former Rockville Facility right-of-way, from east of Tildenwood Lane to Veirs Mill Road. The precise alignment near the western terminus of the parkway will be determined in a future engineering study which will take into account the potential access to affected properties, environmental constraints, and appropriate road design, among other factors. It would have points of access to Rockville Pike and/or Old Georgetown Road, be grade-separated at Rockville Pike, Randolph Road, and the CSX Railroad, and would connect with Veirs Mill Road using the

page **154** old alignment of Gaynor Road. This recommendation also includes a configuration at Veirs Mill Road that would not allow any through movement to Parkland Drive from this new road. This Plan does not recommend any elevated structure at the intersection of the proposed Montrose Parkway and Veirs Mill Road. This intersection will be further addressed during the preparation of the Aspen Hill Master Plan.

In the segment of the Montrose Parkway east of Parklawn Drive, this Master Plan also endorses as an equivalent option a three-lane undivided roadway crosssection. Under this option the center lane would be reversible, operating westbound in the morning peak hours and eastbound during the evening peak hours. The lane may be for general use, or it could be reserved for highoccupancy vehicles or for buses only. Both the four-lane divided and three-lane undivided options should be evaluated, and the final selection should be made by resolution of the County Council.

This road is essential to future capacity for east and west vehicular movement across the planning area. The two existing roads, Montrose/Randolph Roads and Twinbrook Parkway, are currently congested and have high accident rates. Future growth in the region, even with little growth in North Bethesda, makes the provision of additional capacity essential. The parkway would add capacity, replacing capacity removed by the deletion of the Aspen Hill Road Extension. A parkway-type road, with wide medians, could be easily accommodated in the current 300-foot right-of-way with inclusion of a hiker/biker trail in a linear greenway. Additional recommendations for this new roadway include a 45 mph planned speed and prohibitions against trucks. Figure 54 shows the proposed alignment, noting recommendations concerning related actions. An illustrative section is shown below.





In the long-term future, beyond the time frame of this Master Plan, a transitway link to the Shady Grove transitway and Prince George's County may be desirable. page **155** TRANSPORTATION PLAN NORTH BETHESDA

For this reason, the entire right-of-way from I-270 to Veirs Mill Road should be maintained for future transportation purposes. This Plan does not envision a roadway connection east of that shown on the accompanying maps.

Provide Local Circulation Roads serving the Metro station areas. Figure 55 shows two new routes developed by linking together existing roads, serving existing and future activity centers. These roads would allow vehicles access and circulation through current and planned development in this area without the need to use MD 355 (Rockville Pike). This would ease congestion and increase safety and convenience. Many of the new sections can be constructed through agreements when the major parcels are developed. However, the southern link, using Executive Boulevard Extended through the site of the Colonial Manor Motel, may possibly require public acquisition, as may other segments. It is envisioned that Chapman Avenue Extended would be a non-divided Business District Street, with two travel lanes and two parking lanes. Nebel Street Extended would require four travel lanes at all times because of its higher emphasis on longer trips.

Increase highway capacity at selected locations. (Figure 56 summarizes the recommended highway improvements). The increase in traffic from regional and North Bethesda growth, even with conservative demand management assumptions, will necessitate major modifications to the highway network. Traditionally, Master Plans do not specify intersection layouts, as this should be done when the demand numbers warrant actual construction. However, when grade separation or new interchanges are envisioned, these are to be included in the Plan. This Plan includes several such locations.

- A direct connection should be made between the I-270 east spur and Rock Spring Park, connecting with Rock Spring Drive. This would provide a way for trips destined for the employment and residential uses here to bypass the more local roadway system and the current Old Georgetown Road interchange. This proposal would substantially reduce congestion on both Democracy Boulevard and Old Georgetown Road south of the I-270 east spur.
- Widen the I-270 spurs, both east and west, by an additional lane in the median, providing for three lanes in each direction. Current patterns of congestion as well as future volumes projected for these roadways make this additional capacity essential and the increased lanes were included in the transportation network for all alternatives. If collector-distributor lanes or other means of providing for better access to the current and future interchanges are needed, these would be in accordance with this Master Plan.
- The Fernwood Road bridge over the I-270 spur should be connected to the I-270 spur to and from the north via ramps. More extensive ramping appears difficult to construct from an engineering perspective, although it would not be incompatible with this Master Plan if designs can be devised. The ramps to and from the north would be suitable for HOV-only use, as part of a system including the I-270 bus/HOV lanes. Facilities providing for convenient transfers to

page 156

MONTROSE PARKWAY PROPOSALS

FIGURE 54



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SETTLEMENT AGREEMENT

THIS AGREEMENT entered into this 28th day of July, 2004 by and between Wilgus-Montrose Associates Limited Partnership, ("Applicant"), the Montgomery County Planning Board of the Maryland National Capital Park & Planning Commission ("The Board") and Montgomery County, Maryland ("The County").

WHEREAS on October 15, 1998, Wilgus-Montrose Associates Limited Partnership ("Applicant") submitted a preliminary plan application to The Maryland-National Capital Park and Planning Commission proposing certain development on an 8.7-acre site located in the southwest quadrant of Montrose Road and "Old" Old Georgetown Road in Montgomery County, Maryland ("Wilgus Site"); and

WHEREAS on August 30, 2002, the Montgomery County Planning Board ("Board") issued a written opinion for Preliminary Plan Number 1-99029 ("Opinion") (Exhibit One), approving two commercial buildings, one with 308,400 square feet of general office space and the other with 5,500 square feet of general office space ("Development"); and

WHEREAS the Board imposed certain conditions on the Applicant in its Opinion; and

WHEREAS on September 17, 2002, the Applicant filed a timely written objection ("Written Objection") to the Board's Opinion and related conditions in accordance with Chapter 50-30(c)(1) of the Montgomery County Code ("Subdivision Regulations"); and

WHEREAS on September 25, 2002, the Applicant timely filed a petition for judicial review of the Board's Opinion and related conditions captioned Petition of Wilgus-Montrose Associates Limited Partnership f/k/a Wilgus Associates Limited Partnership for Judicial Review of the Decision of the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, Civil Action No. 236745-V ("Court Case"); and

WHEREAS on November 22, 2002, the Board entered a timely Response in the Court Case; and

WHEREAS the Board and Applicant (collectively "Parties") have jointly obtained a stay of the Court Case pending settlement discussions; and

WHEREAS the Parties jointly seek the concurrence of Montgomery County, Maryland, ("County"), to certain terms of this Agreement and that concurrence is provided below for the specific provisions indicated herein; and

-NOW, THEREFORE, WITNESSETH, in consideration of the mutual agreements and promises contained herein, the Parties jointly agree to settle the Court Case based on the following terms:

I. <u>Recitals</u>. The above recitals are incorporated herein by reference.



II. Planning Board Conditions of Approval.

A. The Board will seek a remand from the Circuit Court in order for the Board to undertake a new public hearing to consider the following proposed amended conditions of approval:

1. Condition No. 1.a) will be revised as follows:

Dedicate right of way for Montrose Parkway for a minimum of 130 feet through the property frontage expanding to approximately 215 feet approaching "Old" Old Georgetown Road to accommodate the MDSHA's planned street grade design for the future MD355 and Montrose Road interchange. All rights of way, except for the area of reservation shown on the approved preliminary plan, shall be dedicated by the Applicant. The Applicant shall dedicate this right-of-way within six months of the mailing of this opinion but not later than December 31, 2004.

2. Condition No. 1.c), which states "Design and construction two lanes of the segment of Montrose Parkway through the property frontage, the two lanes to establish a parkway road character," will be deleted in its entirety.

3. Condition No. 2, which states "Construction of Montrose Parkway to be in accordance with the DPWT recommendations dated October 27, 1999 and November 24, 1999, as modified by the conditions of this Opinion," will be deleted in its entirety.

4. New Condition No. 2 will be added that states "Applicant to participate in the construction of Montrose Parkway as provided for in the Settlement Agreement dated **July 28, 2004.**"

5. Condition No. 4, which states "All roads shown on the approved preliminary plan shall be constructed by the Applicant to the full width mandated by the applicable Master Plan, except as modified in Condition #1 above," shall be deleted in its entirety.

6. New Condition No. 4 will be added that states "All roads shown on the approved preliminary plan shall be constructed by the Applicant to the full width mandated by the applicable Master Plan, except for the road identified as the Montrose Parkway, which shall be constructed in accordance with the terms of the Settlement Agreement referenced above in New Condition No. 2.

7. Condition No. 10 shall be revised to reflect a forty-eight month validity period pursuant to a four-year phasing plan, giving the Applicant four years to record the preliminary plan approval and preserving its rights under Pay-and-Go.

8. Condition No. 11 shall be revised to extend Applicant's APFO approvals consistent with the four-year phasing plan.

- B. All other conditions of approval will remain unchanged and in effect.
- C. Within ninety (90) days of the Board's public hearing approving the terms of this settlement agreement the Board will mail a revised opinion ("Revised Opinion") reflecting these revised conditions.
 - D. The Board will verify in its opinion that the Preliminary Plan approval and related DAP approvals will remain in effect for four (4) years after the mailing date of the Revised Opinion.

III. Montrose Parkway

A. <u>Dedication of Right-of-Way for Montrose Parkway</u>. Within six (6) months of the mailing date of the Board's Revised Opinion, but not later than December 31, 2004, the Applicant shall file, in proper form, a record plat for the dedication of Montrose Parkway, as required under Condition No. 1.a) of the Board's Revised Opinion. Applicant shall make this dedication regardless of whether it submits a record plat for the Development or proceeds to obtain building permits for the Development.

The parties hereby confirm that all existing building and parking area setbacks for the Washington Science Center property to the south of the Montrose Parkway conform to all applicable setback requirements and no additional or different setbacks will be required by virtue of the dedication and construction of the Montrose Parkway

B. Construction of Montrose Parkway.

1. The Applicant and County each will pay for fifty percent (50%) of the cost of construction of two lanes of Montrose Parkway along the Wilgus Site frontage ("Road Construction") up to a combined cost of \$400,000 ("Road Costs"), as follows:

(i) If the County undertakes the Road Construction, then Applicant will pay fifty percent (50%) of the Road Costs, not to exceed \$200,000 ("Applicant's Share").

(ii) If Applicant constructs Montrose Parkway along the Wilgus Site frontage, then Applicant will pay fifty percent (50%) of the Road Costs up \$400,000 and all additional construction costs between \$400,000 and \$450,000 ("Applicant's Share").

(iii) If Applicant undertakes the Road Construction and total costs exceed \$450,000 (*i.e.*, \$450,000.01) ("Additional Costs"), then the County and Applicant

agree to renegotiate in good faith additional County funds toward the total amount of (1) the Road Costs; (2) the Applicant's Share; and (3) the Additional Costs (all three together the "Aggregate Costs"). Notwithstanding anything in this Agreement, however, the County's contribution toward the Aggregate Costs shall not exceed fifty-percent (50%) of the Aggregate Costs.

2. Applicant will notify the County in writing by August 2, 2004, if it elects to undertake the Road Construction.

3. Applicant shall pay Applicant's share of the Road Costs, and the Applicant's Share of Additional Costs if incurred, regardless of whether it submits a record plat for the Development or proceeds to obtain building permits for the Development. Applicant shall make four (4) equal payments of Fifty Thousand Dollars (\$50,000) each month commencing upon Applicant's receipt of a copy of Notice to Proceed with Construction. Applicant shall make the first of such payments within thirty (30) days of receipt of said Notice and at the expiration of each thirty (30) day period thereafter until Applicant's share is paid in full.

IV. <u>Court Case.</u> Within thirty (30) days of the mailing date of the Board's Revised Opinion, Applicant shall withdraw, with prejudice, its Written Objection; and dismiss, with prejudice, its Court Case.

V. Miscellaneous.

A. Site Access.

- 1. <u>Internal Access.</u> Applicant will construct, at its cost, driveway access from Cherington Road into its site, as indicated on Exhibit One. The County has no obligation to provide access internal to the Wilgus site.
- 2. Cherington_Road. Applicant has no obligation to fund the design or construction of Cherington Road or the removal of any portion of Jefferson Street if closed. When funding is appropriated and construction scheduling allows, the County will construct Cherington Road (as indicated on Exhibit Two) at its cost. This County funding may include private participation contributions resulting from other development approvals, *e.g.*, Cherington Subdivision and shall not include or be the responsibility of the Applicant.
- 3. East Jefferson Street. The County will close all temporary access to East Jefferson Street at its cost.

4. Other Improvements

a. The County agrees to allow access between the Washington Science Center Parcel E and the Montrose Parkway at the approximate location reflected upon Exhibit 3 attached hereto and made apart hereof and subject to any required adjustments for engineering and safety reasons by DPWT and/or DPS, to allow for construction of the driveway. Applicant shall have sole discretion as to whether or not to build such access. Applicant shall assume the cost of installing such access.

b. The County approves the Applicant's proposal to construct a pedestrian bridge crossing over the Montrose Parkway linking the Applicants site to the Washington Science Center property in a location substantially similar to the location reflected within attached Exhibit 4. The Applicant shall submit all plans and permit applications to DPWT and/or DPS required for such construction and shall bear the cost of the engineering and construction of the pedestrian bridge. DPWT and/or DPS shall review the Applicants plans for engineering and safety and require revisions with respect to engineering and safety as may be necessary to construct the bridge. Applicant shall have sole discretion as to whether to construct the approved pedestrian bridge. Should Applicant construct such pedestrian bridge, (the "bridge"), the Applicant shall be responsible for all maintenance of the bridge, and further, Applicant shall inspect the bridge every other year in accord with all Federal Regulations. The County shall also have the right (and any right of access) to inspect the bridge should applicant fail to inspect as provided for herein and be reimbursed from the Applicant for the cost of such inspection.

c. The Board if necessary shall incorporate its approval of the improvements described in this paragraph V-A.4 above into its revised Opinion on the subject Preliminary Plan No. 1-99029.

- B. <u>Storm Drainage Conveyance</u>. The County is aware of two potential storm drain systems that potentially could serve the Wilgus site. One may be constructed by Maryland's State Highway Administration, parallel to "Old" Old Georgetown Road. The second is an existing system under the adjacent Mid-Pike Plaza shopping center, owned by the Federal Realty Investment Trust. The Applicant may seek to tie into either of these systems and the County will not oppose those applications provided they do not compromise capacity needed by the County for the pending construction of Montrose Parkway. The Applicant is responsible for providing its own on-site stormwater management and retention system.
- C. <u>Front Foot Benefit Assessment</u>. The County will not assess a front foot benefit charge against the Wilgus site.
- D. To the extent permitted by law or The Annual Growth Policy (AGP) of the County, the Expedited Development Approval Excise Tax (EDAET) payment of the Applicant may be applied toward any applicable impact tax on development of this property.
- E. <u>Warranty of Signatures</u>. Each signatory to this Agreement warrants that they have full and complete authority to enter into this Agreement on behalf of the parties hereto and to be bound by the terms and conditions set forth herein.
- F. <u>Parties entered this agreement after consultation with counsel</u>. The parties hereto acknowledge that they have individually consulted with their respective legal counsel

regarding the terms and conditions of this Agreement prior to executing this Agreement.

G. Notice Provisions

Any notification required by the Terms of this Agreement or otherwise shall be made to the following persons in writing and shall be deemed delivered either by certified mail, prepaid or by hand delivery:

If to: The Montgomery County Planning Board of the Maryland National Capital Park & Planning Commission ATTN: Chairman 8787 Georgia Avenue Silver Spring, MD 20910 With copy to: Office of the General Counsel Montgomery County Planning Board ATTN: Michelle Rosenfeld, Esq., Asst. General Counsel 8787 Georgia Avenue Silver Spring, MD 20910 If to: Wilgus Associates, L.P. and/or Wilgus-Montrose Associates Limited Partnership Richard Cohen, General Partner 7811 Montrose Road Potomac, Maryland 20852 With copy to: Stanley D. Abrams, Esq. 4550 Montgomery Avenue, #760N Bethesda, MD 20814 If to: Montgomery County, MD ATTN: Office of The County Executive **Executive Office Building** 101 Monroe Street Rockville, MD 20850 With copy to: County Attorney for Montgomery County, Maryland Office of the County Attorney

H. Entire Agreement/Binding Effect

This Agreement contains the entire agreement between the parties and shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

Executive Office Building, 3rd Floor

101 Monroe Street Rockville, MD 20850

I. Maryland Law

This Agreement and the rights and obligations of the parties under this Agreement shall be governed by the laws of the state of Maryland.

J. <u>Counterpart Copies</u>

This Agreement may be executed in counterpart copies.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.] [SIGNATURE PAGES TO FOLLOW.]

This Agreement made on the date first written above.

ATTEST:

Secretary-Treasurer

Patricia Colihan Barney

The Maryland-National Capital Park and Planning Commission

Trudye M. Johnson Executive Director

Date

Wilgus Associates Ltd. Partnership (a/k/a Wilgus-Montrose Associates Ltd. Partnership)

Richard Cohen, General Partner

Date

Roswil, Inc., General Partner

Date

8

8 Domaruk

Montgomery County, Maryland

Joseph F. Beach, Asst. Chief Administrative Officer

Date

APPROVED AS TO FORM AND LEGALITY OFFICE OF COUNTY ATTORNEY BY д DATE

T:\dwilson\WP51\Cohen, Richard\Wilgus settlement eight-final.wpd






MATCH LINE SEE PS-12



MATCH LINE SEE PS-12



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4/20/05

DECEMBER, 2004

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue Silver Spring, Maryland 20910-3760 301-495-4500, www.mncppc.org Date Mailed: October 27, 2004

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan: 1-99029A Name of Plan: Wilgus East Date of Hearing: July 29, 2004

Action: Approval, subject to conditions. Motion to approve was made by Commissioner Bryant, duly seconded by Commissioner Perdue, with a vote of 5-0. Commissioners Berlage, Perdue, Bryant, Wellington and Robinson voting to support the motion.

On August 30, 2002, the Planning Board issued a written opinion confirming the oral preliminary plan approval that it issued after a duly noticed public hearing held on February 17, 2000, approving the above-referenced preliminary plan subject to a number of conditions. The applicant, Wilgus Limited Partnership, filed a legal challenge to the Board's conditions of approval in the Circuit Court for Montgomery County.¹ Subsequent to the filing of the appeal, the Planning Board, Wilgus Limited Partnership and Montgomery County entered. Into a three-party settlement agreement dated July 28, 2004, in the abovereferenced case. Consistent with the terms of that agreement, this Preliminary Plan will remain valid for four (4) years after the mailing date of the Revised Opinion, as will the Applicant's ability to obtain building permits pursuant to its related Pay-And-Go approvals.

The only testimony at the public hearing came from the applicant and its representatives, who supported staff's recommendation of approval and asked the Board to approve the preliminary plan amendments. There was no opposition in the record, in the form of either written or verbal testimony, to the

Attachment "5"

¹ Petition of Wilgus-Montrose Associates Limited Partnership f/k/a Wilgus Associates Limited Partnership for Judicial Review of the Decision of the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, Montgomery County Circuit Court Civil Action No. 236745-V.

amended plans or to the settlement agreement, thus the recommendation to amend the conditions was utterly uncontested in the record.

Consistent with the terms of that settlement agreement, the Planning Board approves Preliminary Plan No 1-99029A, pursuant to the FY2000 Annual Growth Policy Alternative Review Procedure for Expedited Development Approval ("Pay-and-Go"), subject to the following conditions:

1. Limit approval of the preliminary plan to a maximum of 308,400 square feet of office use² and pay to the Montgomery County Department of Finance the balance of the expedited development approval excise tax prior to receipt of building permit(s), and provide for the following:

a) Dedicate right of way for Montrose Parkway for a minimum of 130 feet through the property frontage expanding to approximately 215 feet approaching "Old" Old Georgetown Road to accommodate the MDSHA's planned street grade design for the future MD355 and Montrose Road interchange. All rights of way, except for the area of reservation shown on the approved preliminary plan, shall be dedicated by the Applicant. The Applicant shall dedicate this right-of-way within six months of the mailing of this opinion but not later than December 31, 2004.

b) Provide a concept plan showing the transition of right of way for Montrose Parkway between "Old" Old Georgetown Road and East Jefferson Street to accommodate the proposed roadway improvements. The right of way should be approximately 215 feet in width at "Old" Georgetown Road tapering to 130 feet at the western edge of Wilgus East per Montrose Parkway design plans and expanding to 300 feet at East Jefferson Street. The concept plan should be submitted and reviewed by the technical Staffs of M-NCPPC and DPWT prior to the Planning Board approval of the site plan application.

c) Join and participate in the North Bethesda Transportation Management District (TMD) to satisfy traffic mitigation requirement, for the North Bethesda/Garrett Park Master Plan.

2. Applicant to participate in the construction of Montrose Parkway as provided for in the Settlement Agreement dated July 28, 2004.

3. Prior to MCPB release of building permits, Applicant to submit to M-NCPPC a reservation plat application depicting the land area located adjacent to "Old" Old Georgetown Road and Montrose Road, shown by the November 2001 SHA Environmental Assessment to be located within the alternative roadway





² 5,500 square feet of space were not approved, as that portion of the site will be placed in reservation pursuant to Condition 3, below, and cannot be developed at this time.

alignment of the Montrose Road and MD 355 intersection improvements as may be updated before recordation of plat. The right of way area is to be placed in reservation for a period not to exceed, by this action, three (3) years.

4. All roads shown on the approved preliminary plan shall be constructed by the Applicant to the full width mandated by the applicable Master Plan, except for the road identified as the Montrose Parkway, which shall be constructed in accordance with the terms of the Settlement Agreement referenced above in New Condition #2.

5. No clearing, grading or recording of plats prior to site plan approval.

6. Landscape, lighting, parking facilities plan and final forest conversation plan to be reviewed and approved with slte plan.

7. No direct access to "Old" Old Georgetown Road through the property frontage, outside of the dedicated right-of-way for Montrose Parkway.

8. Final stormwater management approval, which may include an off-site facility to accommodate future roadway improvements, shall be approved by DPS prior to Planning Board approval of site plan.

9. Other necessary easements.

10. This Preliminary Plan will remain valid for forty-eight (48) months from the date of mailing of the Planning Board opinion, as do all Pay-and-Go approvals. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be provided or a request for an extension must be filed.

11. The Adequate Public Facilities (APF) review for this Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.



MONTGOMERY COUNTY, MARYLAND DEPARTMENT OF FINANCE DIVISION OF TREASURY

This receipt constitutes official evidence of payment of the amount herein specified to Montgomery County

PAY AND 50 FEE PLAN# 1-99029

1154

RELN 06129655 TRN 0039 CR5H REPN 249 WI II-DOF NOLN 002 LOC REV 06/15/99 12:10 PROC DATE 06/15/99 HANNY RIDD 7996 12:50

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Attachment "6"



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EXHIBIT

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IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MONTCOMERY COUNTY MARYLAND	*	
MONTGOMERT COONTT, Mart 212	*	
Dlaintiff	*	
	*	
ν.	*	Civil Action No. 325597-V
	*	
WILGUS ASSOCIATES, LIMITED PARTNERSHIP, et al	*	•
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Defendants

SETTLEMENT AGREEMENT

Plaintiff Montgomery County, Maryland and Defendants Wilgus Associates Limited Partnership ("Wilgus") and Washington Suburban Sanitary Commission ("WSSC"), enter into this full and final settlement of this condemnation action on the following terms:

1.) This settlement is in lieu of condemnation and is not a voluntary sale of part of the property owned by Wilgus and designated as Parcels N321 and N279 on tax map EW31 and located in North Bethesda, Maryland.

2.) The just compensation to be paid by the County to Wilgus for all of the property interests being acquired in the subject condemnation action is \$9,669,000 (NINE MILLION SIX HUNDRED SIXTY-NINE THOUSAND 00/100 DOLLARS), of which \$4,819,000 has been previously paid pursuant to the County's Petition of Advance Taking and Deposit of Funds filed on August 17, 2005 in the Circuit Court for Montgomery County, MP#20250. The total additional amount payable at settlement, on or before December 31, 2010, is \$4,850,000 (FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS). No other compensation, costs or interest shall be due provided the additional amount of \$4,850,000 is paid on or before December

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31, 2010. Interest will accrue at the statutory rate of 6% per annum on any amount of the \$4,850,000 not paid by December 31, 2010, unless later payment is agreed by the parties in writing.

3.) The Parties will settle on the transfer of the Property and payment of the additional compensation not later than December 31, 2010 (the "Settlement Date"), unless otherwise agreed in writing by the Parties.

4.) Prior to the Settlement Date, the County will prepare and provide Wilgus and WSSC with a Consent Inquisition and Judgment to be filed with the Circuit Court for Montgomery County and recorded among the Land Records of Montgomery County reflecting the land and property interests being conveyed by Wilgus to the County and the just compensation to be paid to Wilgus by the County.

5.) All front foot benefit charges, if any, accruing to WSSC shall be paid by the County.

6.) The following additional terms are incorporated into this Settlement Agreement:

A. Cherington Road

i.) The County agrees to construct and maintain Cherington Road as a three lane public road with ancillary storm drain facilities within a 70' wide public Right-of-Way, including bike lane and sidewalk, from the existing curb cut along Montrose Parkway up to the connection to the first private road serving the existing Cherington townhouse community. Cherington Road shall be constructed to fulfill any requirements for transportation access and infrastructure for such road to the existing Cherington Townhouse Community, Wilgus Parcels N321 and N279 and the Wilgus office building

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approved in Preliminary Plan No. 1-99029A (i.e. 308,400 square feet), or any amendment thereto materially consistent with the present Concept Plan attached hereto as Exhibit A. In addition, the County's Department of Transportation ("MCDOT") agrees that Wilgus will be provided access to both the east side and west side of Cherington Road at a location or locations approved by MCDOT. Wilgus agrees to dedicate to public use and at no cost to the County the 70' wide Right-of-Way necessary to construct and maintain the road, and the County agrees to construct and maintain this road as a public road.

The County agrees that if and when a traffic signal is warranted ii.) and approved for the intersection of future Cherington Road and Montrose Parkway, the County will, at its own cost, construct the necessary traffic signalization. To the extent that portions of the Wilgus property are necessary to be utilized for the construction/ installation of the future traffic controls/ signalization, Wilgus will make such land available to the County at no additional cost to the County.

MONTGOMERY COUNTY, MARYLAND

Assistant Chief Administrative Officer

Department

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 40904, p. 0101, MSA_CE63_40861. Date available 01/24/2011. Printed 07/20/2020.

Recommended By:

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Director, Department of Transportation

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WILGUS ASSOCIATES LIMITED PARTNERSHIP By:

Title:

Miller Miller & Canby, Chtd.

Joseph F. Suntum Attorneys for Wilgus Associates Limited Partnership

Approved as to form and legality

Eric C. Willis, Assistant County Attorney

WASHINGTON SUBURBAN SANITARY COMMISSION

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Staff Counsel

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Wilgus Site Apartment Unit Mix - Consolidated All Phases Combined September 10, 2010

rinted 07/20/2020.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 40904, p. 0103, MSA_CE63_40861_Date

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Market-Rate Units		A A 1 m	Not SE	TH NSE
Type	_#_	<u>%</u> Avc	I Net SF	46 750
Efficiency	85	8.6%	550	40,700
1BR/1BA	350	35.4%	750	202,500
1BR/1BA/Den	85	8.6%	950	80,750
2BR/2BA	260	26.3%	1,150	299,000
3BR/2BA	85	<u>8.6%</u>	<u>1,275</u>	108,375
0011207	865	87.5%	922	797,375
MPDUs				
Type	#	<u>%</u> <u>Av</u>	<u>a Net SF</u>	<u>Ttl NSF</u>
Efficiency	12	1.2%	550	6,600
1BR/1BA	50	5.1%	750	37,500
	12	1.2%	950	11,400
10101010000	38	3.8%	1,150	43,700
	12	1.2%	<u>1,275</u>	<u>15,300</u>
ZDIVZDAVDeli	124	12.5%	923	114,500
	12-1			
Total/Avg - Apts	989	100.0%	922	911,875

EXHIBIT





MCPB No. 19-106 Sketch Plan No. 320190070 Wilgus Date of Hearing: July 25, 2019

AUG 0 1 2019

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review sketch plan applications; and

WHEREAS, on February 15, 2019, Wilgus-Montrose Associates, LLC ("Applicant") filed an application for approval of a sketch plan for a mixed-use development with up to 1,274,498 square feet of total development, with up to 1,025,789 square feet of multi-family and townhouse residential uses and up to 248,709 square feet of commercial uses on 16.64 acres of land split-zoned CR-2.0, C-1.0, R-1.5, H-200, CR-2.0, C-0.25, R-1.75, H-75, and CRN-0.75, C-0.0, R-0.75, H-50, on the property generally bound by Montrose Road to the north, Towne Road to the east, Montrose Parkway to the south, and East Jefferson Street to the west, and is known as Part of Parcel N (N273, N279, and N231), Parcel Q (N208), and Parcel R (N174), in the Washington Science Center Subdivision ("Subject Property"), located within the Rockville Pike-Montrose North district of the 2018 *White Flint 2 Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's sketch plan application was designated Sketch Plan No. 320190070 Wilgus ("Sketch Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 15, 2019, setting forth its analysis and recommendation for approval of the Application subject to certain binding elements and conditions ("Staff Report"); and

WHEREAS, on July 25, 2019, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

Approved as to Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320 www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain binding elements and conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Sketch Plan No. 320190070, Wilgus, for construction of up to 1,274,498 square feet of total development, with up to 1,025,789 square feet of multi-family and townhouse residential uses and up to 248,709 square feet of commercial uses on the Subject Property, subject to the following binding elements and conditions:¹

- A. <u>Binding Elements</u>. The following site development elements are binding under Section 59-7.3.3.F of the Montgomery County Zoning Ordinance:
 - 1. Maximum density and height;
 - 2. Approximate location of lots and public dedications;
 - 3. General location and extent of public open space;
 - 4. General location of vehicular access points; and
 - 5. Public benefit schedule.

All other elements are illustrative.

- B. Conditions. This approval is subject to the following conditions:
 - 1. Density

The Sketch Plan is limited to a maximum 1,274,498 square feet of total development on the Subject Property, which may include up to a maximum 1,025,789 square feet of multi-unit and townhouse residential uses and up to a maximum 248,709 square feet of commercial uses.

2. <u>Height</u>

The development is limited to a maximum height of 200 feet where parcels are zoned CR-2.0, C-1.0, R-1.5, H-200, 75 feet where parcels are zoned CR-2.0, C-0.25, R-1.75, H-75, and 50 feet where parcels are zoned CRN-0.75, C-0.0, R-0.75, H-50, as measured from the building height measuring point(s) illustrated on the Certified Site Plan.

3. Incentive Density

The development must be constructed with the public benefits listed below, unless modifications are made under Section 59.7.3.3.I. Total points must equal at least 100 and be chosen from at least four categories as required by Section 59.4.5.4.A.2. The requirements of Division 59.4.7.1 and the *CR Zone Incentive*

¹ For the purpose of these binding elements and conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Density Implementation Guidelines must be fulfilled for each public benefit. Final points and phasing will be approved at Site Plan.

- a. Major Public Facility achieved through:
 - i. Proportional financial contribution towards a school or a park with athletic fields within the Sector Plan area, with details to be determined when the Phase 1 site plan is approved.
 - ii. Dedication and construction of a public park identified on the Sketch Plan as the Central Public Park, subject to Parks Department review and approval of the proposed dedication.
 - iii. Provision of a bike share station.
 - iv. Transit Proximity achieved through the Property's location within 1/4 and 1/2 mile, and 1/2 and 1 mile of the proposed north entrance to the White Flint Metrorail station on Rockville Pike (Level 2).
 - v. Connectivity and Mobility achieved by providing advance dedication and through-block connection.
 - vi. Diversity of Uses and Activities achieved by providing 15% of the residential units as Moderately Priced Dwelling Units (MPDUs).
 - vii. Quality of Building and Site Design achieved through structured parking.
 - viii. Protection and Enhancement of the Natural Environment achieved through building lot terminations (BLTs), energy conservation and generation, and green roof and cool roof on high-rise buildings.

4. Public Spaces

The Applicant must provide the two parks and an urban plaza as conceptually shown on the Sketch Plan. While these spaces must be in the approximate location, size, and quantity as shown on the Sketch Plan, the exact size, location and design will be determined at subsequent Preliminary Plan(s) and Site Plan(s).

5. Buffer Area

The Applicant must provide a minimum 20-foot-wide vegetated buffer between the Cherington townhouse community to the north and the proposed townhouse development to the immediate south with landscape screening and any possible retained trees.

6. <u>Master-Planned Breezeway</u>

The Applicant must provide the bicycle master-planned breezeway along the Subject Property's Montrose Parkway frontage, recommended in the Bicycle Master Plan. Facility widths shall be based on the illustrative section shown in the approved Parking Lots to Places: Urban Design Guidelines for Rock Spring & White Flint 2 Sector Plans (page 113) and will be finalized at Preliminary Plan and Site Plan.

7. Future Coordination for Preliminary Plan(s) and Site Plan(s)

In addition to any other requirements for Preliminary Plans under Chapter 50 and Site Plans under Chapter 59, the following must be addressed when filing a Preliminary Plan or Site Plan:

- a. Provision of appropriate architectural treatments to all building façades facing the public right-of-way.
- b. Dedication of right-of-way along the Subject Property's frontage to the centerline consistent with the *White Flint 2 Sector* Plan and County Bicycle Master Plan as modified by the approved Parking Lots to Places: Urban Design Guidelines for Rock Spring & White Flint 2 Sector Plans dated July 2019.
- c. Execution of Traffic Mitigation Agreement (TMAg) with the Planning Board and Montgomery County Department of Transportation (MCDOT).
- d. Conducting an analysis of total roof area in the multi-family portion of the development and the percentage of roof covered by green roof and by cool roof treatments.
- e. Provision of landscape plan(s) to address incorporating substantial plantings of street trees and trees in open spaces to the extent feasible.
- f. Incorporation of street design features that support Vision Zero objectives for safe, pedestrian-oriented streets.
- g. Provision of additional pedestrian connections to other proposed open space areas through design including formal pathways, materials and lighting.
- h. Evaluation of a small dog park or dog run within the park identified on the Sketch Plan as the Central Public Park as a community amenity.
- i. Provision of façade treatments for exposed multi-level garage fronts.
- j. Provision of street activation, particularly with the proposed multifamily dwellings. Widen pedestrian areas along proposed multifamily developments to accommodate greater pedestrian volumes associated with street activation and locate closer to the building façade.
- k. Minimization of parking to the extent feasible.

- 1. Continuation of coordination on the design and layout of townhouses and proposed private road through the western portion of the Property.
- m. Continuation of discussion and coordination with MCDOT and Planning Staff on the proposed private road between the two north/south running public roads.
- n. Provision of a warrant analysis assuming future volumes at Montrose Parkway and Stonehenge Place.
- o. Provision of an operational analysis for stop control options at the future intersection of Montrose Road and Stonehenge Place. The operational analysis should include signalization options that coordinate with the nearby signalized intersection of Montrose Road and the Greater Washington Jewish Community Center driveway.
- p. Provision of flush pedestrian and bicycle facility crossings over the "Street C" driveways at Montrose Road and Montrose Parkway, as well as the garage entry on Montrose Road. Where appropriate, provide protected intersections abutting the Subject Property per the 2018 Bicycle Master Plan. These improvements are subject to necessary approvals by MCDOT, MCDPS, and SHA, as appropriate.
- q. Continuation of coordination on the design and grade of pedestrian and bicycle facility crossings over Stonehenge Place at Montrose Parkway, to include MCDOT and MCDPS, as appropriate.
- r. Provision of streetscape details that enhance pedestrian safety and walkability for major roads along the Subject Property's frontage.
- s. Provision of ADA compliant internal pedestrian connections.
- t. Provision of the required number and type of bicycle parking spaces.
- u. Explore preservation of specimen trees within the buffer separating Cherington townhouses and the proposed development.
- v. Evaluation of undergrounding utilities within all public rights-ofway, unless there is a Capital Improvement Program (CIP) project that is already undergrounding the utilities.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations and findings of its Staff as presented at the hearing and set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record and all applicable elements of the Zoning Ordinance, the Board finds that as conditioned the necessary elements of the Sketch Plan are appropriate in concept and appropriate for further review at site plan and that:

- 1. The Sketch Plan meets the objectives, general requirements, and standards of the Zoning Ordinance.
 - a. <u>Development Standards</u>

The Subject Property includes approximately 16.64 acres zoned CR-2.0, C-1.0, R-1.5, H-200; CR-2.0, C-0.25, R-1.75, H-75; and CRN-0.75, C-0.0, R-0.75, H-50. The data table below demonstrates the Application's conformance to the applicable development standards of the zones:

Development Standards and Parking Requirements

Section	Description	Required/ Permitted (CR-2.0, C-1.0, R-1.5, H-200)	Required/ Permitted (CR-2.0, C-0.25, R-1.75, H- 75)	Required/ Permitted (CRN- 0.75, C-0.0, R-0.75, H-50)	Proposed	
	Total Tract Area	410,253	174,332 sf	140,438 sf	725,023 sf (16.64 ac.)	
	Maximum Densi					
4.5.4.B.2.b	Total	820,506 sf	348,664 sf	105,328 sf	up to 1,274,498 sf	
	Commercial	410, 253 sf	43,584 sf	0 sf	up to 248,709 sf	
	Residential	615,380 sf	305,082 sf	105,329 sf	up to 1,025,789 sf	
4.5.4.B.2.b	Maximum Height	200 ft.	75 ft.	50 ft.	up to 50 - 200 ft.	
4.5.4.A.4/ 4.1.8.B	Height Compatibility	No structure may pr projecting over the equal to the heig abutting	N/A			
4.5.4.B.1	Minimum Public Open Space	10%/54,450 sf			Minimum 10%/54,450 sf to be provided; Sketch Plan anticipates up to 11%/60,984 sf	
4.5.4.B.3	Setbacks	Determined by site plan			To be set by site plan	
4.5.4.A.4/ 4.1.8	Setback Compatibility	The minimum rear setback is equal to 1.5 times the minimum rear setback required for a detached house on the abutting property.			N/A	
4.5.4.B.4	Form	Determined by site plan.			To be addressed by site plan	
6.2.4.B	Minimum/ Maximum Parking Spaces Permitted	3.5 /1,000 sf of gros	5 /1,000 sf of gross leasable area (commercial)/ 1 DU or 2 DU (by residential density)			

b. Intent of the Zones

The Sketch Plan conforms to the intent of the CR and CRN Zones as described below.

i. Implement the recommendations of applicable master plans.

The Subject Property is located within the Rockville Pike-Montrose North district of the 2018 *White Flint 2 Sector Plan*. As one of five areas within the Rockville Pike-Montrose North district, the Property is located within Area 1, identified as the Cherington Area. The Sector Plan identified the Wilgus Property and indicated that "undeveloped portions of the Wilgus property have the greatest potential for new development. Redevelopment in this area would serve as an important link between the Executive Boulevard District and the Pike & Rose development" (p.37). The Sector Plan envisions the Wilgus properties contributing to a walkable, pedestrian friendly environment.

The rezoning of vacant Parcel N231, which is part of the Wilgus Property, from the EOF-3.0, H-100 Zone to the Commercial Residential CR-2.0, C-1.0, R-1.5, H-200 Zone, was to promote mixed-use development that contributes to the Sector Plan's public benefits, including housing options and a 1.25-acre neighborhood green. The property is split zoned: CRN 0.75 C-0.0 R0.75 H-50, adjacent to the Cherington townhouses; CR 2.0 C0.25 R1.75 H-75, for the middle portion of the property, including the gas station; and CR 2.0 C-1.0 R-1.5 H-200, for the area immediately west of Towne Road. The Wilgus East Property is permitted to receive excess density transferred from the adjacent Parcel N279, as no commercial development is permitted directly south of the existing Cherington residential community.

Specifically, for the Wilgus property, the Sector Plan notes that the "land use and zoning recommendations for the Wilgus property will permit greater intensities and building heights via the CR Zone on the eastern portion, and lower heights and densities via the CRN Zone on the western portion adjacent to the existing Cherington townhouses. At least 1.25 acres of open space should be provided in the Wilgus property when it is developed, either on the area south

of the existing townhouses and/or as a neighborhood green on the central or eastern portion of the Wilgus property. If the area south of the Cherington townhouses is developed with residential units, there should be appropriate transitions between the two communities, including landscaping".

Specifically, for the 3.5-acre property (Parcel N273) that is east of the intersection of Montrose Parkway and East Jefferson Street, the Sector Plan recommends that "during the development review process, pursue options for preserving all or a portion of the wooded area along Montrose Parkway for passive use. Ensure that new residential development is compatible with the adjacent townhouse community".

Density and Building Height

The submitted development's density and building heights are consistent with the Sector Plan's recommendations. Proposed residential townhouses west of Stonehenge Place are within the 50foot height limit; residential townhouses and mid-rise buildings, within the middle segment of the development are within the 75foot height limit; and the area west of Towne Road is within the 200-foot height limit. The overall density is within the Sector Plan's density recommendations.

Design and Connectivity

The Sector Plan's design and connectivity recommendations for the Wilgus property are to:

- Establish a pattern of short blocks and internal streets to promote walkability.
- Locate maximum building heights at the eastern end of the property along Towne Road.
- Reduce building heights toward the existing Cherington townhouse development to establish a compatible relationship with the existing residential development.
- Enhance pedestrian areas along Towne Road to improve pedestrian connectivity between northern and southern districts.
- Extend Stonehenge Place as a public street to connect between Montrose Parkway and Montrose Road.
- Create open spaces, including an area with a minimum of 1.25 acres, for public use that are connected to the overall open space network.

> • Provide screening via fencing, a hedge, tree planting or other appropriate means between the existing Cherington townhouses to the north, and any new development to the immediate south (p.38).

Overall, the submitted Sketch Plan achieves many of these design and connectivity requirements, including illustrating a total of 1.43 acres of public open space, including a .75-acre central park of which the Applicant seeks to dedicate to the Parks Department. This park and the western open space are linked to the Montrose Parkway. Stonehenge Place and Street "C" are proposed as public streets and building heights transition from the tallest along Towne Road to lower level townhouses, which are primarily adjacent to the existing Cherington townhouses.

Affordable Housing

The Sector Plan's housing chapter requires that "15% MPDUs as the highest priority public benefit for all new residential development unless the property is required to dedicate land for a school site or athletic fields that can be used by Montgomery County Public Schools (MCPS) and approximate the size of a local park ." The development is proposing 15 percent MPDUs for the development; therefore, it is consistent with the Sector Plan recommendations for affordable housing.

Public Facilities

The 2018 Sector Plan recommends that "each and every development application should be thoroughly evaluated for a potential school site, notwithstanding any previous development approvals. It is this Plan's direction that the Planning Department will negotiate for maximum dedication of land for a school site and that this be the top priority benefit under the review process of projects proceeding under these plans" (p.96). This Sketch Plan submission indicates that a proportional financial contribution from the Applicant would achieve contributing to the needed school site. This issue must be addressed further at the subsequent preliminary plan.

Public Open Space

The Sector Plan recommends that the Wilgus property should provide a minimum of 1.25 acres of Public Open Space. The Sector Plan states that "at least 1.25 acres of open space should be provided on the Wilgus property when it is developed, either on the area south of existing townhouses and/or as a neighborhood green

> on the central or eastern portions of the Wilgus property. If the area south of the Cherington townhouses is developed with residential units, there should be appropriate transitions between the two communities, including landscaping". The Sector Plan also states that the "location of open space should be defined during the development review process and may include wooded areas and/or a neighborhood green."

> The Parks section of the 2018 White Flint 2 Sector Plan also recommends to "create a minimum 1.25 acre open for public use at the Wilgus property when it redevelops. This could include neighborhood amenities, including a flexible green gathering space, picnic areas, and play features or maybe a wooded area with passive recreation. It should be linked to the Montrose Parkway bikeway by a trail connection".

> The Sketch Plan illustrates more than 1.25 acres of Public Open Space, which includes a central park and the otherwise required Common Open Space for the townhouse development on the Property. The Applicant proposes to provide all required open space (Public Open Space and Common Open Space) as Public Open Space. The Planning Board finds this to be more desirable, as Common Open Space is intended for residents and guests, while Public Open Space is intended for and inclusive of the Public at large.

> The proposed Sketch Plan achieves most of the Sector Plan's recommendations. Based on the proposed phasing plan, the central open space will be implemented in Phase 1. This park will contribute to establishing a key public amenity in the early stage of the development.

Montgomery County Council Resolution 18-979 approving the *White Flint 2 Sector Plan* included the following requirement to: "pursue options for preserving all or a portion of the wooded area along Montrose Parkway for passive use". The next stage of the regulatory review process, including review of a Forest Conservation Plan, will allow the full review and assessment of what is appropriate for forest removal and viable for the retention of forest and specimen trees.

Environment/Sustainability

The Sector Plan provides overall environmental sustainability recommendations, including preserving natural resources, improving water and air quality, and reducing carbon emissions. Specific to the Wilgus Property and preserving natural resources, the Sector Plan recommends to "establish a landscaped area between the southern boundary of the existing Cherington townhouse community and the proposed new development on the Wilgus property."

Important natural resources recommendations are to:

- Incorporate multiple layers of native vegetation in landscaping, including plants that are highly attractive to pollinators, to provide food sources for declining populations of native pollinator species.
- Direct infill development to existing surface parking lots to preserve green spaces.

Important water quality recommendations are to:

- Prioritize environmental public benefit points for tree canopy cover in the CR zone.
- Promote the use of environmental site design (ESD) techniques to reduce impervious areas.

Significant air quality recommendations are to:

- Increasing forest and tree cover.
- Incorporate building design features that keep roofs cool, such as green roofs or cool roofs.
- Prioritize environmental public benefit points for tree canopy cover and energy conservation.
- Promote site and building design for energy conservation.

A variety of public open spaces and cool roofs for the mid-rise and high-rise buildings, along with Building Lot Terminations (BLTs) are the primary environmental sustainability measures included with this Sketch Plan. However, the Applicant should pursue additional sustainable features, as conditioned in Section 1, to enhance the development, including energy conservation to further the Sector Plan's recommendations.

Public Benefits

The Sector Plan's recommended public benefits are the following:

- Dedication of land for needed school sites as the highest priority public benefits.
- Fifteen (15) percent MPDUs as the highest public benefit for new residential development, unless the property is required to dedicate land for a school site or athletic fields that can be used by MCPS and approximate the size of a local park.
- The provision of major public facilities other than school site, including but not limited to: land for school athletic fields; new neighborhood parks and open spaces; public transportation (new Metrorail station entrance); and undergrounding of utilities.
- Quality building and site design, including but not limited to, exceptional design and public open space.
- Connectivity and mobility, including but not limited to advanced dedication, streetscape improvement, minimum parking, trip mitigation and transit access improvement.
- Diversity of uses and activities, including but not limited to care centers, moderately priced dwelling units, dwelling unit mix, and enhanced accessibility for seniors or the disabled.
- Protection and enhancement of the natural environment, including but not limited to, tree canopy, energy conservation, and generation, and habitat preservation and restoration (p.104).

As proposed, the Sketch Plan will primarily advance the Sector Plan's recommended public benefits, including minimum public open space and affordable housing.

Transportation Network

Montrose Parkway, Montrose Road, Towne Road, and East Jefferson Street all surround the Wilgus property. The Sector Plan recommends the extension from Stonehenge Place Extended (B-2), which is classified as a commercial business street with a minimum right-of-way of 60 feet, from its current terminus to Montrose Road.

Both Montrose Road (A-90), between East Jefferson Street and Towne Road, and Montrose Parkway (A-270), also between East Jefferson Street and Towne Road, are classified as arterials with minimum rights-of-ways of 80 feet and 130 feet, respectively. Towne Road (M-4a) is classified as a major highway with a minimum 120-foot right-of-way, and East Jefferson Street (B-6) is classified as a commercial business street with a minimum 80-foot right-of-way.

The submitted Sketch Plan shows the surrounding streets and adheres to the Sector Plan's recommended rights-of-way. However, some of the street cross-sections are not consistent with the County's Road Code standards. At Preliminary Plan review for this development, the associated streets should reflect the County's Road Code standards.

Bikeway Network

Montrose Parkway (SP-50) has an existing shared-use path along the southern portion of the Wilgus property, and the Sector Plan confirms this bikeway. The 2018 White Flint 2 Sector Plan proposes a shared use path along Montrose Road (LB-1), a separated bike lane is proposed for Towne Road (LB-11), and either a standard bike lane or separated bike lane is proposed for East Jefferson Street (LB-4). The submitted Sketch Plan should be revised to reflect the bike lane/protected bikeway for East Jefferson Street.

Transportation-SSP and Tax District

Based on the 2016-2020 Subdivision Staging Policy (SSP), the extension of the White Flint Metrorail Station Policy Area (MSPA) and modifications to the Local Area Transportation Review (LATR) standards only impact portions of the Subject Property. Parcels N208, N279, N174, and N231, are excluded from the Local Area Transportation Review (LATR) standards since they are included in the White Flint Special Taxing District. The Special Taxing District, which is an ad valorem tax, uses the property taxes to mobility infrastructure required in the phasing fund recommendations of the White Flint Sector Plan. The area west of Stonehenge Place follows the typical LATR requirements and requires a traffic study, which is under review.

White Flint Staging

A portion of this Sketch Plan, Parcels N208, N279, N174, and N231, is subject to the staging limits in the 2010 White Flint Sector Plan. This development will be subject to the updated White Flint staging limits and the implementation rules and procedures established in the Planning Board approved White Flint Implementation Guidelines, including the Staging Allocation Request (SAR). ii. Encourage development that integrates target opportunities for redevelopment of single-use commercial areas and surface parking lots with mix of uses.

This Application proposes redevelopment of an existing, single-use gasoline service station into a mix of residential and commercial uses and green spaces. The Property is adjacent to a well-established community and the proposed layout allows this project to make use of the existing transportation network, while building additional connections for efficient circulation. There are no surface parking lots on the Property, nor any proposed for the Project.

iii. Encourage development that integrates a combination of housing types, mobility options, commercial services, and public facilities and amenities, where parking is prohibited between the building and the street.

The Project will provide single-family and multi-family housing that will enhance the housing choices near the White Flint Metrorail Station. In addition to housing, mobility will be improved by this Project. A corridor from the Breezeway Network - a prominent recommended facility of the approved and adopted 2018 Bicycle Master Plan - will be implemented and will provide safe and convenient connections to major community destinations, including to the nearby Metrorail station. Mixed with residential, retail services will also be provided on the Property at strategic locations within the development that are most accessible and visible to internal and external users. In compliance with zoning restrictions, there is no proposed surface parking between the buildings and the abutting roads. Proposed buildings will line the street instead of surface parking. Therefore, the proposed development will be pedestrian-friendly since vehicle parking is not the dominant feature. Additionally, the two parks and urban plaza offer necessary amenities for new and existing residents and businesses.

iv. Allows a flexible mix of uses, densities, and building heights appropriate to various settings to ensure compatible relationships with adjoining neighborhoods.

As envisioned by the Sector Plan, the redevelopment of the Subject Property includes a mix of compatible land uses, various densities, and heights. As previously discussed, the Project locates maximum

> building heights at the eastern end of the Property along Towne Road. The Applicant appropriately proposes three multi-use buildings up to 200 feet in height near Towne Road closest to the most intensive development approaching and along Rockville Pike. The Proposed Project tapers down building heights west of the proposed multi-use building and toward the existing Cherington townhouse development to establish a compatible relationship with the existing residential development. Specifically, the Project transitions from the multi-use buildings of up to 200 feet in height along the eastern portion of the Property to townhouses up to 50 feet in height adjacent to the existing Cherington townhouses. Therefore, the Project achieves compatibility with surrounding development by stepping down the proposed densities and building heights near the existing residential development. The heights and densities proposed by the Project are compatible and provide appropriate transitions to the surrounding development.

v. Integrate an appropriate balance of employment and housing opportunities.

The Project provides new residential housing opportunities, including 15% MPDUs, in addition to retail uses that will create many employment opportunities close to the White Flint Metrorail Station and nearby residential communities. Therefore, the Project integrates an appropriate balance of employment and housing opportunities.

vi. Standardize optional method development by establishing minimum requirements for the provision of public benefits that will support and accommodate density above the standard method limit.

The Project will provide the required public benefits from a minimum of four categories to achieve the desired incentive density above the standard method limit.

2. The Sketch Plan substantially conforms to the recommendations of the Sector Plan.

As discussed in finding 1b, the Sketch Plan substantially conforms to the recommendations of the Sector Plan.

3. The Sketch Plan satisfies, under Section 7.7.1.B.5 of the Zoning Ordinance, the binding elements of any development plan or schematic development plan in effect on October 29, 2014.

The Sketch Plan is not subject to a development plan or schematic development plan.

4. The Sketch Plan achieves compatible internal and external relationships between existing and pending nearby development.

The proposed Project is compatible with existing and pending nearby development. Specifically, the Project proposes to locate the tallest mixed-use buildings along the Subject Property's eastern edge along Towne Road and transition to shorter residential buildings on the Property's central and western portions approaching the existing Cherington townhouses. As previously noted, the Project's building heights closest to the Cherington townhouses are 50 feet in building height – not to exceed the maximum permitted by zoning. The Project will set back new townhouses from the shared property boundary at least to the same extent as the abutting Cherington residential structures. The Sector Plan required buffer area with substantial landscaping and trees is also proposed to maintain an appropriate boundary between the existing and proposed townhomes.

The Project also includes a new street system with short blocks (including the extension of Stonehenge Place to Montrose Road), multiple points of access to surrounding roadways, and sidewalks to facilitate non-motorized circulation both internal and external to the Property. These improvements, along with the Project's proposed open spaces, are intended to strengthen linkages between existing neighborhoods to the Subject Property's east and south (including the Executive Boulevard corridor), the Applicant's Project, and Pike and Rose and the Rockville Pike corridor to the east.

The proposed mid-rise and high-rise, high density multi-family dwellings will also be compatible with existing and pending high-density, mixed-use development at Pike and Rose, which includes mid-rise and high-rise residential, shops, restaurants, entertainment venues, and offices. The proposed higher density, 200-foot high buildings with towers A, B, and C will serve as a gateway to key intersections in the White Flint area – Towne Road at the corner of Montrose Road and Montrose Parkway. Diagonal to this area and along the Rockville Pike, Towne Road, Montrose Parkway corridors, are existing significant high-rise, high-density buildings. The Applicant's proposal at the eastern portion of the property aims to create a cohesive environment with existing development at key intersections.

5. The Sketch Plan provides satisfactory general vehicular, pedestrian, and bicyclist access, circulation, parking, and loading.

As described in the Transportation section of the staff report dated July 15, 2019, the proposed Project provides satisfactory vehicular and non-motorized access, circulation, parking, and loading. Vehicle access will be available from existing points and new access points along East Jefferson Street, Montrose Parkway, and Montrose Road. Pedestrian access is provided through a network of existing exterior sidewalks and new interior sidewalks. The dwelling units fronting Montrose Parkway will have a sidewalk leading directly to Montrose Parkway and a through block connection will link residential and commercial areas to the East Urban Plaza and Towne Road. Private roads and alleys will create an internal circulation network to access the Property's parking, primarily in garages, and the loading areas for each building.

6. The Sketch Plan proposes an outline of public benefits that supports the requested incentive density and is appropriate for the specific community.

Taking into account the considerations in Section 59-4.7.1.B, including the recommendations and objectives of the Sector Plan and any applicable design guidelines, the Incentive Density Implementation Guidelines, the size and configuration of the site and its relationship to adjacent properties, similar public benefits nearby, and additional enhancements related to the individual public benefits, the Planning Board finds that the following outline of public benefits supports the Applicant's request for incentive density and is appropriate for the community surrounding the site. Final determination of public benefit point values will be determined at Site Plan(s).

Proposed Public Benefits Points and Phasing

Public Benefit	Incentive Density Points						
	Max Pts. Allowed	Proposed & Approved in Concept	Phase 1	Phase 2	Phase 3	Phase 4	
59.4.7.3.A: Major Public Facility							
Central Public Park	70	12	х				
Bicycle Share	n/a	5		TDB			
School & Park Contribution	70	25		ТДВ			
59.4.7.3.B: Transit Proximity							
	20		x	x			
Partial Site within ½ mile of Level 2 Transit Station	(1/2 mi.);	26.70					
	15	26.70				Î	
	(1/2 -1mi.)	7					
59.4.7.3.C: Connectivity/Mobility							
Advanced Dedication - Stonehenge PL Extension	30	2.33	x	×			
Through-Block Connection	20	10	х			x	
59.4.7.3.D: Diversity of Uses and Act	ivities						
Affordable housing- 15% MPDUs	n/a	30	x			x	
59.4.7.3.E: Quality of Building and Site Design							
Structured Parking	20	10.94				x	
59.4.7.3.F: Protection and Enhancement of the Natural Environment							
Building Lot Termination (BLTs)*	30	18.79					
Cool Roof	10	5	x			x	
Energy Conservation & Generation (on high rise building)	30	5		TBD			
Vegetated Roof (on high rise building)	15	7.5		TBD			
Total Points Proposed**	158.26						

TBD - To be Determined.

*Required for optional method CR projects.

**All final points to be verified at the time of site plan approval.

Major Public Facility

Central Park, master plan recommendation: The Applicant requested 12 points for the construction and dedication to the Parks Department of the central park/open space which is the main gateway and open space feature of the proposed development, according to the Sector Plan recommendation. The Applicant will enhance the park/open space with various seating and

gathering opportunities, public art, and connections to nearby public spaces. The park/open space will be delivered with the first phase of the development. Any points awarded are contingent upon the Parks Department accepting dedication of the central park/open space area. Dedication will be determined at Preliminary Plan and the final number of points, if accepted by the Parks Department for dedication, will be determined at Site Plan.

Bicycle Share Station: The Applicant is seeking a total of five (5) public benefit points for a bike share station. The Planning Board supports the Applicant's request for points in this category.

School Contribution: The Sector Plan recommends that "each and every development application should be thoroughly evaluated for a potential school site." The applicant requests up to 25 points for making a proportional financial contribution towards a school or a park with athletic fields within the Sector Plan area.

Transit Proximity

The Applicant requests a total of 26.7 points for the Subject Property's proximity to transit. Approximately 67% of the gross tract area is within 1/2 mile of the White Flint Metrorail station, of which 20.1 points is sought. The remaining 33% of the property, west of Stonehenge Place is beyond the 1/2-mile buffer from the station. For the remaining portion, the Applicant requests 6.6 points. The points for this category will be spread across several phases of the Sketch Plan development.

Connectivity and Mobility

Advanced Dedication: The Applicant requests 2.33 points for advance dedication of the proposed extension of Stonehenge Place from its current terminus to Montrose Road. The Planning Board supports the Applicant's request for points in this category.

Through-block Connections: The Applicant requests 10 points out of a maximum of 20 points for a through-block connection in the form of a shared street over a parking garage. This is associated with the eastern portion of the Subject Property for the high-density dwellings, where the connection leads to a publicly accessible parking facility. Points for this dedication are anticipated during proposed Phases 1 and 4. The Planning Board supports the Applicant's request for points in this category.

Diversity of Uses and Activities

Moderately Priced Dwelling Units: The Applicant seeks to gain approval for 30 points for providing 15% MPDU's, which is one of the highest *White Flint* 2 Sector Plan goals. While a minimum of 15% MPDU's is the legal requirement, projects in the C/R and Employment zones are permitted to earn public benefit points for providing more than 12.5%, even though it is legally required. Points are based on the following calculation: (15 (percentage MPDUs provided) – 12.5 (percentage MPDUs required)) x 12 = 30. The Planning Board supports the Applicant's request for points in this category.

Quality of Building and Site Design

Structured Parking: The Applicant seeks 10.94 points out of a possible 20 points for providing structured parking in Phase 4 of the development. The request is based on the preliminary calculation of 550 above grade spaces and 260 below grade spaces which comprise 810 total spaces. The Planning Board supports the Applicant's request for points in this category.

Protection and Enhancement of the Natural Environment

Building Lot Termination (BLT): The Applicant requests 18.79 points permitted for the purchase of approximately 2 BLT's. The Planning Board supports the Applicant's request for points in this category.

Cool Roof: The Applicant requests five (5) points out of a possible ten (10) points for constructing a roof area that is not covered by a vegetated roof with a minimum solar reflectance index (SRI) based on roof slope. The Planning Board supports the Applicant's request for points in this category.

Energy Conservation and Generation: The Sector Plan prioritizes on-site renewable energy for environmental public benefit points. The Applicant seeks 5 points for the high-rise buildings in this category of public benefits to be provided. The Planning Board supports the Applicant's request for points in this category.

Vegetated Roof: The Applicant seeks 7.5 points for the high-rise buildings in this category of public benefits to be provided. The Planning Board supports the Applicant's request for points in this category.

7. The Sketch Plan establishes a feasible and appropriate phasing plan for all structures, uses, rights-of-way, sidewalks, dedications, public benefits, and future preliminary and site plan applications. Subsequent to this Sketch Plan application, the Applicant intends to submit a preliminary plan and a site plan application for Phase 1 of the development, but the timing of such application is unknown. Although identified presently as Phases 1, 2, 3, and 4 based on current plans, phases may occur in any order or may be combined. The elements of the Project that are proposed to be included in each phase are defined in the Project Description section of the Staff Report dated July 15, 2019. Public Benefits will be phased as shown in the Outline of Public Benefits Table in the previous section of this resolution.

BE IT FURTHER RESOLVED that the Board's approval of a sketch plan is in concept only and subject to further review at site plan, when, based on detailed review the Board may modify the Sketch Plan's binding elements or conditions based on the Montgomery County Code, the Sector Plan, or other requirements; and

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that all binding site development elements shown on the latest version of Wilgus Sketch Plan No. 320190070, received by M-NCPPC as of the date of the Staff Report July 15, 2019, are required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is <u>AUG 0 1 2019</u> (which is the date that this Resolution is mailed to all parties of record); and

. . * * * * * * * * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Vice Chair Dreyfuss, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, July 25, 2019, in Silver Spring, Maryland.

Casey Anderson, Chair Montgomery County Planning Board
MR. RICHARD BRUSH, MANAGER MCDPS-WATER RES. PLAN REVIEW 255 ROCKVILLE PIKE 2ND FLOOR ROCKVILLE, MD 20850 By email <u>rick.brush@montgomerycountymd.gov</u>

MS. LISA SCHWARTZ DHCA 100 MARYLAND AENUE 4TH FLOOR ROCKVILLE, MD 20850 By email <u>lisa.schwartz@montgomerycountymd.gov</u>

MR. MARK BEALL MCDPS-ZONING 255 ROCKVILLE PIKE, 2ND FLOOR ROCKVILLE, MD 20850 By email <u>mark.beall@montgomerycountymd.gov</u>

MR. CHRISTOPHER ANDERSON MPDU MANAGER, DHCA 100 MARYLAND AVENUE, 4TH FLOOR ROCKVILLE, MD 20850 By email <u>Christopher.anderson@montgomerycountymd.gov</u>

> Brandon Fritz 2 Research Place Suite 100 Rockville, MD 20850

Philip Hummel 7200 Wisconsin Ave, Suite 800 Bethesda, MD 20814

> Roslyn Needle 6108 Stonehenge Place Rockville, MD 20852

MR. GREG LECK MCDOT 101 MONROE ST 10th FLOOR ROCKVILLE, MD 20850 By email greg.leck@montgomerycountymd.oov

MR. ATIQ PANJSHIRI MCDPS-RIGHT-OF-WAY PERMITTING 255 ROCKVILLE PIKE,2ND FLOOR ROCKVILLE, MD 20850 By email atig.panishiri@montgomervcountvmd.gov MS. CHRISTINA CONTRERAS MCDPS-LAND DEVELOPMENT 255 ROCKVILLE PIKE, 2ND FLOOR ROCKVILLE, MD 20850 By email christina.contreras@montgomerycountymd.gov

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> Abby Milstein 11794 Ibson Drive Rockville 20852

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Keely Lauretti Soltesz 2 Research Place, Suite 100 Rockville, MD 20850

> Peter Fosselman 101 Monroe Street Rockville, MD 20850

Amy Ginsburg Friends of White Flint P.O Box 2761 Kensington MD 20891

Hummel, Phillip A.

From:	Sears, Barbara A.
Sent:	Monday, July 20, 2020 2:17 PM
То:	Hummel, Phillip A.
Subject:	FW: Wilgus Preliminary Plan
Attachments:	Wilgus - Response to Steve Findley's Comment 4846-3136-0442 v.1.docx

From: Sears, Barbara A.
Sent: Tuesday, April 21, 2020 7:00 PM
To: Butler, Patrick <patrick.butler@montgomeryplanning.org>
Subject: Wilgus Preliminary Plan

Hi Patrick-

Per your request, we prepared the attached memorandum summarizing the options the Applicant considered on the issue of the preservation of the wooded area along Montrose Parkway. Soltesz is uploading it to eplans today as part of our responses to the second cycle of DRC comments. I hope it covers what you are looking for. Please let me know if you need anything else.

Thanks.

Barbara

Barbara A. Sears

11 N. Washington Street | Suite 700 | Rockville, MD 20850-4229 D: +1 301.517.4812 | O: +1 301.762.1600 | F: +1 301.517.4812



vCard | bsears@milesstockbridge.com

For COVID-19 information and resources, please visit our <u>Coronavirus Task Force page</u>.

MEMORANDUM

- TO: Montgomery Planning Patrick Butler Steve Findley
- **FROM:** Miles & Stockbridge P.C. Barbara A. Sears, Esq. Phillip A. Hummel, Esq.

DATE: April 21, 2020

SUBJECT: Response to Cycle 2 Area Environmental Comment

<u>Comment</u>: Please address prior comments about documenting alternatives studied to preserve forest, comments about landscaping (10-FCP-1201200140-001.pdf V2, Changemark #02).

<u>Response</u>: Applicant has responded to this comment in several previous responses. In an effort to summarize these prior responses, however, Applicant presents the following discussions of the options.

Applicant has carefully and thoroughly studied the following three options for preserving forest:

Option 1:

The first option Applicant considered is retaining the entire forested area south of the existing Cherington townhouses. The White Flint 2 Sector Plan (the "Sector Plan"), however, notes that "[t]he undeveloped portions of the potential Wilgus property have the greatest for new development. Redevelopment in this area would serve as an important link between the Executive Boulevard District and the Pike & Rose development. The land use and zoning recommendations for the Wilgus property will permit greater intensities and building heights via the CR Zone on the eastern portion, and lower heights and densities via the CRN Zone on the western portion adjacent to the existing Cherington townhouses." Sector Plan, pgs. 36-37 (Emphasis added). Furthermore, Sketch Plan No. 320190070 (the "Sketch Plan") approved by the Planning Board for the Wilgus site incorporates 68 townhouses south of the existing Cherington townhouse community. Thus, it is clear that the approved Sketch Plan for the subject site implements the recommendations of the Sector Plan for the Wilgus property, including redeveloping the area south of the Cherington townhouses.

Retaining all of the forest in this area would therefore be contrary to the Sector Plan and the established binding elements of the approved Sketch Plan. Furthermore, it would violate Applicant's property rights by imposing an economic harm of considerable magnitude unless just compensation was paid for the land. As a result, retaining all of the forest in this area would require M-NCPPC to purchase this portion of the Wilgus property to provide Applicant with appropriate compensation. Applicant estimates that this land is worth approximately \$20 million.

Option 2:

Applicant also considered retaining a portion of the existing forested area south of the existing Cherington townhouses. As previously noted by Don Zimar, Applicant's arborist and forester, the existing forest stands in this area of the subject property are dominated by tulip poplars (*Liriodendron tulipifera*). Mr. Zimar has attested to this species' weak wood and vulnerability to storm damage. Mr. Zimar has also observed that the smaller existing trees in the upper canopy with diameters from 12 - 24" are scarce and of even poorer quality than the larger tulip poplars. According to Mr. Zimar, these trees are suppressed (meaning diminished health and quality due the competition of other trees), vine covered, are in very poor form, and display other various problems making them poor candidates for preservation. Other smaller trees, particularly 4"-10" American beech, exist but are sparse, scattered, and cannot be expected to provide a suitable forest cover that would provide an outcome of sustainable forest retention.

Additionally, Mr. Zimar has observed that the health of a significant number of the existing trees is already compromised. The survival of any retained trees would be further undermined by creating a new forest edge and exposing interior trees to construction impacts and root zone area disturbances. These circumstances only increase the likelihood of further tree deterioration, as well as the creation of an imminently hazardous situation for existing and new structures. Applicant understands that Environmental Staff agrees with these conclusions. Montgomery Planning April 21, 2020 Page 3 of 4

Option 3:

Applicant next considered removing the existing forest south of the Cherington townhouses and achieving compatibility between existing townhouses to the north and proposed townhouses to the immediate south through a vegetated buffer with landscape screening and any possible retained trees. In consultation with Mr. Zimar, landscape and planning consultants, and with input from Staff, Applicant determined that a minimum 20-foot-wide and thickly landscaped buffer, as approved in the Sketch Plan, with a thoughtful planting schedule is the most effective way to achieve an effective and vibrant year-round natural screen, rather than any retained forest.

Additionally, in light of (a) the Sketch Plan approval of the location of lots and public dedications, as well as the location and extent of open space areas as binding elements; (b) Condition 5 of the approved Sketch Plan ("The Applicant must provide a minimum 20-foot-wide vegetated buffer between the Cherington townhouse community to the north and the proposed townhouse development to the immediate south with landscape screening and any possible retained trees."); and (c) Condition 7u of the approved Sketch Plan ("Explore preservation of specimen trees within the buffer separating Cherington townhouses and the proposed development"), the scope of potential retention of trees through the evaluation of alternatives has been satisfied with the exception of the possibility of retaining some trees in the buffer area, rather than the whole area south of the existing Cherington townhouses.

Applicant's vegetated buffer area is designed to create an appropriate transition between the Cherington and Wilgus townhouses with landscaping and achieve screening via trees, shrubs, and other plantings. *See* Sector Plan, pgs. 37, 38, 62. As shown in the materials initially submitted with the preliminary plan application, Applicant has prepared two options for the landscaped buffer area, both of which propose planting over 200 new trees and shrubs (deciduous trees, evergreen trees, and evergreen shrubs). Applicant believes the buffer option that proposes the greatest extent of new plantings by replacing existing trees ("Version 1") is preferable to the option that retains some existing trees ("Version 2"). Version 1 provides greater screening at both ground level and at elevation while Version 2 reduces the number of new plantings as required to avoid encroachments into the critical root zones of retained trees. Applicant will continue to coordinate with both Planning staff and the Cherington community on the particular planting schedule, as well as

Montgomery Planning April 21, 2020 Page 4 of 4

possible opportunities to retain existing trees within the vegetated buffer as appropriate.

Thus, Applicant considered three options and carried forward Option 3 approved in the Sketch Plan, namely, an approximately 20-foot-wide vegetated buffer between the Cherington townhouse community to the north and the proposed townhouse development to the immediate south. Conditions 5 and 7u of the Sketch Plan state that the preliminary and site plans should include this buffer area, with any possible retained trees as appropriate. Applicant's preliminary plan fully complies with these conditions.

Hummel, Phillip A.

From:	Greg Ruff <greg.ruff@whihomes.com></greg.ruff@whihomes.com>
Sent:	Wednesday, July 15, 2020 11:11 AM
То:	Sears, Barbara A.; Hummel, Phillip A.
Cc:	Bob Mazzuca
Subject:	[EXTERNAL] FW: The final landscape buffer design approved by Cherington and Wilgus
Attachments:	V1_PlantedBuffer_EXH.pdf; Tree-Info-Sheet.pdf

EXTERNAL

Barbara and Phil,

Bob asked me to go ahead and send you the final Cherington buffer planting plan again just so there's no confusion – the same one Roslyn sent to Tamika last Friday down in her email below.

Please see attached. The final changes we made were to call out the fence as "composite" and change the species of trees per Roslyn's request in her June 25th email to me. In case you never received that email, I'm going to send it to you separately in a second.

Let me know if you have any questions, thanks

Greg

From: Greg Ruff
Sent: Friday, July 10, 2020 4:28 PM
To: Bob Mazzuca <bmazzuca@willco.com>; Sears, Barbara A. <bsears@MilesStockbridge.com>; Phil Isaja
<pisaja@solteszco.com>; Keely Lauretti, RLA <klauretti@solteszco.com>; Brandon Fritz <BFritz@solteszco.com>
Subject: FW: The final landscape buffer design approved by Cherington and Wilgus

All,

See below and attached – a little good news on a Friday afternoon.

Greg

Greg Ruff

Development Manager



o. 301.803.4832 c. 571.437.5664

Greg.Ruff@whihomes.com

12435 Park Potomac Avenue, Suite 600

From: Graham, Tamika <<u>tamika.graham@montgomeryplanning.org</u>>
Sent: Friday, July 10, 2020 3:42 PM
To: Roslyn Brandon <<u>rbrandon@Ctsguides.com</u>>; Butler, Patrick <<u>patrick.butler@montgomeryplanning.org</u>>
Cc: Greg Ruff <<u>greg.ruff@whihomes.com</u>>
Subject: RE: The final landscape buffer design approved by Cherington and Wilgus

Thank you for the updated design.

Best regards,

Tamika

Montgomery Planning Tamika K. Graham, AICP Senior Planner, Area 2 Montgomery County Planning Department 8787 Georgia Avenue, Silver Spring, MD 20910 tamika.graham@montgomeryplanning.org o: 301.495.4551 | f: 301.495.1313

Let's Plan Our Future. Together.

() 🕑 🔘 💬

From: Roslyn Brandon <rbrandon@Ctsguides.com>
Sent: Friday, July 10, 2020 3:14 PM
To: Graham, Tamika <tamika.graham@montgomeryplanning.org>; Butler, Patrick
<patrick.butler@montgomeryplanning.org>
Cc: greg.ruff@whihomes.com
Subject: The final landscape buffer design approved by Cherington and Wilgus

Attached is the final landscape design accepted by Cherington, Wilgus, and Winchester Homes. This design provides for a year round landscape screen and will run the length of the property line between Cherington and the Winchester Homes development. It will begin at Stonehenge Place and end down by East Jefferson. The landscaping will be planted on the 20 foot buffer in front of a 6 foot 6 inch fence that will also run the same length of the property line. Both the plantings and the fence (type to be determined) will meet the goals of the White Flint Sector II Plan. Cherington worked with a well respected landscape designer who carefully critiqued the initial Wilgus design and recommended changes that achieved the Sector II plan goals. Winchester Homes will install the plantings and be responsible for maintenance until the new community's HOA is operational. We will work out when is the best time to install the plantings and we will keep you apprised of any decisions. Thank you, Roslyn Needle and the Cherington Board

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Wilgus – Preliminary Plan No. 120200140

DRC Review Cycle Comments and Responses Regarding Tree Preservation in Public Open Spaces

Review Cycle 1

<u>Comment</u>	<u>Response</u>
2. The proposed development should consider relocating 4 to 8 units, which are adjacent to the western open space to retain more existing trees, further create a compatible relationship with the existing residential community	The existing trees have been analyzed by an arborist and both the under and upper story of the existing forest is in poor condition. In addition, there are not alternative locations to place units on the site. The open spaces proposed are consistent with the approved sketch plan.
<u>Comment</u>	Response
Tree Conservation: o Tree preservation throughout this development is important; therefore, the proposed design should be revised to demonstrate the feasibility of the tree saving. Reconsider unite layout, location, number related to the tree saving. o The plan proposes to save three large specimen trees, including two 46" and 52" caliper Tulip Poplars and a 28" Red Maple. The symbol representing the "Critical Root Zone of Trees to be Preserved" on the Framework Plan is misleading and is not consistent with the actual CRZ as shown on sheet V-3, identified as "Critical Root Zone (For Trees Larger than 24" DBH)". Tulip Poplars are notoriously sensitive to any type of root disturbance. Sheet V-3 indicates that over 60% of the CRZ of the 46" Poplar will be impacted and almost 50% of the 52" caliper Poplar will be impacted. Over 30% of the CRZ of the Red Maple will be impacted. Likely, these trees will not survive the disturbance proposed by the current plan, yet the design of the park is predicated on the preservation of these three specimen trees. o There is more potential for increased tree save area. Conduct more on the-ground	See response to comment 1 from Nkosi Yearwood. Additionally, although not required, applicant's arborist conducted a site visit on March 25, and again found that no smaller trees exist on the site in the park area that should be a priority for preservation in the design considerations for the development.

assessment to determine the extent that additional forest can be saved in the neighborhood park area. o Consider an approach that preserves small trees with smaller root zones that have a greater chance of survival than larger trees that may become hazards to adjacent new homes.	
WESTERN PARK o The Department of Parks would support a concept (backed by the Sector Plan language "maybe a wooded area with passive recreation") where the western most portion of the linear woods (0.50 acres or greater) along Montrose Parkway are preserved, therefore partially preserving a wooded canopy otherwise nearly non-existent in the White Flint 2 Sector Plan Area.	The forest is generally even-aged with few trees that would be viable to preserve in the intermediate or understory layers. Most of the trees present are the large tulip trees (24" diameter or greater) as was shown on the NRI/FSD. Trees in the range of 8"-24" are scarce. Those that are present are in poor condition with broken tops and poor form, with a few exceptions, too few to consider this a viable alternative. These trees are being suppressed by the competition of the large even-aged overstory or are very likely genetically inferior to the overstory trees. They are not likely to release if the overstory is removed.

Review Cycle 2

<u>Comment</u>	<u>Response</u>
Tree Conservation: o Tree preservation throughout this development is important; therefore, the proposed design should be revised to demonstrate the feasibility of the tree saving. Reconsider unite layout, location, number related to the tree saving. o The plan proposes to save three large specimen trees, including two 46" and 52" caliper Tulip Poplars and a 28" Red Maple. The symbol representing the "Critical Root Zone of Trees to be Preserved" on the Framework Plan is misleading and is not consistent with the actual CRZ as shown on sheet V-3, identified as "Critical Root Zone (For Trees Larger than 24" DBH)". Tulip Poplars are notoriously sensitive to any type of root disturbance. Sheet V-3 indicates that over 60% of the CRZ of the 46" Poplar will be impacted and almost 50% of the 52" caliper Poplar will be impacted. Over 30% of the CRZ of the Red Maple will be impacted. Likely, these trees will not survive the disturbance proposed by the current plan, yet the design of the park is predicated on the preservation of these three specimen trees. o There is more potential for increased tree save area. Conduct more on the-ground assessment to determine the extent that additional forest can be saved in the neighborhood park area.	In response to the comments of Park Planning staff, Applicant has provided a revised park concept plan with this resubmission. Please see attached file 32-Park-120200140.PDF. As noted in the responses from the last review cycle, Applicant's arborist conducted a site visit on 3/25/20 and again found that no smaller trees exist on the site in the park area that should be a priority for preservation in design considerations. See also Response to Comment 1 from Nkosi Yearwood in last review cycle.

- Consider on engaged that	
o consider an approach that	
preserves small trees with	
smaller root zones that have a	
greater chance of survival than	
larger trees that may become	
hazards to adjacent new homes.	
······	



120200140

Rev Cycle	Group Name	Reviewer Name	Assigned By	Review Status	Review Comments	
1						
2						
3						
	AREA SITE PLAN	Luis Estrada luis.estrada@montgom eryplanning.org	Tamika.Graham@ montgomeryplanni ng.org	Recommend for Approval		
	WASHINGTON GAS	Jared Martin WGLMontReviews@en engineering.com	Tamika.Graham@ montgomeryplanni ng.org	Recommend for Approval	There are WGL facilities in the project limits. See the attached quad map for details. When final plans are available, please provide them to WGL for final review.	
	FIRE & RESCUE	Marie LaBaw marie.labaw@montgo merycountymd.gov	Tamika.Graham@ montgomeryplanni ng.org	Revisions Requested	East Jefferson access is insufficient	
AREA MASTER Nkosi Yearwo nkosi.yearwo gomeryplanni		Nkosi Yearwood nkosi.yearwood@mont gomeryplanning.org	Tamika.Graham@ montgomeryplanni ng.org	Incomplete		
	COUNTY TRANSPORTA TION	Billy Whelan william.whelan@montg omerycountymd.gov	Tamika.Graham@ montgomeryplanni ng.org	Revisions Requested	See comments uploaded to "Supporting Documents" folder and on plans.	
	SEDIMENT & STORMWATER	Dave Kuykendall david.kuykendall@mon tgomerycountymd.gov	Tamika.Graham@ montgomeryplanni ng.org	Denied	I have uploaded the 2nd denial dated April 29, 2020. Once all comments are addressed make sure the preliminary plan matches the SM plan and that all SM facilities are labeled.	
	PARK PLANNING	Dominic Quattrocchi Dominic.Quattrocchi@ montgomeryparks.org	Tamika.Graham@ montgomeryplanni ng.org	Incomplete		
	ZONING & ENFORCEMEN T	Melissa Goutos Melissa.Goutos@mont gomerycountymd.gov	Tamika.Graham@ montgomeryplanni ng.org	Recommend for Approval	No Comments. All signs must be designed in accordance with Division 6.7 of the Montgomery County Zoning Ordinance. Per Section 7.4.2, any sign not listed in Division 6.7, or that does not satisfy the requirements in Division 6.7, shall require a sign variance from the Sign Review Board.	
					The proposed plan meets the requirements of Chapter 25A. 1. Section 25A-5(e)(4) of the County Code states that in subdivisions with both single-family and multi-family dwelling units, the ratio of single-family MPDUs to total MPDUs must not be less than the ratio of market-rate single-family units to total market-rate units in the subdivision, unless DHCA	



owners to have a car. (See third and fourth attachment.) • The proposed location of the two-over-two MPDUs puts them next to the main amenity area within the project, the "Central Public Park", and in close proximity to the "East Urban Plaza" open space planned on Towne Road.	HOUSING & COMMUNITY AFFAIRS	wartz artz@montgo ntymd.gov	Recommend for Approval	 provide 16.9% MPDUs (10/ out of 638 units) in the multi-family portion of the site (apartments and two-over two condominiums), and 4.7% MPDUs (5 out of 107 units) in the single-family portion of the site (townhouses). Fifteen percent of the apartment units (90 out of 604 units) and 50% of the two-over-two units (17 out of 34 units) would be MPDUs. The plan meets the requirements of Section 25A-5(e)(4): Advancing the purpose of the County housing policy and the objectives of any applicable land use plan: The proposed two-over-two MPDUs would be located on the lower level, and the market-rate two-over-two swould be located on the upper level. This is the same configuration and footprint as the two-over-two MPDUs built by Ryan Homes in Cabin Branch, which have sold very well. They are actually a bit larger than a typical MPDU townhouse, provide the same bedroom and bathroom count as a typical MPDU townhouse, and will have a garage space integral to the building. Although the proportion of MPDUs is higher in the multi-family section than the single-family sections, an equal proportion of the MPDUs (15%) would be located in the for-sale and the rental units. The proposed two-over-two MPDUs will have an at-grade entry into the main living (kitchen) level, and all three bedrooms will located on the second level. By contrast, the main living level in the MPDU townhouses will be on the second floor, and the third bedroom will be located an a separate level from the other two bedrooms. Six of the proposed MPDU two-over-two units will result in faster delivery of the MPDUs, buildout of the lower level MPDUs will happen at the same time. The proposed location of the two-over-two MPDUs east of Stonehenge Place. Also, since the market rate units will be located above the MPDUs, buildout of the lower level MPDUs will happen at the same time. The proposed location of the two-over-two MPDUs puts them next to the main amenity area within th
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MontgomeryPla	nning Montgome	ryPlanning.org Mor	tgomeryParks.org	M-NCPPC Montgomery County
				 (See fifth attachment.) Avoiding excessive mandatory condominium or homeowners' association fees or other costs that would reduce the affordability of sale: On average, lower level two-over-two MPDUs have been priced almost \$30,000 less than the typical MPDU townhouse. While monthly condo fees are higher for the proposed two-over-twos (about \$120 more), the higher condo fees are partially offset by lower front foot benefit charges, and two-over-two owners are not responsible for the costs of exterior maintenance. Section 25A-5(k) of the Code states that MPDUs must be reasonably dispersed throughout the development, and further requires that the pace of MPDU production reasonably coincides with the pace of the construction of market rate units. MPDUs are located throughout the site, and the two-over-two buildings include both MPDUs and market-rate units. Additionally, the future multifamily apartment building and three high-rise buildings will each have 15% MPDUs. The two-over-twos and townhouses on the eastern portion of the site, where most of the MPDUs are located, will be built before the western portion of the site, with the result that the pace of MPDU production will exceed the pace of the construction of the market rate units. Section 25A-5(o) of the Code states that an applicant must not establish a condominium of homeowners' association consisting solely of MPDUs. The condominium association for the two-over-twos would be composed of 50% market-rate units and 50% MPDUs, so it would not be composed solely of MPDUs.
PEPCO		Tamika.Graham@ montgomeryplanni ng.org	Incomplete	
WSSC	Art Atencio Art.Atencio@wsscwate r.com	Tamika.Graham@ montgomeryplanni ng.org	Incomplete	
AREA ENVIRONMEN TAL	Steve Findley steve.findley@montgo meryplanning.org	Tamika.Graham@ montgomeryplanni ng.org	Recommend for Approval	Can recommend for approval with conditions.
AREA SUBDIVISION	Tamika Graham Tamika.Graham@mont gomeryplanning.org	Tamika.Graham@ montgomeryplanni ng.org	Revisions Requested	Per our email correspondence to the Applicant, key APF findings are unable to be satisfied at this time. A follow-up meeting is planned to further discuss.
				1. Please provide point-by-point response to ALL the comments listed below. The existing comment response excludes many of the changemarks on the previous plan. Staff has documented the origination of comments. Some date back to sketch plan review. In order to ensure an expeditious process going forward, we continue to encourage the Applicant to respond to all comments and changemarks rather than a select few.



				2. REPEAT COMMENT: The segment between Stonehenge Place and Street C should be provided as public. Please change the section as appropriate and ensure the design conforms to MCDOT standards.
				3. While responses regarding the roadway sections are appreciated, more discussion is required regarding the frontage improvements required. This will need to be discussed at upcoming meetings. These should be shown to generally meet the intent of the White Flint Design Guidelines. The LOD will also be discussed at this time.
				4. REPEAT COMMENT: Planning staff is concerned that vehicle overhang from the short driveways could inhibit FDA access. Driveways should either be elongated to hold an entire car's length, or reduced to be less than 3' so it is clear cars cannot park in the driveway.
				Signage and marking may necessary to ensure guests and visitors understand the policy. Planning staff defers to Fire and Safety.
				5. REPEAT COMMENT: The LATR Study ahs not been approved. The Applicant has not responded t previous comments related the following: a. Request for warrant analysis (dates back, at minimum, to Sketch Plan comments as visible in ePlans) - Must be included in the study for MCDOT review
				 b. Re-assignment of traffic due to access changes at East Jefferson (now the curb cut is now exit only—this comment dates back, at minimum, to Sketch Plan as visible in ePlans.) c. Some questions and requested to the study, dating back to 12.6.18, have not been addressed. These were previously provided and discussed with Barbara Mosier. While it is true that staff leadership has agreed to accept the Applicant's methodology, this was not the only
AREA TRANSPORTA TION	Patrick Reed patrick.reed@montgom eryplanning.org	Tamika.Graham@ montgomeryplanni ng.org	Revisions Requested	6. REPEAT COMMENT: Relocate the multifamily building access points on Public Street C as they are too close to intersections. Provide access only on Private Driveway A, and the segment linking the two north-south public streets (which we have repeatedly requested be provided as public).
				7. REPEAT COMMENT: Please dimension driveways for each set of townhome sticks, and then be sure they are acceptable for FDA access. Staff is concerned about overhang into areas that may need to be traversed by fire/safety vehicles.
				8. REPEAT COMMENT: Can a truck circulate into Parking Garage C, head- in, head-out? This is required as the street is public.
				9. REPEAT COMMENT: Planning staff does not support the use of



		porkchops on Montrose Road and would prefer a standard perpendicular T intersection. Remove the porkchops and in their place (to prevent left turns), provide the division median shown in the Parking Lots to Places: White Flint Urban Design Guidelines document.
		10. REPEAT COMMENT: Provide justification for the curb radius design at the SW corner of Stonehenge Place and the segment currently referred to as "Private Street A." It does not appear to be standard and should mirror the other corners. If required for FDA purposes, use mountable paving here instead.
		 Repeat General Comment, amended from previous: Note that all parking along *public* streets will be managed by MCDOT. REPEAT COMMENT: This plan is missing adjacent context. Please show all adjacent curb ramps and crossings.
		REPEAT COMMENT: Visitor parking is not provided for the townhomes. Staff recommends exploring the following options, one of which will be conditioned:
		Option 1 – Maintain as is, condition that there is no visitor parking in disclosure agreements for sale of units Option 2 – Provide a temporary visitor parking lot where the multifamily buildings are located; once the multifamily is constructed, require the provision of visitor parking for the town homes Option 3 – Require the Applicant to secure a shared parking agreement with the commercial buildings points south; this would necessitate a safe crossing of Montrose Parking (signal at Stonehenge Place) Option 4 - Remove units and add visitor parking.



January 10, 2020

M-NCPPC, Attn. Steve Findley, Planner Area 2 8787 Georgia Avenue Silver Spring, MD 20910

Re: Wilgus Property Preliminary Forest Conservation Plan - Variance Request Preliminary Plan Number: 120200140

Dear Mr. Findley,

On behalf of Wilgus-Montrose Associates LLC (Applicant), Soltesz is requesting a variance for the critical root zone (CRZ) impact to one hundred and ten (110) trees 30 inches or greater in diameter at breast height (DBH), as required under Section 22A-21 of the Montgomery County Code (Code). This variance request is also consistent with recent revisions to the State Forest Conservation Law enacted by Senate Bill 666 and codified at Section 5-1607(c)(2) of the Natural Resources Article of the Maryland Code, which notes that a variance is required to disturb trees with a DBH of 30" or greater, or with a DBH that is at least 75% of the diameter of the state champion tree of that species.

The impact to these trees results from a mixed-use project located in the White Flint 2 Sector Plan area in Rockville. These trees are within the proposed LOD and will be removed due to tree health, species-wide survivability, and guidelines put forth by Montgomery County. The Forest Conservation Plan was prepared in consultation with Don Zimar, RPF #377, RCA #446, who provided guidance regarding the health and preservation opportunities for the existing trees on the subject property.

Project Information

The subject property is bounded by Montrose Parkway, Montrose Road, East Jefferson Street, and Towne Road. The gross tract area is approximately 16.64 acres across five separate parcels. The zoning classifications of the parcels, from west to east, are CRN-0.75, C-0.0, R-0.75, H-50; CR-2.0, C-0.25, R-1.75, H-75; CR-2.0, C-1.0, R-1.5, H-200.

On August 21, 2019, the Montgomery County Planning Board (Planning Board) approved a sketch plan (#320190070) permitting the construction of up to 1,274,498 square feet of total development, with up to 1,025,789 square feet of multi-family and townhouse residential uses and up to 248,709 square feet of commercial uses (Sketch Plan).

Applicant seeks to implement the Sketch Plan on the subject property with the Preliminary Plan, which proposes 15,000 square feet of retail space and 745 dwelling units that will include 107 townhomes, 34 2-over-2 units, and 604 multi-family units. This variance request is being submitted to achieve the proposed Preliminary Plan.

Critical Root Impacts

A NRI-FSD (#420182300) was approved for the subject property on July 9, 2018. The specimen trees below that will be impacted as a result of this variance request are shown on the NRI/FSD and are numbered accordingly for reference purposes. Two specimen trees will be impacted but retained, and 108 specimen trees are proposed for removal.

WILGUS SPECIMEN TREES TO BE IMPACTED BUT RETAINED (2 TOTAL)								
Tree #	Tree #Common NameBotanical NameDBH (inch)Cond.Impact							
98	Tulip Tree	Liriodendron tulipifera	46	Fair	54.7%			
99	Tulip Tree	Liriodendron tulipifera	52	Fair	64.6%			

	WILGUS SPECIMEN TREES TO BE REMOVED (108 TOTAL)						
Tree #	Common Name	Botanical Name	DBH (inch)	Cond.	Impact		
1	Tulip Tree	Liriodendron tulipifera	38	Good	100%		
2	Tulip Tree	Liriodendron tulipifera	44	Fair	100%		
3	Tulip Tree	Liriodendron tulipifera	36	Fair	100%		
4	Tulip Tree	Liriodendron tulipifera	41	Poor	100%		
5	Tulip Tree	Liriodendron tulipifera	36	Fair	100%		
6	Tulip Tree	Liriodendron tulipifera	38	Fair	100%		
7	Tulip Tree	Liriodendron tulipifera	41	Fair	100%		
8	Tulip Tree	Liriodendron tulipifera	38	Fair	100%		
9	Tulip Tree	Liriodendron tulipifera	58	Fair	100%		
10	Tulip Tree	Liriodendron tulipifera	30	Fair	100%		
11	Tulip Tree	Liriodendron tulipifera	42	Poor	100%		
12	Tulip Tree	Liriodendron tulipifera	30	Poor	100%		
13	Tulip Tree	Liriodendron tulipifera	36	Poor	100%		
14	Tulip Tree	Liriodendron tulipifera	36	Poor	100%		
15	Tulip Tree	Liriodendron tulipifera	36	Fair	100%		
16	Tulip Tree	Liriodendron tulipifera	36	Poor	100%		
20	Tulip Tree	Liriodendron tulipifera	30	Fair	100%		
22	Tulip Tree	Liriodendron tulipifera	30	Poor	100%		
23	Tulip Tree	Liriodendron tulipifera	38	Poor	100%		
24	Tulip Tree	Liriodendron tulipifera	32	Fair	100%		
26	Tulip Tree	Liriodendron tulipifera	28	Poor	100%		
27	Tulip Tree	Liriodendron tulipifera	32	Poor	100%		
28	Tulip Tree	Liriodendron tulipifera	40	Fair	100%		
29	Tulip Tree	Liriodendron tulipifera	38	Poor	100%		
30	Tulip Tree	Liriodendron tulipifera	48	Fair	100%		
31	Tulip Tree	Liriodendron tulipifera	34	Fair	100%		
33	Tulip Tree	Liriodendron tulipifera	36	Fair	100%		
34	Tulip Tree	Liriodendron tulipifera	32	Fair	100%		

35	Tulip Tree	Liriodendron tulipifera	32	Fair	100%
36	Tulip Tree	Liriodendron tulipifera	38	Fair	100%
37	Tulip Tree	Liriodendron tulipifera	38	Fair	100%
41	Tulip Tree	Liriodendron tulipifera	42	Fair	100%
43	Tulip Tree	Liriodendron tulipifera	36	Fair	100%
45	Tulip Tree	Liriodendron tulipifera	36	Poor	100%
50	Tulip Tree	Liriodendron tulipifera	36	Fair	100%
51	Tulip Tree	Liriodendron tulipifera	64	Poor	100%
53	Hickory species	Carya spp.	30	Fair	100%
54	Black Oak	Quercus velutina	34	Fair	100%
55	Tulip Tree	Liriodendron tulipifera	42	Fair	100%
56	White Oak	Quercus alba	38	Fair	100%
57	Tulip Tree	Liriodendron tulipifera	32	Fair	100%
58	Tulip Tree	Liriodendron tulipifera	30	Fair	100%
61	Tulip Tree	Liriodendron tulipifera	34	Poor	100%
62	Tulip Tree	Liriodendron tulipifera	38	Fair	100%
66	Tulip Tree	Liriodendron tulipifera	36	Fair	100%
67	Tulip Tree	Liriodendron tulipifera	36	Fair	100%
70	Tulip Tree	Liriodendron tulipifera	38	Poor	100%
71	Tulip Tree	Liriodendron tulipifera	38	Fair	100%
73	Tulip Tree	Liriodendron tulipifera	36	Poor	100%
75	Tulip Tree	Liriodendron tulipifera	38	Poor	100%
76	Tulip Tree	Liriodendron tulipifera	48	Poor	100%
77	Tulip Tree	Liriodendron tulipifera	38	Poor	100%
78	Tulip Tree	Liriodendron tulipifera	34	Poor	100%
79	Tulip Tree	Liriodendron tulipifera	32	Poor	100%
80	Tulip Tree	Liriodendron tulipifera	30	Poor	100%
82	Tulip Tree	Liriodendron tulipifera	46	Fair	100%
83	Tulip Tree	Liriodendron tulipifera	48	Fair	100%
84	Tulip Tree	Liriodendron tulipifera	45	Fair	100%
85	Tulip Tree	Liriodendron tulipifera	36	Fair	100%
86	Tulip Tree	Liriodendron tulipifera	48	Fair	100%
87	Tulip Tree	Liriodendron tulipifera	36	Fair	100%
88	Tulip Tree	Liriodendron tulipifera	48	Fair	100%
89	Tulip Tree	Liriodendron tulipifera	52	Fair	100%
90	Tulip Tree	Liriodendron tulipifera	56	Fair	100%
91	Tulip Tree	Liriodendron tulipifera	56	Fair	100%
92	Tulip Tree	Liriodendron tulipifera	60	Poor	100%
93	Tulip Tree	Liriodendron tulipifera	40	Fair	100%
94	Tulip Tree	Liriodendron tulipifera	38	Fair	100%
96	Tulip Tree	Liriodendron tulipifera	42	Fair	100%

97	Tulip Tree	Liriodendron tulipifera	48	Fair	100%
100	Hickory species	Carya spp.	30	Fair	100%
101	Black Oak	Quercus velutina	52	Fair	100%
102	Tulip Tree	Liriodendron tulipifera	48	Fair	100%
103	White Oak	Quercus alba	48	Poor	100%
104	Tulip Tree	Liriodendron tulipifera	56	Fair	100%
105	Tulip Tree	Liriodendron tulipifera	38	Fair	100%
106	Tulip Tree	Liriodendron tulipifera	41	Fair	100%
107	Tulip Tree	Liriodendron tulipifera	41	Fair	100%
109	Tulip Tree	Liriodendron tulipifera	30	Poor	100%
111	Tulip Tree	Liriodendron tulipifera	34	Fair	100%
112	Tulip Tree	Liriodendron tulipifera	54	Fair	100%
113	Red Maple	Acer rubrum	34	Fair	100%
114	Tulip Tree	Liriodendron tulipifera	44	Fair	100%
115	Tulip Tree	Liriodendron tulipifera	38	Poor	100%
116	Tulip Tree	Liriodendron tulipifera	48	Fair	100%
117	Tulip Tree	Liriodendron tulipifera	38	Poor	100%
118	Tulip Tree	Liriodendron tulipifera	46	Poor	100%
119	Tulip Tree	Liriodendron tulipifera	46	Poor	100%
120	Tulip Tree	Liriodendron tulipifera	36	Fair	100%
121	Tulip Tree	Liriodendron tulipifera	30	Fair	100%
123	Honeylocust	Gleditsia triacanthos	38	Poor	100%
124	Tulip Tree	Liriodendron tulipifera	42	Poor	100%
125	Tulip Tree	Liriodendron tulipifera	44	Fair	100%
126	Tulip Tree	Liriodendron tulipifera	46	Fair	100%
127	Tulip Tree	Liriodendron tulipifera	38	Poor	100%
128	Tulip Tree	Liriodendron tulipifera	38	Fair	100%
130	Ash species	Fraxinus spp.	34	Poor	100%
133	Black Locust	Robinia pseudoacacia	32	Poor	100%
134	Tulip Tree	Liriodendron tulipifera	36	Fair	100%
135	Tulip Tree	Liriodendron tulipifera	36	Poor	100%
136	Tulip Tree	Liriodendron tulipifera	38	Fair	100%
137	Tulip Tree	Liriodendron tulipifera	42	Fair	100%
139	Black Locust	Robinia pseudoacacia	36	Poor	100%
140	Black Locust	Robinia pseudoacacia	36	Poor	100%
142	Chestnut oak	Quercus montana	32	Fair	100%
143	Red Mulberry	Morus rubra	32	Poor	100%
145	Black Locust	Robinia pseudoacacia	38	Poor	100%
148	Eastern Cottonwood	30	Poor	100%	
Total DB	H Removed		4237		
Total Ca	liper Replacement Requi	1060			

Required Mitigation

All 108 of the trees listed above to be removed equate to a combined DBH of 4237". This yields a requirement of 1060" in total caliper replacement. Approximately 251" will be replaced on-site with the provision of ninety eight (98) trees as shown below. Fifty three (53) of the on-site mitigation trees will be located in the landscaped buffer area between the project site and the Cherington townhome community.

Quantity	Location	Common Name	Common Name Botanical Name		
24	Buffer	Loblolly Pine	Pinus taeda	1-1½" cal.	
2	Buffer	Swamp White Oak	Swamp White Oak Quercus bicolor		
4	Buffer	Willow Oak	Quercus phellos	4-4½" cal.	
23	Buffer	American Holly	American Holly Ilex opaca		
45	Private ROWs	Native Species to be determined		4-4½" cal.	
98	Total On-Site M	itigation Trees	ation Trees		

The remainder of the mitigation requirement (809") will be fulfilled through the purchase of a forest bank. The forest bank will consist of 4.05 acres, the equivalent of four hundred and five (405) 2" caliper trees.

Category	Quantity	Total Caliper
4" Caliper Trees (On-Site)	51	204"
1" Caliper Trees (On-Site)	47	47"
2" Caliper Trees (Forest Bank)	405	810″
Total Trees to be Planted	503	
Total Caliper Replacement		1061"

Variance Request

Applicant's variance request should be granted pursuant to Section 22A-21 of the Code as the enforcement of Chapter 22A of the Code would result in an unwarranted hardship as detailed below.

The application requirements of Section 22A-21(b) of the Code require an applicant for a variance to:

- (1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of granting of the variance; and
- (4) provide any other information appropriate to support the request.

The Applicant meets the above criteria as follows:

(1) - Special conditions peculiar to the property which cause the unwarranted hardship:

The existing forest stands on the subject property are dominated by tulip poplar, or *Liriodendron tulipifera*. This species includes both the specimen trees to be impacted and 85% of the specimen trees to be removed. While the tulip poplar is a native, fast-growing species that supports wildlife, it is not a preferred plant in urban areas like those recommended for mixed-use infill development within the White Flint 2 planning area, including the subject property. Mr. Zimar attests to the species' weak wood and vulnerability to storm damage as a potential long-term issue for the future residents and tenants of the site, as well as existing development adjacent to the subject property. These trees, if maintained, would struggle not only during the construction phase but also after development is completed and create potential safety concerns.

Another significant factor supporting removal of these trees is health, which further impacts the chance of survival and risks to human health and safety. According to Mr. Zimar's field assessment, created as part of the Approved NRI/FSD, just one of the 108 trees to be removed (approximately 1% of the total) is in good health, while the remaining trees are in either fair (62%) or poor (37%) condition. Construction activities such as grading and truck movements around a tree's CRZ in combination with existing poor tree health will most likely jeopardize the survivability and long term viability of these trees.

Additionally, the subject property lies within the boundaries of the White Flint 2 Sector Plan ("WF2 Sector Plan"), approved and adopted in January 2018. It is a stated intention of the WF2 Sector Plan to "[c]oncentrate additional density in areas with potential to create mixed-use activity in support of ongoing efforts to transform these areas" as well as "[i]dentify properties that could develop as unique mixed-use neighborhood centers to serve established communities." WF2 Sector Plan, pg. 24.

The subject property lies in the Rockville Pike Montrose North District of the WF2 Sector Plan within the "Cherington Area." WF2 Sector Plan, pg. 36. The WF2 Sector Plan specifically discusses the subject property as follows:

The undeveloped portions of the Wilgus property have the greatest potential for new development. Redevelopment in this area would serve as an important link between the Executive Boulevard District and the Pike & Rose development. WF2 Sector Plan, pgs. 36-37.

These recommendations acknowledge that the subject property is expected to provide greater intensities and building heights using the CR Zone on the eastern portion, and lower heights and densities using the CRN Zone on the westernmost portion, directly south of the existing Cherington townhouses. Applicant has respected these recommendations by in a single approved Sketch Plan for the entire subject property, including the CRN portion, and providing approximately 1.4 acres of public open space in the proposed development, including the Central Public Park.

In recognition of the fact that the Cherington community lies immediately north of a portion of the subject property, the WF2 Sector Plan recommends the abutting portion of the subject property (Parcel N273) be zoned CRN 0.75, C-0.0, R-0.75, H-50 and that the new residential development in this location be compatible with the adjacent Cherington townhouse community. Accordingly, the Sketch Plan provides townhouses in this area and a minimum 20' wide vegetated buffer between the existing Cherington townhomes and the proposed new townhomes to the south. WF2 Sector Plan, pg. 37. The Preliminary Plan associated with this variance request is consistent with and implements the WF2 Sector Plan and Sketch Plan by providing townhouses and a planted buffer that naturally screens the new development from the existing townhouse community and places end units perpendicular to the existing community with no intervening roads or alleys between.

For the above reasons, redevelopment of the subject property invokes specific conditions peculiar to the subject property that warrant removal of the specimen trees as requested. To disallow this variance request would result in precluding development consistent with the health status and species assessment of the trees in question, the very recent recommendations of the WF2 Sector Plan, the approved Sketch Plan and other established land use policies of the County.

(2) - Enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas:

The geography, demographics, and land use policies of the County have influenced the establishment of the three overall planning areas in the County. Development is more closely clustered in Areas 1 and 2 with Area 3 being more rural. Within Areas 1 and 2, transit accessibility has heavily influenced where the highest density of development is recommended. With growing population and market demand for housing, the County has responded in kind by utilizing zoning, planning, and other policies and regulations to guide and encourage redevelopment in these areas. The Zoning Ordinance, General Plan, master plans, and sector plans reflect the development policies of Montgomery County.

The subject property is part of a desired development pattern of targeting redevelopment along major identified transportation corridors. In the White Flint Planning Area immediately east of the subject property, the densest development radiates outward from the White Flint Metro. The zoning designations of the subject property shift from CR (commercial/residential) to CRN (commercial/residential neighborhood), with various levels of density and building height. It is clear that the subject property, zoned CR and CRN, is intended by the WF2 Sector Plan for urban mixed-use development with building heights of up to 200 feet. *See also* previous discussion. Denying the variance request would prevent the Applicant from implementing the specific land use recommendations for the subject property in the WF2 Sector Plan and achieved in the Sketch Plan. In view of the established and desired development pattern and specific development recommendations for the subject property, such a denial would deprive the landowner of rights commonly enjoyed by others.

(3) - State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance:

The subject property is located in the Cabin John Creek Watershed. The project site is completely bounded by asphalt pavement and the site does not directly drain into a body of water. Stormwater Management will be proposed throughout the project according to the current Maryland Department of the Environment (MDE) and Montgomery County Department of Permitting Services (DPS) regulations and standards. In compliance with these standards, Environmental Site Design (ESD) practices will be implemented to the maximum extent practicable (MEP) through a combination of planning techniques, alternative cover, and micro-scale practices. These ESD practices optimize conservation of natural features, like drainage patterns, soil and vegetation, etc., along with slowing down runoff to maintain discharge timing and to increase infiltration and evapotranspiration. Applying these techniques will ensure that all available resources have been considered in order to protect streams and waterways from the impact of land development activities. Thus, Applicant is confident that state water quality standards will not be violated and the development will not cause any measurable degradation in water quality.

(4) - Provide any other information appropriate to support the request:

The Applicant believes the information set forth above is adequate to justify the variance request. Furthermore, the Applicant's request complies with the "minimum criteria" of Section 22A-21(d) of the Code:

- (1) the request will confer no special privilege on the Applicant that would be denied to any other applicants;
- (2) the request is not made based on conditions or circumstances that are the result of actions by the Applicant;
- (3) the requested variance is not based on a condition relating to land or building use, either permitted or nonconforming on a neighboring property; and
- (4) removal of the impacted trees will not violate State water quality standards or cause measurable degradation in water quality.

As the above responses demonstrate, no special privileges or benefits would be accorded to the Applicant by granting the requested variance. The reasons supporting the variance request arise from the health and species characteristics of existing trees, as well as the goals, objectives, and specific zoning and planning recommendations for the subject property. These factors have been carefully considered by the Planning Board and County Council and incorporated in the approved Sketch Plan which this Preliminary Plan implements. Accordingly, the factors that justify the variance are not based on conditions or circumstances that are a result of actions by the Applicant or related to conditions on adjacent or neighboring land or buildings. Finally, as detailed above, all state water quality standards will be met and there will be no measurable degradation in water quality as a result of the development. For all of the above reasons, Applicant respectfully requests that this variance request be granted. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

SOLTESZ

Keely D. Lauretti Landscape Architect



[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Chair Anderson,

We submit the following additional background materials for inclusion in the administrative record for the above-reference case on behalf of Applicant Wilgus-Montrose Associates LLC:

- Statement of Justification for narrower than standard road right-of-way, lesser intersection truncations, and lesser centerline radius for Preliminary Plan No. 120200140
- Wilgus Utility Pole Exhibit
- ٠ Photos of Existing Utility Poles along Rockville Pike
- Utility Pole Undergrounding Cost Estimate

Thank you very much for your attention to this matter.

Sincerely,

Phil

Phillip A. Hummel

11 N. Washington Street | Suite 700 | Rockville, MD 20850-4229 D: +1 301.517.4814 | O: +1 301.762.1600 | F: +1 301.517.4814



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For COVID-19 information and resources, please visit our Coronavirus Task Force page.

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Statement of Justification for narrower than standard road right-of-way, lesser intersection truncations, and lesser centerline radius WILGUS Preliminary Plan No. 120200140

On behalf of Wilgus-Montrose Associates, LLC (the "Applicant") and in accordance with Chapter 50 of the Montgomery County Code (the "Subdivision Regulations"), this statement is submitted to justify the approval of a narrower than standard road right-of-way width, lesser intersection truncations, and lesser centerline radius as part of Preliminary Plan No. 120200140 for Wilgus. Preliminary plan drawings and roadway typical cross-sections are attached hereto for reference.

- A. In accordance with Section 50.4.3.E.2.a.i of the Subdivision Regulations (Design standards for right-of-way), the Planning Board may approve a narrower than standard road right-of-way if it meets minimum fire access requirements and the Board finds that a narrower right-of-way is environmentally preferable, improves compatibility with adjoining properties, or allows better use of the tract under consideration. All roads for which Applicant seeks a narrower than standard road right-of-way meet the minimum fire access requirements. Specific justification for environmental preference, improved compatibility with adjoining properties, and better use of the tract under consideration are listed below.
 - 1. Modification to Secondary Residential Street, parking on one side, 60' right-of-way Standard MC-2002.02 for Private Street "A" to a 52' modified MC-2002.02.

Environmentally Preferable:

A narrower than standard road right-of-way for Private Street "A" allows for a larger Central Public Park area, greater incorporation of state-of-the-art stormwater management facilities, and reduced impervious area on a centrally located roadway within the proposed Wilgus mixed-use development. Reduced rights-of-way also promotes the White Flint 2 Sector Plan's recommendations for sustainability through improving bikeability and walkability through human-scale block sizes and pathways.

Improved Compatibility with Adjoining Properties:

The location of proposed Private Street "A" is intended to align with Stonehenge Place, a private road in the Cherington townhouse development, and the through-block connection to the east to the private driveway providing vehicular and pedestrian access into the Tower A and B and the East Urban Plaza. Both of these adjoining drives have 20' pavement widths that are narrower than the standard road right-of-way widths.

Allows Better Use of Tract Under Consideration:

Providing the standard 60' standard road right-of-way width with the minimum 5' PUEs outside of the right-of-way would reduce the square footage of the Central Public Park area along this road's frontage. It would also reduce the significant infill redevelopment



recognized in the White Flint 2 Sector Plan. Wider road widths and sidewalks are not needed to access the adjoining uses.

2. Modification to Tertiary Residential Street, sidewalk on one side, 44' right-of-way Standard MC-2001.01 for Private Street "B" to 33' modified MC-2001.01.

Environmentally Preferable:

A narrower than standard road right-of-way allows for the accommodation of a vegetated buffer area between the Cherington townhouse community to the north and the proposed townhouse development to the immediate south with landscaping screening. In accordance with White Flint 2 Sector Plan recommendations, this buffer area allows for an appropriate transition between the two communities, including landscaping and the possible retention of existing trees as appropriate.

Improved Compatibility with Adjoining Properties:

The location and alignment of proposed Private Street "B" were designed as proposed for two reasons: intersection spacing and townhouse alignment.

With respect to intersection spacing, the street access points were based on the required 150' intersection spacing requirements from Montrose Parkway per Section 50.4.3.E.2.f.ii of the Subdivision Regulations.

With regard to townhouse alignment, Private Street "B" in previous layouts was a straight tangent from the access point with townhomes in the configurations as currently shown on the end facing East Jefferson (with townhouse rows aligned north to south) to Stonehenge Place (with townhouse rows also aligned north to south). However, M-NCPPC requested that the Project's townhomes front East Jefferson, Montrose Parkway, and Stonehenge Place Extended to improve compatibility with surrounding communities and for these units to engage with abutting roadways. As a result, Private Street "B" was shifted south as currently proposed, but entrance points could not also be shifted south due to required 150' intersection spacing from Montrose Parkway per Section 50.4.3.E.2.f.ii of the Subdivision Regulations. This shift caused the horizontal alignment to not meet the standard road right-of-way width. This proposed alignment is shown on the previously approved sketch plan and fire access plan: a 50' minimum radii meets fire access standards and will be an adequate turning movement for providing safe, efficient, and adequate access to abutting townhouse driveways. This shift also benefits the Cherington community because it moves the road away from the existing townhouses to mitigate noise, as well as allows for the accommodation of the vegetated buffer area with landscaping.

Allows Better Use of Tract Under Consideration:

A narrower right-of-way provides more usable space for utilities and stormwater management, as well as accommodates the vegetated buffer between the Cherington townhouse to the north and the proposed Wilgus townhouses to the south. These units also front onto other open spaces and streets where street trees and sidewalks will be more integrated. A narrower than standard right-of-way also calms traffic discourages cut-through traffic in this portion of the Wilgus property.



3. Modification to Business District Street, 2 lanes with parking on one side, 60' right-of-way Standard MC-2005.01 for Public Street "C" to 55' Modified MC-2005.01.

Environmentally Preferable:

By reducing the roadway width of 12' per lane to 11' per lane, the design of Public Street "C" reduces impervious area on the site, allowing for wider grass panels, additional landscaping, and integration of stormwater management facilities. Reduced rights-of-way also promotes the White Flint 2 Sector Plan's recommendations for sustainability through improving walkability through human-scale block sizes and pathways.

Improved Compatibility with Adjoining Properties:

A narrower than standard road right-of-way establishes an appropriate design to promote walkability, calm traffic, and improve pedestrian connectivity between Montrose Parkway and Montrose Road for those units and buildings abutting Public Street "C."

Allows Better Use of Tract Under Consideration:

A narrower right-of-way provides the ability for buildings to be located closer to the road as encouraged in the White Flint 2 Sector Plan and associated urban design guidelines. It also provides more space to allow for liner units facing Public Street "C." This road is designed as right-in right-out on both ends thereby reducing thru traffic, encouraging traffic calming, and promoting pedestrian walkability.

4. Modification to Secondary Residential Street, parking on one side, 60' right-of-way Standard MC-2002.02 for Private Street "D" to 45' right-of-way Modified MC-2002.02.

Environmentally Preferable:

By virtue of reducing the roadway width from 11.5' to a 10' lane, the design of Private Street "D" reduces impervious area on the site, allowing for wider grass panels, additional landscaping, and integration of stormwater management facilities.

Improved Compatibility with Adjoining Properties:

A narrower than standard road right-of-way for Private Street "D" establishes an appropriate design in this portion of the Wilgus property, slows down the speed of vehicles driving in the area, and enhances the level of comfort for pedestrians and cyclists.

Allows Better Use of Tract Under Consideration:

This private road is proposed solely for addressing of Lots 7-13 and providing additional visitor parking. Private Street "D" ties into an alley network. As a result, this road will be used by a limited number of the townhouses in this immediate area of the project.

B. In accordance with Section 50.4.3.E.2.f.iii of the Subdivision Regulations (Intersection), the Planning Board may specify lesser truncation than otherwise required.

Applicant is proposing to use no truncations at the following intersections:



- 1. Public Street "C" and Montrose Parkway
- 2. Public Street "C" and Private Street "A"
- 3. Public Street "C" and Montrose Road
- 4. Public Street Stonehenge Place Extended (B-2) and Private Street "A"
- 5. Public Street Stonehenge Place Extended (B-2) and Montrose Road (Cherington side)
- 6. Public Street Stonehenge Place Extended (B-2) and Private Street "B"
- 7. Private Street "B" and East Jefferson Street

Applicant is proposing to use 15' radial truncations at the following intersections:

- 1. Public Street Stonehenge Place Extended (B-2) and Montrose Parkway (west side)
- 2. Public Street Stonehenge Place Extended (B-2) and Montrose Road (east side)

Rationale for the request.

The standard straight 25-foot truncations on corner lots at an intersection would cut into the proposed lots for the low-rise multi-family building between Private Street "D" and Public Street "C", as well as Tower C and Tower B. The 10' PUE offset from the 25' truncation would also cut into multiple stormwater management facilities throughout the development. Many of the intersections recently constructed at the nearby Pike and Rose development have no truncations. In addition, there were no truncations provided at the corner of Stonehenge Place and Montrose Parkway currently located on the Wilgus property. Furthermore, reducing and eliminating truncations are appropriate for urban streets on compact infill redevelopment projects such as the proposed preliminary plan. Even without any truncations, there is still sufficient area to provide required street signage.

Applicant understand the potential need in the future for traffic signals at the intersection of Stonehenge Place Extended (B-2) and Montrose Parkway, as well as the intersection of Stonehenge Place Extended (B-2) and Montrose Road. At the intersection of Stonehenge Place Extended (B-2) and Montrose Road, there is no area on the west side of the intersection to provide a truncation because the Cherington property is abutting the property boundary. As a result, a full 25' standard truncation is proposed on the east side of the intersection.

At the intersection of Stonehenge Place Extended (B-2) and Montrose Parkway, there is sufficient area to provide truncation on both sides of the intersection. Therefore, Applicant proposes a 15' radial truncation at these corners. The radial truncation will allow for the accommodation of future signal equipment, if needed, and will not cut into the proposed townhouses and stormwater management facilities at these corners.

In accordance with the Subdivision Regulations, all proposed reductions in truncation will allow for safe, adequate, and efficient vehicular turning.



- C. In accordance with Section 50.4.3.E.2.g of the Subdivision Regulation (Horizontal alignment, the Planning Board may specify a lesser radius when the Department of Transportation has previously issued a design exception for a similar design.
 - 1. Modification to Tertiary Residential Street, 100' min. centerline radius to 35' min. centerline radius.

Rationale for the request.

Although the centerline radius does not meet the minimum standard centerline radii for a tertiary road, the smaller radius in these areas is more beneficial because it creates traffic calming along a street where vehicles will be backing out of driveways and pedestrians will be active. The location and alignment of proposed Private Street "B" were selected for two reasons. First, the street access points were based on the required 150' intersection spacing from Montrose Parkway per Section 50.4.3.E.2.f.ii of the Subdivision Regulations. Second, Private Street "B" in previous layouts was a straight tangent from the access point with townhomes in the configurations as currently shown on the end facing East Jefferson (with townhouse rows aligned north to south) to Stonehenge Place (with townhouse rows also aligned north to south). However, M-NCPPC requested that the Project's townhomes front East Jefferson, Montrose Parkway, and Stonehenge Place Extended to improve compatibility with surrounding communities and for these units to engage with abutting roadways. As a result, Private Street "B" was shifted south as currently proposed. This shift caused the horizontal alignment to not meet the minimum permitted centerline radii for a tertiary road.

Private Street "B" will primarily be used for townhouse access and not be used as a thru street. It meets the minimum requirements for fire access.

A list of constructed roads with similarly lesser centerline radii are:

- Chelsea Heights Ellsworth Heights St, Silver Spring, MD (private road for townhouse access)
- Montgomery Row Eames Way, Bethesda, MD (private road for townhouse access)
- Grosvenor Heights Merriam Street and Windsom Circle, North Bethesda, MD (private road for townhouse access)
- Poplar Run Poplar Run Drive, Silver Spring, MD (public one-way road for single family access)

The above projects were built with primarily private roads for townhouse access. Therefore, a design exception approved by the Department of Transportation was not required. Similarly, Private Street "B" is proposed as a private road without an accompanying design exception. As Private Street "B" is one-way and is designed to discourage thru-traffic, it is entirely appropriate for it to be provided as a private road, rather than a public road.



In conclusion, the justifications for providing a narrower than standard road right-of-way for the roads identified above establish Applicant's proposed design meets minimum fire access requirements, is environmentally preferable, improves compatibility with adjoining properties, and allows better use of the tract under consideration. Furthermore, the reduction of intersection truncations is sufficient for safe vehicular turning and is only requested where no future traffic signals may be needed. Lastly, reduction of the centerline radius is appropriate and a similar design has been used in multiple approved infill development projects similar to the proposed preliminary plan. As such, the Planning Board should approve Applicant's proposed roadway design.

If you should have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Soltesz, Inc.

Brandon J. Fritz, PE Project Manager

cc: Bob Mazzuca

Barbara Sears



BY	DATE

		PROFESSIONAL CERTIFICATION I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. <u>26286</u> , EXPIRATION DATE: <u>06/21/21</u>	PROPOSED STREET SECTIONS
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	MISS UTILITY NOTE	(
DATE	INFORMATION CONCERNING EXISTING UNDERGROUND UTILITIES WAS OBTAINED FROM AVAILABLE RECORDS. THE CONTRACTOR MUST DETERMINE THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITIES AND UTILITY CROSSINGS BY DIGGING TEST PITS BY HAND, WELL IN ADVANCE OF THE START OF EXCAVATION. CONTACT "MISS UTILITY" AT 1-800-257-7777, 48 HOURS PRIOR TO THE START OF EXCAVATION. IF CLEARANCES ARE LESS THAN SHOWN ON THIS PLAN OR TWELVE (12) INCHES, WHICHEVER IS LESS, CONTACT THE ENGINEER AND THE UTILITY COMPANY BEFORE PROCEEDING WITH CONSTRUCTION. CLEARANCES LESS THAN NOTED MAY BEOLURE REVISIONS TO THIS PLAN	V 7 5 F F F





REFERENCE



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Wilgus Towne Road Undergrounding Budget Estimate

ITEN	DESCRIPTION	INFRASTRUCTURE	UTILITY CO. FEES	TOTAL
1	Pepco Relocation	\$597,250	\$588,041	\$1,185,291
2	Verizon Relocation	\$24,500	\$101,719	\$126,219
3	Comcast Relocation	<u>\$93,600</u>	<u>\$18,760</u>	<u>\$112,360</u>
4	TOTAL	\$715,350	\$708,520	\$1,423,870

From:	Hummel, Phillip A.
To:	MCP-Chair
Cc:	Butler, Patrick; Graham, Tamika; "Bob Mazzuca"; Sears, Barbara A.
Subject:	RE: Wilgus - Preliminary Plan No. 120200140
Date:	Tuesday, July 21, 2020 10:35:06 PM
Attachments:	image006.png
	image007.png
	image008.png
	image009.png
	image010.png
	image011.png
	Attachment 1 to 7-15-20 Greg Ruff E-Mail - V1_PlantedBuffer_EXH.pd
	Attachment 2 to 7-15-20 Greg Ruff E-Mail - Tree-Info-Sheet.pdf

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding

Dear Chair Anderson,

We inadvertently left out the attachments to the 7/15/20 Greg Ruff E-Mail referenced below, which are now attached to this e-mail. We also submit these attachments for inclusion in the administrative record for the above-referenced case on behalf of Applicant Wilgus-Montrose LLC.

Sincerely Phil



Phillip A. Hummel Miles & Stockbridge direct: +1 (301) 517-4814

OVID-19 information and resources, please visit our Coronavirus Task Force page.

From: Hummel, Phillip A.

Sent: Tuesday, July 21, 2020 10:20 PM To: 'mcp-chair@mncppc-mc.org' <mcp-chair@mncppc-mc.org> Cc: Butler, Patrick <patrick.butler@montgomeryplanning.org>; 'Graham, Tamika' <tamika.graham@montgomeryplanning.org>; 'Bob Mazzuca'

bmazzuca@willco.com>; Sears, Barbara A. <bsears@milesstockbridge.com>

Subject: Wilgus - Preliminary Plan No. 120200140

Dear Chair Anderson.

We submit the following background materials for inclusion in the administrative record for the above-reference case on behalf of Applicant Wilgus-Montrose Associates LLC:

• 11/22/17 Barbara Sears Letter (with attachments) – Application to Extend Adequate Public Facilities and Preliminary Plan Validity Period for Preliminary Plan No. 199029A

- (Wilgus East)
- Wilgus Settlement Agreement
- Wilgus Sketch Plan Resolution (Sketch Plan No. 320190070)
- 4/21/20 Barbara Sears E-Mail (with attachment) correspondence regarding options considered by Applicant for preservation of wooded area along Montrose Parkway
- 7/15/20 Greg Ruff E-Mail (with attachments) correspondence regarding accepted landscape design for vegetated buffer
- Excerpts from DRC Comments and Responses Regarding Tree Preservation in Proposed Public Open Spaces
- Eplans Cycle 3 Comments DHCA approval of Preliminary Plan No. 1201200140's compliance with Chapter 25A
- Tree Variance Justification Statement

Due to size limitations on e-mail attachments, we will send a few additional background materials in a separate e-mail. We appreciate your attention to this matter.

Sincerely, Phil

Phillip A. Hummel

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For COVID-19 information and resources, please visit our Coronavirus Task Force page.

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	Proposed New Planting Buffer Schedule					
	Sym	Qty	Botanical Name	Common Name	Size	Remarks
	Qrp	5	Quercus x warei 'Regal Prince'	Regal Prince Oak	3-3½" cal.	Planted height approx. 10'. Approx. 40' height at 10 years.
	Pcn	12	Picea abies	Norway Spruce	8-10' B&B, 1" cal.	Planted height approx. 10'. Approx. 45' height at 10 years.
	Тра	49	Thuja 'Green Giant'	Green Giant Arborvitae	8-10' B&B, 1" cal.	Planted height approx. 10'. Approx. 30' height at 10 years.
	Сју	43	Cryptomeria japonica 'Yoshino'	Yoshino Cryptomeria	8-10' B&B, 1" cal.	Planted height approx. 10'. Approx. 45' height at 10 years
	Ccm	8	Cercis canadensis 'Merlot'	Merlot Eastern Redbud	5 gallon	Planted height approx. 8'. Approx. 15' height at 10 years.
*	Vir	24	Virburnum rhytidophyllum	Leatherleaf Viburnum	5 gallon	Planted height approx. 3'. Approx. 8' height at 10 years.
8	Igl	68	llex glabra	Inkberry Holly	5 gallon	Planted height approx 3'. Approx. 6' height at 10 years.

LEGEND
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DATE		REVISION

SCHEMATIC BUFFER PLANTING

SHEET NO.

LB-I



QUERCUS X WAREI 'REGAL PRINCE' COMMON NAME: REGAL PRINCE OAK TYPE: DECIDUOUS TREE **ORIGIN: NATIVE** HEIGHT: 50'-60' SPREAD: 20'-25' GROWTH RATE: MODERATE SOIL: MEDIUM TO WET



CERCIS CANADENSIS 'MERLOT' COMMON NAME: MERLOT REDBUD TYPE: DECIDUOUS TREE ORIGIN: HYBRID HEIGHT: 12'-15' SPREAD: 12'-15' GROWTH RATE: MODERATE SOIL: MEDIUM



PICEA ABIES

COMMON NAME: NORWAY SPRUCE TYPE: EVERGREEN TREE **ORIGIN: EUROPE** HEIGHT: 40'-60' SPREAD: 25'-30' **GROWTH RATE: RAPID** SOIL: MEDIUM



VIBURNUM RHYTIDOPHYLLUM

COMMON NAME: LEATHERLEAF VIBURNUM TYPE: DECIDUOUS SHRUB ORIGIN: CENTRAL AND WESTERN CHINA HEIGHT: 6'-10' SPREAD: 6'-10' GROWTH RATE: MODERATE SOIL: MEDIUM



THUJA 'GREEN GIANT' COMMON NAME: 'GREEN GIANT' ARBORVITAE TYPE: EVERGREEN TREE **ORIGIN: HYBRID** HEIGHT: 40'-60' SPREAD: 12'-18' **GROWTH RATE: RAPID** SOIL: MEDIUM



COMMON NAME: INKBERRY TYPE: EVERGREEN SHRUB ORIGIN: NATIVE HEIGHT: 5'-8' SPREAD: 5'-8' GROWTH RATE: SLOW SOIL: MEDIUM TO WET



CRYPTOMERIA JAPONICA 'YOSHINO' COMMON NAME: YOSHINO CRYPTOMERIA

TYPE: EVERGREEN TREE

ORIGIN: JAPAN AND SOUTHERN CHINA

HEIGHT: 40'-60'

SPREAD: 12'-18'

GROWTH RATE: RAPID

SOIL: MEDIUM

WIGU

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DATE		REVISION

BUFFER PLANT PROFILES

SHEET NO.

LB-2

SOURCES: MONROVIA, MISSOURI BOTANICAL GARDEN