

Item 5 - Correspondence

From: [Francoise Carrier](#)
To: [MCP-Chair](#)
Cc: [Wright, Gwen](#); [Kronenberg, Robert](#); [Pereira, Sandra](#); [Casey, Jonathan](#); [Van Alstyne, Chris](#); [christopher.conklin@montgomerycountymd.gov](#); [Paylor, Michael L.](#); [Cupples, Tim](#); [Rebecca Torma](#); [Whelan, William](#); [Daniel Goodman](#); [dustin.schade@lidl.us](#); ["plavay@mhgpa.com"](#); [Katie Wagner](#); [Maribel Wong, Gorove Slade](#)
Subject: July 28 agenda item No. 5
Date: Tuesday, July 26, 2022 8:15:18 PM
Attachments: [Lett Pl Bd traffic light 7-26-22 w.exhibit reduced.pdf](#)

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

Dear Chair's office staff:

Please distribute the attached letter to the members of the Planning Board in preparation for their July 28 meeting.

Thank you,

Françoise



Françoise M. Carrier
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Bethesda, Maryland 20814
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July 26, 2022

Casey Anderson, Chair and Members, Montgomery County Planning Board
Maryland-National Capital Park & Planning Commission
2425 Reddie Drive, 14th Floor
Wheaton, MD 20902

Re: Wisteria Drive Business Park, Applications 120220030 and 820220080
July 28, 2022 Agenda Item 5

Dear Chair Anderson and Members of the Board:

I write on behalf of my client Lidl US, LLC (“Lidl”). In the applications cited above, Lidl proposes to build a 30,000-square-foot grocery store with surface parking and extensive public open space enhanced by a large mural, extensive landscaping, seating and lighting. The project site is on Walter Johnson Road in Germantown, near the Germantown MARC Station. Lidl’s preliminary plan and site plan applications will be before you on July 28, 2022. Lidl unfortunately cannot accept a condition of approval requested by the Montgomery County Department of Transportation (“MCDOT”). This letter will outline why these applications reach you in this unsettled posture and Lidl’s proposed resolution of the matter.

Lidl submitted a comprehensive transportation study (the “Transportation Study”) as part of its application package, consistent with the County’s Growth and Infrastructure Policy (the “GIP”) and Local Area Transportation Review Guidelines (the “LATR Guidelines”). The Transportation Study identified no roadway deficiencies and therefore proposed no vehicular mitigation. It did identify several deficiencies in the local pedestrian/bicycle transportation network. Lidl worked with planning staff to identify a package of improvements with a total cost in keeping with the LATR Proportionality Guide published as part of the LATR Guidelines. As you will recall, the Planning Board established the LATR Proportionality Guide via an update to the LATR Guidelines, in March 2022, to ensure that the cost of exactions imposed on an applicant under GIP requirements for off-site improvements would be roughly proportional to the impact of the project, consistent with constitutional requirements. The package of improvements that Lidl agreed upon with planning staff included buffered shared use paths and high-visibility crosswalks intended to provide an improved, safer experience for pedestrians and bicyclists in the block where the new Lidl grocery store is proposed.

These applications were submitted in October, 2021. Planning staff and Lidl agreed on a package of off-site improvements in March, 2022. On April 22, 2022, in response to concerns raised by community members, planning staff sent Lidl an email containing a list of questions and requests for additional improvements. Lidl was able to accommodate nearly all of these requests, including a request

from MCDOT to conduct new counts at the intersection of Wisteria Drive and Walter Johnson Road and redo the traffic signal warrant analysis that was conducted in September 2021¹. Lidl conducted new counts and redid the warrant analysis in April. The new counts and analysis continued to show that the intersection does not meet any of the signal warrant criteria established in the Maryland Manual on Uniform Traffic Control Devices (the “Maryland Traffic Manual”), Chapter 4C, which Montgomery County has long applied to assess whether an applicant should be required to install a traffic signal. The test involves taking 12 hours of counts at an intersection. If criteria for any of the nine (9) warrants are satisfied, a traffic signal is considered warranted and must be provided by the applicant. Here, *not one* of the data points from either the September 2021 counts or the April 2022 counts exceeded the specified levels for the vehicular warrants or the pedestrian warrants. According to applicable state standards that Montgomery County has adopted and upon which development applicants rely, this intersection does not meet the criteria for an applicant to be required to install a traffic signal.

MCDOT has determined based on engineering judgment that, despite the intersection passing the LATR tests and the traffic signal warrant tests, to enhance pedestrian safety this applicant should be obligated to install a traffic signal. Lidl makes no comment on MCDOT’s engineering judgment at this time. Lidl strongly objects to the notion that an applicant can be obligated to install a traffic signal *despite the intersection in question having passed the applicable LATR and traffic signal warrant tests.*

The proposed conditions of approval require Lidl to make the off-site pedestrian/bicycle improvements agreed upon in March and also provide a traffic signal as requested by MCDOT. In Lidl’s view, requiring Lidl to install a traffic signal at the intersection of Wisteria Drive and Walter Johnson Road would exceed the Planning Board’s authority and violate its own policies. As noted above, Lidl carried out the required traffic tests and even went beyond, conducting an additional set of counts and an additional traffic signal warrant analysis at the request of MCDOT. These tests were established as a way to determine whether a proposed project will have an impact on the local transportation network significant enough to warrant mitigation by the application – in other words, to determine whether a nexus exists to impose a regulatory exaction that is proportionate to the project’s impact. Here, the intersection passed all of the applicable tests. Nothing in state or county laws, regulations or standards justifies imposing on Lidl the cost of a traffic signal, which is estimated at roughly \$400,000. If it is the County’s judgment that a traffic signal would be beneficial at this location, but the County’s own tests indicate that imposing that cost on a development applicant would lack the constitutionally required nexus and proportionality, the signal should be installed through the County’s capital improvements program. In any event, under the LATR Proportionality Guide, the maximum cost that should be imposed on this application for off-site improvements is \$123,375, less than one third the cost of a traffic signal. To discard the County’s established standards based on subjective engineering judgment would violate the takings clause of the U.S. Constitution, ignore the LATR Guidelines and the Maryland Traffic Manual, and stifle development by making it impossible for businesses to assess with any degree of certainty the financial viability of developing in Montgomery County.

To resolve this situation and allow the grocery store to be built, Lidl proposes to make a payment equal to its maximum cost of improvements under the LATR Proportionality Guide (\$123,375), to be used towards the cost of the future installation of a traffic signal. This would be instead of providing the

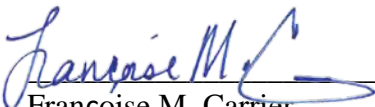
¹ Lidl conducted its first signal warrant test in September 2021, when public schools were fully open and MARC was operating at full capacity.

series of off-site pedestrian/bicycle safety improvements previously agreed upon with planning staff. The LATR Guidelines provide that motor vehicle mitigation can be counted towards the LATR Proportionality Guide maximum if, as here, it will mitigate deficiencies in the pedestrian transportation system that were identified in the LATR Report. *See* LATR Guidelines at 54. Lidl will still provide extensive pedestrian/bicycle improvements as frontage improvements. The attached graphic identifies which of the improvements previously shown on Lidl's submissions will be built as frontage improvements, and which are off-site improvements that Lidl proposes to remove from the project to make its off-site improvements expenditure available to partly fund a traffic signal. In the alternative, Lidl is willing to make the off-site improvements agreed upon in March if the MCDOT requirement to construct a traffic signal is removed from the conditions of approval.

We regret that despite extensive communication among planning staff, DOT staff and the applicant, we were unable to resolve this issue. We look forward to discussing it with you on July 28.

Sincerely yours,

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By: 
Françoise M. Carrier

cc: Gwen Wright, Montgomery Planning
Robert Kronenberg, Montgomery Planning
Sandra Pereira, Montgomery Planning
Jonathan Casey, Montgomery Planning
Christopher VanAlstyne, Montgomery Planning
Christopher Conklin, MCDOT
Michael Paylor, MCDOT
Tim Cupples, MCDOT
Rebecca Torma, MCDOT
William Whelan, MCDOT
Daniel Goodman, Lidl
Dustin Schade, Lidl
Patrick LaVay, MHG
Katie Wagner, Gorove Slade
Maribel Wong, Gorove Slade



City Engineers
Land Planning
Architects
Land Surveyors

10000 Wisteria Drive, Suite 100
Montgomery Village, MD 20894
Phone: 301.670.0640
Fax: 301.670.0641

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**Sidepath extension to
intersection of
Germantown Road
and Wisteria Drive**

LIDL US OPERATIONS, LLC
10000 WISTERIA DRIVE, SUITE 100
MONTGOMERY VILLAGE, MD 20894
PHONE: (703) 851-7492
FAX: (703) 851-7493
EMAIL: DANIEL.GOODMAN@LIDL.US

**Frontage
Improvements**

**New High Visibility
Crosswalk**

**Frontage
Improvements**

**Sidepath extension to
Bowman Mill Drive**

SEE DETAIL 2 ON SHEET 2

GERMANTOWN ROAD
MD ROUTE 118
SAC PLAT NOS. 147
(R/W WIDTH VARIES)

**Frontage
Improvements**

**Off-site improvements to
be deferred to redirect
funds toward traffic signal**

**New High Visibility
Crosswalk**

Application Site

NEW GROCERY STORE
120220030
820220080

WISTERIA DRIVE
PLAT NOS. 14701 & 13683
(R/W WIDTH VARIES)

WALTER JOHNSON ROAD
PLAT NOS. 20062 & 20066
(R/W WIDTH VARIES)

SEE DETAIL 1 ON SHEET 2

BOWMAN MILL DRIVE
PRIVATE DRIVE

PLAT 14701 & 13683
L23973 F.138
MONTGOMERY COUNTY
MARYLAND

LOT 1 & PART OF LOT 3
WISTERIA BUSINESS
PARK
& PARCEL P985
L23973 F.138

PROJ. MGR.
DRAWN BY
SCALE
DATE

OFF-SITE PEDESTRIAN &
BICYCLE IMPROVEMENTS
OVERALL VIEW

PROJECT NO.
SHEET NO.



LIDL US OPERATIONS, LLC
3500 S CLARK STREET
ARLINGTON, VA 22202
PHONE: (703) 851-7492
CONTACT: DANIEL GOODMAN
EMAIL: DANIEL.GOODMAN@LIDL.US

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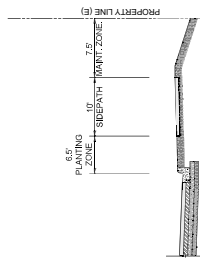
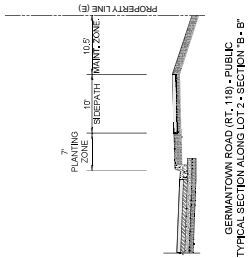
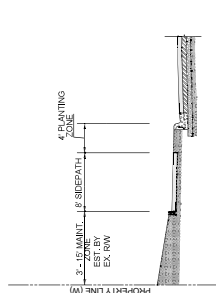
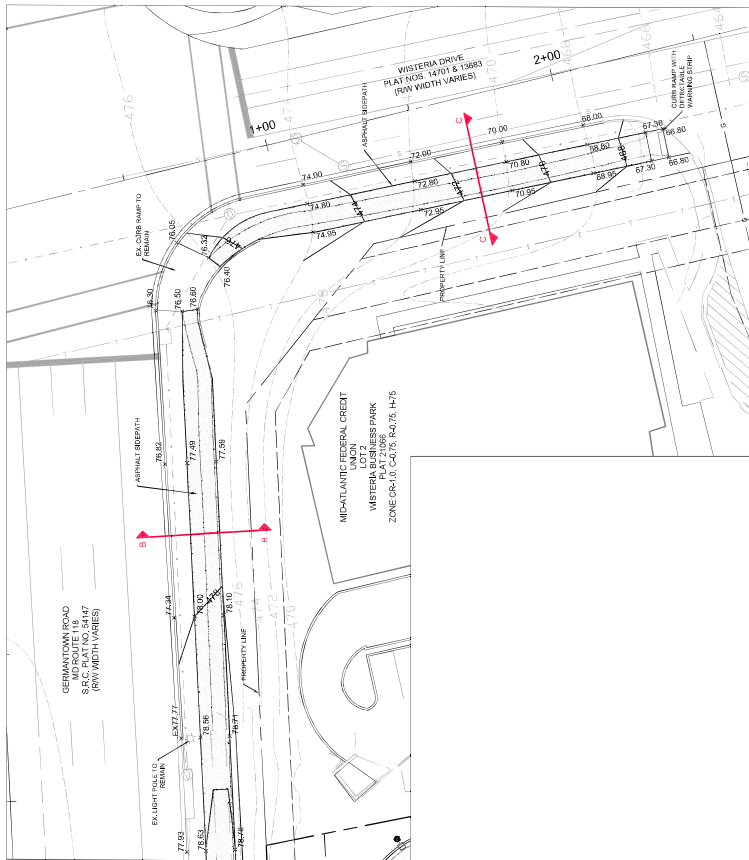
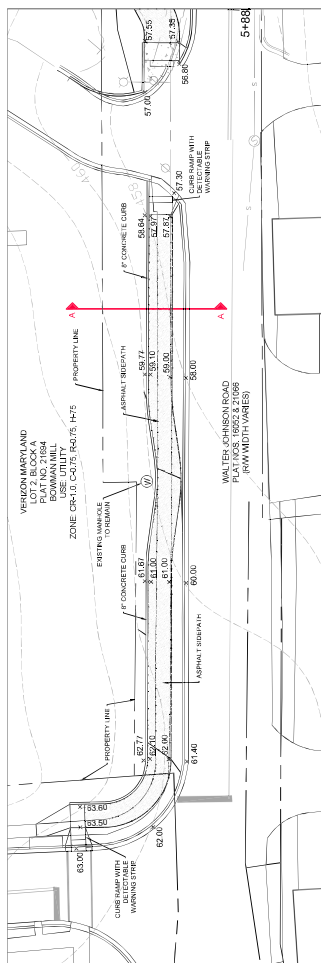
TAX MAP EU241.342 W55C 220N0713, 221N0713
 PLAT PLATS 20037, 21056 &
 L.23973 F.138
 2ND ELECTION DISTRICT
 MONTGOMERY COUNTY

LOT 1 & PART OF LOT 3
WISTERIA BUSINESS
PARK
& PARCEL P965
23973 F.138

PROJ. MGR	PGL
DRAWN BY	PGL
SCALE	1"= 20'
DATE	03.22.2022

OFF-SITE PEDESTRIAN & BICYCLE IMPROVEMENTS

PROJECT NO.	85.136.53
SHEET NO.	2 OF 2



From: [Robert Albiol](#)
To: [MCP-Chair](#)
Subject: LIDL grocery store
Date: Monday, July 25, 2022 12:11:59 PM

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

Robert Albiol
16710 River Road
Poolesville, MD 20837
July 25, 2022

To Whom It May Concern,

I am the owner of the historic Pumphrey-Mateny House at 19401 Walter Johnson Road, Germantown, MD 20878. The Pumphrey-Mateny House is a few hundred feet down the road from the proposed LIDL market. I am deeply concerned that the traffic from the planned LIDL market, the traffic from the proposed large apartment building that is to be constructed directly across the street, and combined with the traffic from the multi-storied parking garage that MARC intends to build, will create a nightmare. Is anyone seriously taking into consideration what this traffic will be like on the undersized 2-lane Walter Johnson Road? Envision, if you will, the daily evening traffic jam: shoppers, trying to pull in and out of the LIDL driveway; tired tenants returning from work heading home and exhausted commuters peeling out of the MARC parking lot (and they do peel). It is not enough to argue that most of the shoppers will be coming off of Rt118: When traffic on Rt118 is heavy, the customers will inevitably use the exit onto Walter Johnson Road. I am not suggesting a solution, for I do not see one. Only that this critical issue cannot be ignored.

If you have any questions, feel free to contact me.

Sincerely,

Robert Albiol