

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-088  
Preliminary Plan No. 120220030  
Wisteria Business Park  
Date of Hearing: July 28, 2022

AUG 25 2022

## **RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on December 15, 2021, LIDL US Operations, LLC (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create one (1) lot and Outlot on 3.59 acres of land in the CR-1.0, C-0.75, R-0.75, H-75 zone and the Germantown Transit Mixed Use Overlay (“GTMU”) Overlay Zone, located in the southern quadrant of the intersection of Germantown Road (MD 118) and Wisteria Drive, on Walter Johnson Road, 225 Feet South of Wisteria Drive (“Subject Property”), in the Germantown Center Policy Area and 2009 *Germantown Employment Area Sector Plan* (“Sector Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120220030, Wisteria Business Park (“Preliminary 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, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 28, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120220030 to create one (1) lot and one (1) Outlot on the Subject Property, subject to the following conditions:<sup>1</sup>

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<sup>1</sup> For the purpose of these conditions, the term “Applicant” shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

### **General Approval**

1. This Preliminary Plan is limited to one (1) lot for up to 30,000 square feet of commercial uses and one (1) Outlot for a surface parking lot. A Preliminary Plan Amendment is required, prior to any future development on the Outlot.

### **Adequate Public Facilities and Outside Agencies**

2. The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for five (5) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).

### **Plan Validity Period**

3. The Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

### **Outside Agencies**

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter July 15, 2022, and incorporates them as conditions of the Preliminary Plan approval, except for Comment 1 and 17a, requiring installation of a traffic signal at the intersection of Walter Johnson Road and Wisteria Drive. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
  5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
  6. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
  7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated May 27, 2022, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter,
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which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

8. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated May 4, , 2022, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

### **Other Approvals**

#### **Clearing/ Grading/ Demolition**

9. Before approval of a record plat or any demolition, clearing or grading for the Subject Property (except for demolition, clearing and grading associated with demolishing the existing building and paving), the Applicant must receive Staff certification of any subsequent Site Plan(s) associated with this Preliminary Plan. The number and location of site elements including but not limited to buildings, on-site parking, site circulation, sidewalks and sidepaths is determined through site plan review and approval.
10. Except for clearing and grading associated with the demolition of the existing building and paving, there shall be no clearing or grading of the site prior to recordation of plat(s).
11. If an approved site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the site plan amendment.

### **Environment**

12. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 92 caliper inches as shown on the approved Preliminary/Final Forest Conservation Plan. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

### **Transportation**

#### **Frontage Improvements**

13. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
  - a. All land necessary to accommodate fifty (50) feet from the existing pavement centerline along the Subject Property frontage for Walter Johnson Road.
14. Prior to the release of any above ground building permit, the Applicant must satisfy all necessary requirements of Maryland State Highway Administration ("MDSHA") to ensure construction of a 10-foot wide sidepath along the Property frontage on MD 118.
15. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of a 12-foot wide sidepath along the Property frontage on Walter Johnson Road.
16. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of a 10-foot wide sidepath along the Property frontage on Wisteria Drive. This section must include a 10-foot-wide crossing, with corresponding ramps at the existing bank driveway, connecting to the proposed sidepath on Outlot A to the off-site sidepath immediately to the north.
17. The existing bank driveway access to Wisteria Drive must include necessary treatments, as approved by MCDOT, to achieve right-in right-out channelization.

#### Off-Site Improvements

18. Prior to the release of any above ground building permit, the Applicant must ensure construction of the following off-site improvements by satisfying MCDOT and/or MDSHA requirements to construct:
  - a. An 8-foot wide sidepath along the north side of Walter Johnson Road that extends approximately 275 feet between Bowman Mill Drive and the frontage of the Subject Property. This section must include a bikeable crossing at Bowman Mill Drive.
  - b. A 10-foot wide sidepath along the west side of Wisteria Drive that extends approximately 170 feet between Germantown Road and the existing bank driveway on Wisteria Drive.
  - c. A 10-foot wide sidepath along the south side of Germantown Road that extends approximately 185 feet between Wisteria Drive and the Property line of the Subject Property, connecting to the proposed sidepath along the Property frontage.



- d. A minimum 10 ft-wide bikeable crossing of Walter Johnson Road at the western leg of the Walter Johnson Road / Wisteria Drive intersection.

#### Drive Aisles

19. The Applicant must provide two drive aisles as illustrated in the Preliminary Plan: one an extension of the residual stub of Walter Johnson Road running to the east to the existing ingress/egress and utility easement on Lot 2 and Outlot A; and one running north from Walter Johnson Road to the proposed parking lot.

#### **Record Plats**

20. Prior to recordation of any plat, the County Council must abandon the portions of public rights-of-way subject to Right-of-Way Abandonment Case # AB779.
21. The record plat must show necessary easements.
22. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
23. The record plat must reflect all areas under common ownership.
24. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Book 28045 Page 578 ("Covenant").

#### **Certified Preliminary Plan**

25. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
26. The certified Preliminary Plan must contain the following note:

*Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

27. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
  - a. Show resolutions and approval letters on the certified set.

- b. Illustrate necessary treatments to achieve right-in right-out channelization at the existing bank driveway access to Wisteria Drive and note that the final design is subject to MCDOT approval.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Preliminary Plan No. 120220030, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The Subject Property consists of 4.737 acres of land (gross tract area), comprised of Lot 1 on Record Plat 20037 (1.02 acres), Lot 3 on Record Plat 21066 (1.42 acres), Parcel P965 (0.994 acres), 42,677 square feet (0.978 acres) of prior dedication and an 0.308-acre portion of Montgomery County Right-of-Way (to be abandoned by request No.779). The Preliminary Plan creates one 2.78-acre lot and one 0.89-acre Outlot on 3.59 acres of land, for a maximum density of up to 30,000 square feet of retail/service establishment uses. This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, Subdivision Regulations. The Application has been reviewed by other applicable agencies.

- a. *The lot design is appropriate for the development or use contemplated*

- i. Creation of a through lot

Section 4.3.C.e. of the Subdivision Regulation states that the Board must not approve through lots, except where unusual topography, orientation, or the size of the subdivision permit no other feasible way to subdivide.

Proposed Lot 4 has frontage on MD 118 and Walter Johnson Road, making it a through lot with a front setback on both sides. However, the building is sited on Walter Johnson Road and the internal drive, and the topography of the site precludes vehicular connection from Germantown Road. The Applicant intendeds to access the development from Walter Johnson North

and Walter Johnson Road, with a public access easement over the private drive. Therefore, circulation and access to the site will function as though the Property has been subdivided. The Applicant is not proposing new access to MD 118, other than for pedestrians. Creating a through lot comes with unique challenges associated with the development standards, and as a result, the Applicant is requesting modifications to the build-to-area standards. The Board approves this lot design due to the unusual topography and orientation that provide no other feasible subdivision option.

*b. The Preliminary Plan provides for required public sites and adequate open areas*

*i. Master Planned Sites*

The Sector Plan identifies part of the Subject Property for the creation of an open space (Figure 17 on Pg.37) and later, on page 80, goes on to describe the vision of establishing Water Johnson Road as a neighborhood main street with a variety of public open spaces. The Applicant has delineated an open space on the Outlot, framed by the new sidewalk on the east side of drive-aisle B and the existing parking lot. The open space coincides with the historic driveway which once accessed the historic Water's house north of MD118. The Applicant is replanting the historic allee of trees, that lined both sides of the original driveway and incorporating historically appropriate commemorative signage identifying the significance of the historic site.

As discussed in the Sector Plan Section below, the Applicant is providing all the necessary right-of-way for dedication and easements necessary for public roads, paths, utilities and other public facilities, except for dedication of the right-of-way for Wisteria Drive.

*ii. Reduced right-of-way dedication for Wisteria Drive*

A portion of the Subject Property is occupied by a surface parking lot and will remain on Outlot A. Outlot A has approximately 200 feet of frontage on Wisteria Drive, which is classified by the Sector Plan and 2018 *Master Plan of Highways and Transitways* as a business street with an ultimate right-of-way (ROW) width of 115 feet.

The Applicant is requesting that the right-of-way dedication for Wisteria Drive be reduced from 57.5 feet from the center line to between 43 and 45 feet (variation along frontage) from the road centerline, providing for 87 feet of ultimate ROW width instead of the recommended 115 feet.

The Planning Board supports the Applicant's request for a narrower right-of-way, because public improvements are still feasible as part of this Application and future dedication can be expected upon development of the existing parking lot.

Section 50.4.3.E.2.a.i gives the Planning Board the authority to approve a narrower than standard right-of-way. M-NCPPC Staff and MCDOT support (Letter dated July 15, 2022) the Applicant's proposal based on the existing and planned improvements in the section of the Property's frontage on Wisteria Drive.

In the Planning Board's review of a preliminary plan and record plat, under Subdivision Regulation Section 50.4.3.D - *Public sites and adequate open spaces*, a preliminary plan must provide for required public sites and adequate open space areas. Section 50.4.3.D.3 instructs the Board to require dedication to public use of roads as part of the subdivision process. Section 50.4.3.E.2., Road Design Standards, states:

2. *Design standards.*

- a. *Right-of-way.* Area for a road on a subdivision plan must include the full width of all rights-of-way recommended for the applicable road classification in the adopted master plan and in the Road Design and Construction Code.
  - i. *The 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.*
  - ii. *In determining the width of a less than standard right-of-way, the Board must consider:*
    - (a) *the recommendations of the Department of Transportation or other applicable state or municipality transportation permitting agency;*
    - (b) *the amount of traffic expected to use the proposed roads;*
    - (c) *the maximum road right-of-way or improvement required for the proposed land use; and*

*(d) the increased traffic, travel lane, and right-of-way requirements that would be created by maximum use and development of land using the road.*

The Applicant's request to reduce the right-of-way dedication for Wisteria Drive is the result of the presence of an existing AT&T utility easement which is beyond the Applicant's control. This easement area cannot be transferred to public ownership as a result of this Application. However, this reduction in dedication will not impact the Master Plan cross section of Wisteria Drive as it is already constructed to the full 4 through-lane cross section envisioned, which adequately handles current and future vehicular traffic.

Additionally, the Applicant is constructing a 10-foot sidepath along the southwest side of Wisteria Drive between Germantown Road and Walter Johnson Road, within the existing right-of-way, which meets the Master Plan required minimum width; completing the Master Planned cross section. Furthermore, because, it is an Outlot, any future development (other than use as a parking lot) will trigger further subdivision review and dedication of additional right-of-way. Additional space required for utilities will either remain in the existing AT&T easement or in the future utilize a new 10-foot-wide utility easement immediately adjacent to the existing AT&T easement. While reviewing this application, the reduced ROW has been reviewed and approved by MCDPS and MCDOT.

*c. The Lot(s) and Use comply with the basic requirements of Chapter 59*

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape and orientation of the proposed lot is appropriate for the location of the subdivision and proposed retail/service establishment use, taking into account the Commercial Residential zone, Germantown Transit Mixed Use (GTMU) Overlay zone and recommendations included in the 2019 *MARC Rail Communities Sector Plan*. Based on the CR-1.0, C-0.75, R-0.75, H-75 zoning, retail/service establishment with between 15,001 and 50,000 square feet is a permitted use in the CR zone under Section 59.3.1.6. A general building such as a grocery store is a permitted building type in the CR zone under Section 59.4.1.5.

Retail/service establishment is a permitted use in the CR zone and not a prohibited use in the Germantown Transit Mixed Use Overlay zone, per Section 4.9.11. The land use and development standards are the same as the underlying zone. The purpose of the overlay is to prioritize the purchase of Building Lot Terminations (BLT) by requiring public benefit points. However,



public benefit points and purchasing BLT's is not required for this Application, because the development is standard method, with a concurrent site plan approval.

The lot was reviewed for compliance with the dimensional requirements of the CR zone, including area, frontage, width, and setbacks as specified in the Zoning Ordinance. A summary of this review and additional considerations are included below and within the Site Plan data table. Final building placement and setbacks will be determined at Site Plan.

As shown on the Preliminary Plan and described in more detail in the accompanying Site Plan application, Lot 4 can adequately accommodate the proposed grocery store, inter-parcel connections, open space, stormwater management facilities, and public utility easements. The Preliminary Plan has been reviewed by other applicable county agencies, all of whom have recommended approval.

*1) The Preliminary Plan substantially conforms to the Master Plan.*

The Preliminary Plan substantially forms to the recommendations in the 2019 *MARC Rail Communities Sector Plan*, the 1985 *Amendment to the Master Plan for Historic Preservation*, the 2020 *Bicycle Master Plan*, and the 2021 *Complete Streets Design Guide*.

2019 Approved and Adopted MARC Rail Communities Sector Plan

The Vision statement for the Germantown portion of the 2019 *Approved and Adopted MARC Rail Communities Sector Plan* states "the Germantown plan area is envisioned as a compact, connected and walkable neighborhood with a mix of land uses. These uses include community- and commuter-serving retail, a range of housing options and parking structures for MARC commuters near the station. The historic integrity of the station area is maintained through the preservation and adaptive reuse of historic structures, while the design and placement of new buildings are sensitive to the historic scale and character. A variety of public spaces and dedicated open spaces accommodates community gatherings and enhance existing public events, such as the flea market that draws visitors to the area.

Walter Johnson Road/Liberty Mill Road, the historic alignment of MD 118, is revitalized as a neighborhood main street, while an enhanced street network improves access to the station and provides a safer and more comfortable environment for walking and bicycling. The interconnected street grid and redesigned streets near a newly rebuilt Seneca Valley High School support increased walking, biking and student safety."

The recommendations in the Sector Plan for the Germantown area are geared toward supporting this vision and transforming the Germantown MARC Station area from an auto-dominated environment to an environment with an interconnected street network that is safe and comfortable for pedestrians, bicyclists, transit riders, and motorists. The five recommendations that are most applicable to the Lidl Germantown site are as follows:

*Renew Germantown Recommendation B.2.c. (page 80)*

Design streets and streetscapes to promote a comfortable walking environment that fosters a distinct sense of place.

- Establish Walter Johnson Road as a neighborhood main street and primary pedestrian link to the MARC station by incorporating wide sidewalks, neighborhood-serving uses, a variety of public open spaces and outdoor gathering spaces and seating.

*Sustain Germantown Recommendation C.4.a. (page 94)*

Celebrate Germantown's history and historic resources through local events, walking tours, signage, and artwork.

The Lidl grocery store is to be located north of the railroad tracks in the GI designated area of the Germantown portion of the *2019 Approved and Adopted MARC Rail Communities Sector Plan*, less than a quarter mile north of the Germantown MARC Station. The GI designated area is generally bounded by Wisteria Drive on the north, Walter Johnson Road on the east, Bowman Mill Drive on the south and Germantown Road on the west. A drive-aisle will be introduced that runs parallel to Walter Johnson Road and connects Bowman Mill Drive with Wisteria Drive. An existing unimproved right-of way midway along the west side of Walter Johnson Road ("Drive-aisle A") will be built to create a midblock connection between this drive-aisle street and the existing stub of Walter Johnson Road to the west.

The grocery store will be sited so that building is located at the juncture of Walter Johnson Road, Drive-aisle B, and the new midblock connecting (Drive-aisle A). The streetscapes for the three adjacent roads will be improved in accordance with the general recommendations of the Sector Plan. Walter Johnson Road, which is to serve as the "neighborhood main street" for the Germantown portion of the MARC station area and is significant pedestrian connection to the station, will be improved with a 12-foot wide sidepath with a planting strip that has shade trees.

*Connect Germantown Recommendation A2.a. (page 53)*

Transform the MARC station area from an auto-dominated environment to an interconnected street network that is safe and comfortable for pedestrians, bicyclists, transit riders and motorists (Sites GA, GF, GG, GH, GI, GJ, GK, GL and GM).

- Provide a network of local roads and pedestrian/bicycle facilities that will result in improved circulation and safe access, and create a fine-grained network of small, walkable blocks on the north side of the railroad tracks. Implement context-sensitive improvements to streets that calm traffic, improve safety and respect historic resources.

*Connect Germantown Recommendation A.2.i. (page 63)*

Classify Bowman Mill Drive as a two-lane business district street with wide sidewalks and shade trees.

- Confirm the recommended private road connection between Bowman Mill Drive and Walter Johnson Road as recommended in the 2009 Germantown Employment Area Sector Plan unless properties are consolidated for redevelopment (Site GI).

*Connect Germantown Recommendation A.2.p. (page 66)*

Enhance streetscapes along Walter Johnson and Liberty Mill Roads to improve the walking and bicycling experience while reinforcing the street's historic role as the spine of historic Germantown and a significant link to the MARC station (Sites GB, GC, GE, GF, GG, GI, GJ, GL and GM).

- Design the streetscape to complement the historic character of the area.
- Construct a sidepath on the northwest side of the streets linking to the bridge and a broad sidewalk on the southeast side of the streets with shade trees on both sides. If pedestrian facilities (south of the railroad tracks) cannot be located on both sides of the street, a sidepath on the northwest side will suffice.

2020 Bicycle Master Plan

The 2020 *Bicycle Master Plan* recommends the following improvements along the Subject Property:

- Sidepath along the north side of Walter Johnson Road
- Sidepath along the west side of Wisteria Drive

Additionally, the 2021 *Complete Streets Design Guidelines* recommends a minimum 10 ft. wide sidepath along the south side of Germantown Road.

As conditioned, the Applicant is constructing these improvements along the Subject Property frontage and off-site in conformance with these recommendations.

1985 Amendment to the Master Plan for Historic Preservation

The Madeline V. Waters House (MP 19/13-1) historic site is identified in Sector Plan and 1985 Amendment to the Master Plan for Historic Preservation Sites in Montgomery County, Maryland. The Application is subject to historic preservation review pursuant to Chapter 24A of the Montgomery County Code. The Historic Preservation Commission (HPC) reviewed the Application during a Preliminary Consultation on March 23, 2022 and recommended approval.

Sector Plan recommendations:

Maintain the entire Madeline V. Waters House (MP 19/13-1) historic site (Sites GH and GI) [see Reference Key in the Sector Plan] and all rights-of-way, including Germantown Road and Wisteria Drive within its designated environmental setting as follows:

- The portion of the Subject Property north of Germantown Road, within the Wisteria Drive right-of-way, must maintain the existing linear park with benches, lighting, stone wall, pavers and commemorative monument/signage. Street signage should be added for Waters House Avenue.
- The portion of the Subject Property south of Germantown Road must maintain the historic row of trees (including replanting as necessary) and existing commemorative signage within a publicly accessible, grassy open space.
- For both north and south portions of the Subject Property, commemorative signage must be erected along the street frontage of every parcel and the existing environmental setting, and these requirements will remain in place even if there is parcel assemblage, resubdivision or redevelopment of the site.

Excerpt from *Places from the Past*:

*A linear park along Wisteria Drive, at Rt. 118, commemorates the Madeline Waters House that was destroyed by arson in 1986. Built in 1899-1902, this roomy frame Colonial Revival house belonged to the owner of Germantown's*

*general store, Horace D. Waters. His stepson Lloyd Dorsey built the house, which was the long-time dwelling of Madeline Waters, daughter of Horace. The residence was the most elaborate house in Germantown, featuring a three-story projecting pavilion with palladian windows, a broad hipped roof with dormers, cornice with dentil molding, and pedimented wrap-around porch with classical columns.*

The historic allee of white pines that delineated the historic alignment of the Water's driveway, have died over the years, so the Applicant is replanting white pines, in the linear green area between drive-aisle B and the existing parking lot on Outlot A.

Commemorative signage will be installed at the southern side of the green, adjacent to the new sidepath where it will be easily viewed from the public realm. Additionally, the mural being installed on the southern face of the building will relate to the history of Germantown, tying the historic signage and open place to one another.

As discussed in the HPC staff report, the change in use and associated architectural alterations and improvements are consistent with the goals and recommendations of the Sector Plan. At the time of building permit, the Applicant will return to the HPC for a Historic Area Work Permit.

The Preliminary Plan substantially conforms to the recommendations in the Sector Plan, and 1985 *Amendment to the Master Plan for Historic Preservation*.

2) *Public facilities will be adequate to support and service the area of the subdivision.*

a. Roads and other Transportation Facilities

i) *Existing and proposed public transportation infrastructure*

**Table 1: Summary of Study Area Roadways**

Roadway	Jurisdiction	Functional Classification (MDOT SHA/MPOHT)	Rural vs Urban	# of Lanes
Germantown Road	SHA	Principal Arterial Other/major Highway	Urban	6
Middlebrook Road	MCDOT	Principal Arterial Other/ Arterial	Urban	6
Wisteria Drive	MCDOT	Major Collector/business	Urban	4
Bowman Mill Drive	MCDOT	Local/Business	Urban	2
Waters Road	MCDOT	Local/Business	Urban	2
Dawson Farm Road	MCDOT	Major Collector/Arterial	Urban	4
Great Seneca Hwy	MCDOT	Principal Arterial Other/Major Highway	Urban	4
Walter Johnson Road	MCDOT	Local/Business	Urban	2



Germantown Road

The Subject Property has approximately 240 feet of frontage on Germantown Road, classified as a Major Highway as defined by the Sector Plan and 2018 Master Plan of Highways and Transitways with a recommended 150 ft. ROW. The existing ROW line will be maintained which exceeds the 75 ft. minimum width required.

The Applicant will construct a 10-foot sidepath along the south side of Germantown Road between Wisteria Drive and westernmost point of Subject Property frontage, meeting the Complete Streets Design requirement of a minimum 10-ft wide facility.

Walter Johnson Road

The Subject Property has approximately 520 feet of frontage on Walter Johnson Road, an unclassified road with a variable width ROW that has been reviewed as part of this application as a business street.

The Applicant will construct a 12-foot-wide sidepath along north side of the road along the frontage of the Subject Property, meeting the Master Plan recommended width. Off site, the Applicant will continue the path but with an 8-ft width along frontage of neighboring property between Subject Property and Bowman Mill Drive on the north. This reduced width is the result of the limited available ROW on that side of the road, with additional ROW acquisition beyond the Applicant's ability. This nevertheless substantially conforms to the Master Plan.

Wisteria Drive

As previously discussed, the Subject Property has approximately 200 feet of frontage on Wisteria Drive, which is classified by the Sector Plan and 2018 *Master Plan of Highways and Transitways* as a business street with an ultimate right-of-way (ROW) width of 112 feet. As detailed in the request above, the Applicant will construct a 10-foot sidepath along the southwest side of Wisteria Drive between Germantown Road and Walter Johnson Road, within the existing right-of-way, which meets the Master Plan required minimum width.

The Board approves the Applicant's request to dedicate 43-45 feet (existing) from the Wisteria Drive road centerline, which is less than the full Master Plan recommended ROW width. The reduced ROW is acceptable because the Master Plan recommended sidepath can be constructed in the existing ROW as part of this Application and because, as an Outlot, any future development (other than use as a parking lot) will trigger further subdivision review and dedication of additional right-of-way.

*ii) Proposed private transportation infrastructure*

Two main drive aisles, A and B, provide both vehicular and pedestrian connection, one between Bowman Mill Drive and Wisteria Drive to the east, providing east-west through connectivity, and drive aisle running north-south from Walter Johnson Road connecting to the main drive aisle. These drive aisles as designed will be narrow and pedestrian focused to promote slow speeds and walkability. Curb radii have been reduced for the most part to 15 feet, as recommended by the Urban Road Code. Stamped pavement will additionally highlight the high pedestrian traffic areas of the site to increase driver awareness. Additionally, a pedestrian walkway will connect from the storefront to Germantown Road accommodating new north-south connectivity.

The cross connectivity through the site in both the north-south and east-west orientations will significantly improve the walkability of this section of Germantown by reducing walking distance between destinations. Maximum block width will be reduced roughly by half from the current 800 feet to 400 feet, comparable to pedestrian-focused mixed-use areas of Germantown Town Center.

Truck loading for the grocery store will be located on the southeastern edge of the structure, accessed from the main drive aisle.

*iii) Local Area Transportation Review (LATR)*

The Application was reviewed under the *2020-2024 Growth and Infrastructure Policy* and associated *2021 Local Area Transportation Review (LATR) Guidelines*. The proposed grocery store replaces an existing office building. The project will generate 136-person trips during the AM weekday peak period and 417-person trips during the PM weekday peak period based on the ITE Trip Generation Manual, 10th Edition, adjusted for the Germantown Town Center policy area (Table 1). A multimodal transportation study is required to satisfy the LATR Guidelines as the project generates 50 or more-person trips during a weekday peak hour. The Applicant submitted a study dated October 11, 2021.

Table 1: Trip Generation – Person Trips\*

Development	Measure	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Existing Office	15,000 sf	20	2	22	4	18	22
Proposed Supermarket	30,000 sf	95	63	158	223	216	439

<b>Net New Person Trips</b>	—	75	61	136	219	198	417
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\*Trip generation rates are based on the ITE Trip Generation Manual, 10th Edition and adjusted as detailed in the 2021 LATR guidelines. Figures are rounded to nearest whole number. Source: Grove Slade Traffic Impact Analysis October 11, 2021.

Thirteen intersections were studied: nine in the Germantown Town Center Policy Area, an orange policy area, and four in the Germantown West Policy Area, a yellow policy area. These intersections were studied using the HCM and CLV methodologies, respectively, in line with LATR requirements. All intersections will operate under the congestion limit.

Table 2: Highway Capacity Manual Methodology - Seconds of Vehicle Delay

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Germantown Town Center Policy Area (HCM 63 Seconds)</i>						
Germantown Rd & Middlebrook Rd	40	43	39	44	40	44
Germantown Rd & Wisteria Dr	35	42	33	42	34	44
Germantown Rd & Waters Road/Bowman Mill Dr	12	21	9	16	10	18
Wisteria Dr & Walter Johnson Rd	1	4	21	25	23	25
Wisteria Dr & Father Hurley Blvd	16	18	21	25	23	25
Wisteria Dr & Crystal Rock Dr	9	9	8	9	9	9
Site Driveway & Walter Johnson Rd	1	2	1	1	5	4
Site Driveway & Wisteria Dr	0	2	0	2	0	2
Site Driveway & Bowman Mill Dr	1	2	1	1	1	3

Table 3: CLV Methodology

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Germantown West Policy Area (1,425)</i>						
Germantown Rd & Dawson Farm Rd	513	575	696	679	699	683
Germantown Rd & Father Hurley Blvd	534	706	803	1,060	805	1,063

Middlebrook Rd & Great Seneca Hwy	1,129	978	1,184	1,049	1,192	1,066
Wisteria Dr & Great Seneca Hwy	591	885	718	990	718	991

All nine intersections in the Germantown Policy Area operate below the 63 second congestion standards. All four intersections in the Germantown West Policy Area operate below the 1,425 CLV threshold. No improvements are necessary for congestion purposes.

*(1) Signal Warrant*

Signal warrant analysis was performed for the currently unsignalized intersection of Walter Johnson Drive and Wisteria Drive. The analysis did not find that the intersection met any of the 9 warrants studied. However, it should be noted that Warrant 2 for four-hour vehicular volume nears, but does not exceed, the warrant threshold for two hours of the study period (4 – 6 pm). Although MCDOT requested the traffic signal be constructed by the Applicant, the Planning Board found that the analysis did not show a need for the signal, a nexus did not exist, and the Applicant otherwise met its transportation requirements.

*(2) Multimodal Analysis*

The transportation study analyzed multimodal transportation facilities for pedestrians, bicyclists, transit, and ADA compliance. Serious deficiencies in these networks were found in all studies. These deficiencies are being addressed in part through the Applicant's off-site mitigation improvements as discussed below, which will provide improvements up to the maximum LATR project cost cap. The local bicycle and pedestrian networks were studied within a 1,000 ft. buffer of the Subject property. Facilities along major roads, particularly Germantown Road and Wisteria Drive, are for the most part deficient, exceeding the minimum Level of Traffic Stress standards for cycling and Pedestrian Level of Comfort for walking. Only one study area ramp was found to be deficient, which will be improved as part of the off-site bicycle improvements. Bus stations in the vicinity were for the most part sufficient with only one stop lacking shelter.

Additionally, the study area has a significant history of crashes; within the 1,000 ft. study area, 124 crashes were recorded between 2015 and 2019. Four of these were serious, injury-causing crashes. Six crashes involved pedestrians, though there was no record of any crashes involving bicyclists.

Two speed studies were conducted along Germantown Road and Walter Johnson Road. On Germantown Road, 85<sup>th</sup> percentile speeds of up to 53 mph exceeded the

40-mph posted speed limit, exceeding the 120% threshold to signify a speeding problem. Speeds on Walter Johnson Road fell in line or below the posted speed limit of 30 mph. Additional speed enforcement along with geometric improvements to Germantown Road, would be necessary to address these deficiencies but are beyond the scope of this Application.

According to the proportionality guidelines of the 2022 LATR, the Applicant is limited to a maximum of \$123,375 in off-site LATR related mitigation improvements. The Applicant proposes to fulfill this mitigation by providing the following off-site improvements which match the capped maximum dollar amount for off-site mitigation:

- 8-foot wide sidepath along the north side of Walter Johnson Road that extends approximately 275 feet between Bowman Mill Drive and the frontage of the Subject Property. This section shall include a bikeable crossing of Bowman Mill Drive.
- 10-foot wide sidepath along the west side of Wisteria Drive that extends approximately 170 feet between Germantown Road and the existing bank driveway on Wisteria Drive.
- 10-foot wide sidepath along the south side of Germantown Road that extends approximately 185 feet between Wisteria Drive and the property line of the Subject Property, connecting to the proposed sidepath along the frontage.
- A minimum 10 ft-wide bikeable crossing of Walter Johnson Road at the western leg of the Walter Johnson Road / Wisteria Drive intersection.

As conditioned, public facilities are adequate for the proposed use.

#### *iv) Other Public Facilities and Services*

Other public facilities and services are available and adequate to serve the proposed lot. The Lot will be served public water and sewer. There is an 8-inch waterline within the existing ingress/egress and utility easement between the building and Wisteria Drive, which the Applicant will extend with a 6-inch water house connection to serve the new grocery store.

A new 6-inch sewer house connection will tie into the existing 8-inch sewer line that runs parallel to the building within the existing Walter Johnson Road right-of-way. The use of public water and public water is consistent with the existing W-1 and S-1 services categories designated for the Property.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section who determined that the Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated May 4, 2022.



There are existing 10-foot-wide public utility easements along the Property frontage on Germantown Road and Wisteria Drive, which will be sufficient to accommodate future utility installation. A new public utility easement is not proposed along the frontage of the Lot in accordance with page 80 of the Sector Plan, which allows all underground utilities to be placed within in the right-of-way to provide a street oriented gathering space.

Electric and telecommunications services are available and adequate to serve the Subject Property. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the *2020-2024 Growth and Infrastructure Policy*. The Application can be adequately served by all applicable public facilities and services.

2) *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

A. Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420220020 for this Property was approved in September 2021. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The NRI/FSD included 4.63 acres within the Middle Great Seneca Creek watershed which is classified as Use Class IV-P by the State of Maryland. The Subject Property contains 1.33 acres of forest. There are four trees with a diameter at breast height ("DBH") of 24 inches or more located on or immediately adjacent to the Subject Property, one of these trees has a DBH greater than 30 inches. The Property does not contain any streams, wetlands, floodplain, stream buffers, or highly erodible soils. There are slopes greater than 25 percent located adjacent to MD Route 118. There are no documented rare or endangered species on the Property. A portion of the Property is located within the boundaries of the Madeline V. Waters Historic Site (19/013-001A). No cemeteries are known to exist on the Subject Property.

B. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Applicant has submitted a Preliminary/Final Forest Conservation Plan ("FCP") with the current development plan applications for Preliminary Plan No. 120220030 and Site Plan No. 820220080. The Applications satisfy the applicable requirements of the Forest Conservation Law, Montgomery

County Code, Chapter 22A and comply with the Montgomery County Planning Department's approved Environmental Guidelines.

The Subject Property is zoned CR and is assigned a Land Use Category of Commercial and Industrial ("CIA") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law ("FCL") and in the Land Use Table of the *Trees Technical Manual*. This results in an afforestation threshold of 15% and a conservation threshold of 15% of the Net Tract Area. The tract area for forest conservation purposes includes the 3.75-acre Subject Property plus 0.92 acres of offsite disturbance associated with this Application, for a total net tract area of 4.67 acres. There is a total of 1.40 acres of existing forest within the net tract area which includes the 1.33 acres of onsite forest and 0.07 acres of forest within the adjacent offsite right-of-way. The Application proposes to remove the entire 1.40 acres of existing forest. The proposed forest clearing generates a reforestation requirement of 1.58 acres. The Applicant proposes to meet the planting requirement offsite by purchasing credits from an M-NCPPC approved forest bank. If there are no credits available for purchase, the Applicant will meet the requirements via fee-in-lieu payment.

#### C. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition.

An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

This Application will require the removal or CRZ impact to 211 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board finds that the Applicant would suffer unwarranted hardship by being denied reasonable

and significant use of the Subject Property, for a permitted commercial use, without the Variance.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the removal and disturbance to the specified trees are due to the development of the Property, location of the trees and necessary site design requirements. The Property contains numerous Protected trees located within the developable area of the site. Granting a variance to allow disturbance within the developable portion of the site and meet the objectives of the Master Plan is not unique to this Applicant. The granting of this variance is not a special privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, development standards of the zone, and necessary design requirements of this Application, including street frontage improvements.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions and the proposed site design and layout of the Subject Property, and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed are not located within a stream buffer, wetland or Special Protection Area. The Application proposes mitigation by planting larger caliper trees on-site. These trees will replace water quality functions that may be lost by the removed trees. Therefore, the Application will

not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed (368 caliper inches). The Board approved replacement of Protected Trees at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 92 inches with the installation of thirty-one 3-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements. The mitigation trees will be planted on the Subject Property and provide some immediate benefit, ultimately replacing the canopy lost by the removal of these trees. There is some disturbance within the CRZ of fifteen trees; however, they will receive adequate tree protection measures, their roots will regenerate, and the functions they currently provide will continue. No mitigation is required for Protected Trees impacted but retained. As stated previously, it has been M-NCPPC policy not to require mitigation for Protected Trees removed within forest stands since the removal of the forest is accounted for through the Forest Conservation Worksheet. As conditioned, the mitigation trees will be protected as part of a 5-year maintenance and management agreement.

County Arborist

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist as part of the ePlans review process. The County Arborist recommended approval of the variance request in a letter dated July 1, 2022.

*3) All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS Water Resources Section on May 27, 2022. The Application will meet stormwater management goals via micro bioretention planter boxes. A partial stormwater management waiver has also been requested due to site constraints. The application of these approaches will provide for full environmental site design (ESD) to the maximum extent practicable.


BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 25 2022 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

#### 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 Verma, seconded by Commissioner Cichy, with a vote of 5-0; Chair Anderson, Vice Chair Verma, and Commissioners Cichy, Patterson, and Rubin, voting in favor of the motion, at its regular meeting held on Thursday, July 28, 2022, in Wheaton, Maryland and via video conference.

  
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Casey Anderson, Chair  
Montgomery County Planning Board



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