

Committee: GO

Committee Review: N/A

Staff: Naeem M. Mia, Legislative Analyst

Purpose: To receive testimony/final action - vote expected **Keywords:** Property Disposition, Walter Johnson Road, Lidl

AGENDA ITEM #13 November 29, 2022 Public Hearing/Action

SUBJECT

Declaration of No Further Need – Disposition via Transfer of the abandoned portion of Walter Johnson Road, located in Germantown, Maryland, to Lidl US, LLC

EXPECTED ATTENDEES

Greg Ossont, Deputy Director, Department of General Services

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Introduction on November 15, 2022.
- Public Hearing and Action on November 29, 2022. A motion is required.

DESCRIPTION/ISSUE

The County Executive requests Council approval of a Declaration of No Further Need (DNFN) to transfer approx. 13,451 square feet of property located adjacent to Walter Johnson Road, in Germantown, Maryland.

The subject property is a heavily wooded, L-shaped area that is not improved with asphalt or pavement. It is best described as a "paper street" that extends northward from Walter Johnson Road for approximately 245 feet, where it abruptly stops. The right of way was previously dedicated to public use by way of a Deed of Dedication dated October 21, 1996.

June 3, 2021, Lidl US, LLC ("Lidl") petitioned for abandonment of an area of public right of way consisting of 13,451 square feet, more or less, that is located adjacent to Walter Johnson Road in Germantown (the "Abandonment Area"). The Applicant is the contract purchaser of land located immediately adjacent to and surrounding the Abandonment Area. The Applicant seeks to incorporate the Abandonment Area into its surrounding property and develop a retail grocery store on the site, as well as build two sections of private roadway that will be open to public use, completing road connections for the block.

The Executive is recommending a purchase price of \$375,000 (below fair market value) to Lidl (or \$27.88 per square foot); the Department of General Services had previously appraised the property at approx. \$500,000 (or \$37.17 psf) based on several comparable sales within the area; negotiations with Lidl resulted in a lower-than-appraised price offer due to Lidl's intent to build two private roadways for public use/access to its site.

On September 13, 2022, the Council approved the abandonment of the property. No County department or agency opposed this abandonment, neither is there testimony or correspondence in the public record opposing this abandonment.

The property transfer of this property complies with the requirements established under County Code 11B-45.01 Disposition of Real Property, including:

- This transaction is subject to the Property Disposition process as the property was conveyed to the County in fee simple.
- The Executive transmitted to the Council the material terms on September 23, 2022.
- On September 21, 2022 Executive Order 198-22 was published in the County Register to give notice
 of the County's intent to proceed with disposition to Lidl and that there was no further need for
 public use.
- The Executive transmitted to the Council the Declaration of No Further Need on November 8, 2022.

This report contains:

| © 1-2 |
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| © 3-4 |
| © 5-6 |
| © 7-8 |
| © 9-50 |
| |

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| Resolution No.: | |
|-----------------|-------------------|
| Introduced: | November 15, 2022 |
| Adopted: | |

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the County Executive

SUBJECT: Approval of Disposition via Transfer of the abandoned portion of Walter Johnson Road, located in Germantown, Maryland, to Lidl US, LLC

Background

- 1. Montgomery County Code §11B-45 requires the Council to approve a Declaration of No Further Need before the Executive can dispose of real property that has more than nominal value. Prior to seeking Council approval of a Declaration of No Further Need, the Executive must:
 - (a) submit all material terms of the proposed disposition and any appraisal the Executive relied on in setting the property's market value to the Council; and
 - (b) publish a declaration in the County Register and post a notice on the County website that the County has no further need for the property.

If the Council, by resolution, approves the Executive's Declaration of No Further Need, the Executive may dispose of the property for fair market value.

- 2. On September 23, 2022, the Executive transmitted the material terms of the proposed disposition. The Executive proposes to transfer the subject property, comprising of approximately 13,451 square feet of unimproved land to Lidl US, LLC ("Lidl"), who intends the subject property and adjacent parcels to develop a retail grocery store on the site, as well as build two sections of private roadway that will be open to public use, completing road connections for the block.
- 3. The proposed sale price is \$375,000, which is less than the appraised value of \$500,000. Lidl and the County negotiated a reduced sale price due to Lidl's intent to build two private roadways for public use/access to its site.
- 4. On September 21, 2022 Executive Order 198-22 was published in the County Register to give notice of the County's intent to proceed with disposition to Lidl and that there was no further need for public use.

5. The Council is scheduled for a public hearing and action on this recommended disposition on November 29, 2022.

Action

The County Council for Montgomery County, Maryland, approves the following action:

The Declaration of No Further Need for the Transfer of the abandoned portion of Walter Johnson Road, located in Germantown, Maryland, to Lidl US, LLC is approved and the property may be disposed of as described in the material terms provided to the Council on September 23, 2022, the memorandum dated November 8, 2022, and in Executive Order 198-22 as published in the County Register on September 21, 2022. The County Council waives the requirement that the disposition be a fair market value transaction.

| This is a correct copy | of Council action. |
|------------------------|--------------------|
| | |
| Judy Rupp | |
| Clerk of the Council | |



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

November 8, 2022

TO: Gabe Albornoz, President

Montgomery County Council

FROM: Marc Elrich, County Executive Man L

SUBJECT: Declaration of No Further Need – Walter Johnson Road Real Property

Disposition

On September 23, 2022, I transmitted material terms to Council and provided notice that I intend to sell approximately 13,451 square feet of County-owned property on Walter Johnson Road, Germantown, Maryland 20874 (the "Subject Property") to Lidl US, LLC ("Lidl").

As required under Section 11B-45 of the Montgomery County Code, an Executive Order must be issued declaring that the County-owned site is no longer needed for public use. Attached please find Executive Order 198-22 which was published in the *County Register* on September 21, 2022 to give notice of my intent to proceed with the sale to Lidl for \$375,000.

The Subject Property was conveyed to the County in 1996 via a Deed of Dedication, which was made in compliance with a condition of approval of the Wisteria Business Park subdivision. The dedication was to support the implementation of recommended roadway connections. However, the Subject Property has never been used for a public purpose, and all existing infrastructure associated with Walter Johnson Road is located outside of the Subject Property.

The Subject Property is included in a proposed site for Lidl, who approached the County as the contract purchaser of three privately owned tracts surrounding the Subject Property. Lidl's proposed project will build two sections of private roadway that will be open to public use, completing road connections for the block.

Declaration of No Further Need – Walter Johnson Road Real Property Disposition November 8, 2022 Page **2** of **2**

The County Council approved the abandonment of the property on September 13, 2022 under Resolution No. 19-1366. Because the Subject Property was deeded to the County fee simple, it must go through the disposition process.

I hope this information is helpful. If you have any questions, please contact Greg Ossont, Deputy Director, Department of General Services, at 240.777.6192 or greg.ossont@montgomerycountymd.gov.

Enclosure: Executive Order No. 198-22

Material Terms Memo dated September 23, 2022

cc: Jennifer Bryant, Director, Office of Management and Budget

Michael Coveyou, Director, Department of Finance David Crow, Acting Controller, Department of Finance Greg Wims, Director, UpCounty Regional Services Center David Dise, Director, Department of General Services

Greg Ossont, Deputy Director, Department of General Services Cynthia Brenneman, Division Chief, Department of General Services Ronnie Warner, Division Chief, Department of General Services



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| Disposition of County Property: Walter Johnson Road | Executive Order No. | Subject Suffix |
|---|---------------------|----------------|
| Real Property | 198-22 | |
| Montgomery County Department of General Services | Department No. | Effective Date |
| | | 9/21/22 |

County Executive Declaration of No Further Need

Recitals

WHEREAS, the County owns approximately 13,451 square feet of property on Walter Johnson Road, Germantown, described in the Deed of Dedication recorded among the Land Records of Montgomery County at Book 14594, page 53 ("the Property"); and

WHEREAS, the Property was conveyed to the County in 1996 via the Deed of Dedication, in satisfaction of a condition of approval for the Wisteria Business Park subdivision; and

WHEREAS, the Deed of Dedication was intended to support the implementation of recommended roadway connections. However, the Property has never been used for a public roadway, and all existing infrastructure associated with Walter Johnson Road is located outside of the Property; and

WHEREAS, Lidl US, LLC ("Lidl"), the contract purchaser of three privately owned tracts surrounding the Property, would like to include the Property in its proposed development project. As part of its project, Lidl intends to use the Property for two sections of private roadways that will complete road connections for the block; and

WHEREAS, the County Council has approved the abandonment of the Property. Because the Property was deeded to the County in fee simple, the conveyance of the Property must comply with the disposition process codified at 11B-45; and

WHEREAS, the County Executive has completed the Preliminary Reuse Review and Reuse Analysis; and

WHEREAS, the County proposes selling the Property, in fee, to Lidl for a purchase price of \$375,000; and

WHEREAS, the material term of the sale of the Property is stated above; and

WHEREAS, under Section 11B-45 of the County Code, the County Council may waive the requirement that the Property be disposed of at full market value; and

WHEREAS, in accordance with the provisions of Montgomery County Code Section 11B-45 and COMCOR 11B.45.01.08, Disposition of Real Property, the County Executive must issue an Executive Order declaring that County owned or controlled land is no longer needed for County use.



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Disposition of County Property: Walter Johnson Road Executive Order No. Real Property 198-22

Montgomery County Department of General Services Department No. Effective Date 9/21/22

ACTION

In consideration of the above recitals, the County Executive hearby declares that the County Property, approximately 13,451 square feet on Walter Johnson Road, Germantown, Maryland, 20874, is no longer needed for County use and, upon Council approval, will be disposed of through a sale to Lidl US, LLC subject to the material term described above.

Approved as to Form and Legality
Office of the County Attorney

Date: 9/14/22

APPROVED

Fariba Kassiri, Deputy Chief Administrative Officer

Date: 9/2//7

Signature: Ronnie Warner

Email: ronnie.warner@montgomerycountymd.gov



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

September 23, 2022

TO: Gabe Albornoz, President

Montgomery Council

FROM: Marc Elrich, County Executive Man &

SUBJECT: Material Terms – Walter Johnson Road Real Property

In accordance with the provisions of 11B-45, Property Disposition, the purpose of this memorandum is to provide the material terms related to the disposition of approximately 13,451 square feet of County-owned property on Walter Johnson Road, Germantown, Maryland 20874 (the "Subject Property").

The Subject Property was conveyed to the County in 1996 via Deed of Dedication, which was made in compliance with a condition of approval of the Wisteria Business Park subdivision. The dedication was to support implementation of recommended roadway connections. However, the Subject Property has never been used for a public purpose, and all existing infrastructure associated with Walter Johnson Road is located outside of the Subject Property.

The Subject Property is included in a proposed site for Lidl US, LLC ("Lidl"), who approached the County as the contract purchaser of three privately owned tracts surrounding the Subject Property. Lidl's proposed project will build two sections of private roadway that will be open to public use, completing road connections for the block.

Montgomery County Department of Transportation is concurrently undertaking the right-of-way abandonment process. Because the Subject Property was deeded to the County fee simple, it must go through the disposition process.

In accordance with the provisions of Section 11B-45, before seeking County Council approval of a declaration of no further need, the County Executive must submit to the Council all material

Material Terms – Walter Johnson Road Real Property September 23, 2022 Page **2** of **2**

terms of the disposition. I am recommending the County sell the Subject Property to Lidl for a purchase price of \$375,000.

I hope this information is helpful. If you have any questions, please contact Greg Ossont, Deputy Director, Department of General Services, at 240.777.6192 or greg.ossont@montgomerycountymd.gov.

cc: Jennifer Bryant, Director, Office of Management and Budget
Michael Coveyou, Director, Department of Finance
David Dise, Director, Department of General Services
Greg Ossont, Deputy Director, Department of General Services
Cynthia Brenneman, Division Chief, Department of General Services
Ronnie Warner, Division Chief, Department of General Services
Kimberly Williams, Controller, Department of Finance
Greg Wims, Director, Upcounty Regional Services Center



Committee: Directly to Council Committee Review: N/A

Staff: Glenn Orlin, Senior Analyst **Purpose:** Final action – vote expected

Keywords: #abandonment, Walter Johnson

AGENDA ITEM #4K September 13, 2022

Action

SUBJECT

Abandonment of a right-of-way adjacent to Walter Johnson Road in Germantown

EXPECTED ATTENDEES

Eric Willis, Chief, Property Acquisition Section, Department of Transportation (DOT)

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

Because there was no opposition to the abandonment by any department or agency or by those who testified at DOT's public hearing, this matter was not reviewed by the Transportation and Environment Committee and is brought directly to the Council for action.

SUMMARY OF KEY DISCUSSION POINTS

On June 3, 2021, Ms. Francoise Carrier of the law firm Bregman, Berbert, Schwartz and Gilday, LLC, on behalf of her client, Lidl US, LLC, petitioned for abandonment of an area of public right of way consisting of 13,451 square feet located adjacent to Walter Johnson Road in Germantown. The Applicant seeks to incorporate the abandonment area into its surrounding property and develop a retail grocery store on the site. The abandonment area is a heavily wooded, L-shaped area that is not improved with asphalt or pavement. It is best described as a "paper street" that extends northward from Walter Johnson Road for approximately 245 feet, where it abruptly stops. Maps of the abandonment area and the surrounding parcels are included in the Planning staff's memorandum, which is attached.

No County department or agency opposes this abandonment, neither is there testimony or correspondence in the public record opposing this abandonment.

This report contains:

| Executive's transmittal | © 1-2 |
|-----------------------------|---------|
| Draft adoption resolution | © 3-4 |
| Hearing Examiner's report | © 5-14 |
| Planning staff's memorandum | © 15-38 |

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OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

August 8, 2022

TO: Gabe Albornoz, President

Montgomery County Council

FROM: Marc Elrich, County Executive Man &

SUBJECT: DOT Docket No. AB779 Abandonment of Right of Way adjacent to Walter

Johnson Road in Germantown

I am attaching for your consideration a proposed Resolution by which the County Council might approve the abandonment of a portion of public right of way located adjacent to Walter Johnson Road in Germantown. A summary of this abandonment request is as follows:

On June 3, 2021, Ms. Francoise Carrier of the law firm Bregman, Berbert, Schwartz and Gilday, LLC, on behalf of her client, Lidl US, LLC (the "Applicant") petitioned for abandonment of an area of public right of way consisting of 13,451 square feet, more or less, that is located adjacent to Walter Johnson Road in Germantown (the "Abandonment Area"). The Applicant is the contract purchaser of land located immediately adjacent to and surrounding the Abandonment Area. The Applicant seeks to incorporate the Abandonment Area into its surrounding property and develop a retail grocery store on the site.

The Abandonment Area is a heavily wooded, L-shaped area that is not improved with asphalt or pavement. It is best described as a "paper street" that extends northward from Walter Johnson Road for approximately 245 feet, where it abruptly stops. The right of way was previously dedicated to public use by way of a Deed of Dedication dated October 21, 1996.

A public hearing on the abandonment request was held on February 16, 2022.

Abandonment of Right of Way adjacent to Walter Johnson Road DOT Docket No. AB779 August 8, 2022 Page 2 of (2)

The following supporting materials are transmitted with this memorandum:

- 1. Proposed County Council Resolution
- 2. Public Hearing Officer's Report and Recommendation dated March 29, 2022 recommending approval of the abandonment request.

The hearing transcript and exhibits transmitted with this memorandum may be accessed through the MCDOT Property Acquisition Section website at the following link:

 $\underline{https://montgomerycountymd.gov/dot-dte/PAS/WalterJohnsonRd/index.html}$

The contents contained within the above link are incorporated herein as if fully set forth as the complete record of proceedings before the Hearing Officer. A physical copy of the record can be made available upon request.

Enclosures

| Resolution No: | |
|----------------|--|
| Introduced: | |
| Adopted: | |

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

| By County Co | ouncil |
|--------------|--------|
|--------------|--------|

SUBJECT: DOT Docket No. AB779

Abandonment – Right of Way adjacent to Walter Johnson Road Germantown, 2nd Election District

Background

- 1. By letter dated June 3, 2021, Ms. Francoise Carrier of the law firm Bregman, Berbert, Schwartz and Gilday, LLC, on behalf of her client, Lidl US, LLC (the "Applicant") petitioned for an abandonment of an area of public right of way that is located adjacent to Walter Johnson Road in Germantown.
- 2. A Public Hearing to consider the abandonment proposal was held on February 16, 2022 by the designee of the County Executive.
- 3. The County Executive forwarded to the County Council the application for abandonment, a report based on the record of the proceedings, together with exhibits relied upon and a transcription of the hearing, and recommended approval of the proposed abandonment request subject to conditions contained in the Executive's report.

Action

The County Council for Montgomery County, Maryland, finds that the portion of the right of way located adjacent to Walter Johnson Road consisting of 13,451 square feet, more or less, that is proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment subject to the following conditions which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective:

- 1. Applicant must obtain plan approvals and construct, at its sole cost, both the east-west roadway connection and the north-south roadway connection through the Project site;
- 2. Applicant must prepare and record a new record plat incorporating the abandoned area into the Applicant's adjacent property.

The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area.

Any person aggrieved by the action of the Council for the abandonments may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.

Judy Rupp
Clerk of the Council

OFFICE OF THE COUNTY EXECUTIVE EXECUTIVE OFFICE BUILDING ROCKVILLE, MARYLAND

IN THE MATTER OF: **DEPARTMENT OF**

TRANSPORTATION PETITION OF LIDL, LLC

PETITION NO. AB 779

PUBLIC HEARING OFFICER

FOR THE ABANDONMENT OF A BEFORE:

PORTION OF PUBLIC RIGHT OF WAY JOSE THOMMANA ADJACENT TO WALTER JOHNSON

ROAD IN GERMANTOWN,

MARYLAND

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Introduction

On June 3, 2021, Ms. Françoise Carrier of the law firm Bregman, Berbert, Schwartz & Gilday, LLC, on behalf of her client, Lidl, LLC (the "Applicant") petitioned for an abandonment of an area of public right of way consisting of 13,451 square feet, more or less, that is located adjacent to Walter Johnson Drive in Germantown (the "Abandonment Area"). See Exhibit A. The Applicant is the contract purchaser of land located immediately adjacent to and surrounding the Abandonment Area, upon which the Applicant is proposing to construct a new grocery store. The abandonment of the subject right of way is being sought in order to incorporate the land underlying the right of way into the Applicant's future development.

This report and recommendation relies upon the public hearing record that may be found at the following link:

https://montgomerycountymd.gov/dot-dte/PAS/WalterJohnsonRd/index.html

(the "Hearing Record"). The Hearing Record is incorporated herein as if fully set forth. All

references to "Exhibits" in this report and recommendation may be found in the Hearing Record with a corresponding exhibit label. The scope of this report and recommendation is limited to a determination of whether the Abandonment Area is no longer needed for present or anticipated future public use.

a. Area Overview

The subject right of way is a heavily wooded, L-shaped area. *See* Exhibit A, pp. 2-3. The Abandonment Area is not improved with asphalt or pavement and is best described as a "paper street" that extends northward from Walter Johnson Road for approximately 245 ft where it abruptly stops. *Id.*, p. 10. The right of way was dedicated to public use by way of a Deed of Dedication dated October 21, 1996 and recorded among the Land Records of Montgomery County, Maryland at Liber 14594, folio 53. The dedication was made in response to a condition required by the Montgomery Planning Board to a plan of subdivision being pursued by the thendeveloper of the adjacent property. At the time of the Dedication, it was thought that the Abandonment Area could be used to create a "loop road" to service the nearby MARC train station. The proposed "loop road" was never built and no other public use was constructed within the Abandonment Area.

b. Abandonment Hearing Procedure for AB 775.

As required by Section 49-62 of the Montgomery County Code, notice of the public hearing was provided by way of newspaper publication (see Exhibit D(2), and the posting of a

¹ The Deed of Dedication granted to Montgomery County a fee simple interest in the Abandonment Area as well as a strip of land contiguous to and paralleling what is now Walter Johnson Drive. The additional area is not being sought for abandonment in this petition.

sign in the right-of-way (see Exhibit E). In this case, the Applicant owns or controls all of the land surrounding the Abandonment Area, so there are no additional abutting owners to whom to provide notice of the hearing. According to an email received from Mr. Greg Wims, Director of Montgomery County's Upcounty Regional Services Center, notice of the hearing was announced at a meeting of the Upcounty Advisory Board, which represents approximately 325,000 citizens in the Upcounty region on Monday, February 5, 2022 (See Exhibit F).

In addition, the County solicited responses concerning the abandonment request from required government agencies and utility companies (*See* Exhibits H through Q). The public hearing was convened on February 16, 2022, and statements were made and documents were received into evidence. At the conclusion of the public hearing, the record was held open until 5:00 p.m. on March 2, 2022 to provide an opportunity for anybody desiring to submit additional comments for the record in writing.

II. SUMMARY OF STATEMENTS MADE AT THE HEARING HELD ON SEPTEMBER 15, 2021.

1. Mr. Eric Willis, Chief, Montgomery County Department of Transportation Property Acquisition Section.

Mr. Willis spoke on behalf of the Montgomery County Department of Transportation ("MCDOT"). Mr. Willis explained that his Office is charged with the administration of requests to abandon County rights of way. In so doing, Mr. Willis explained that his Office received an abandonment request from the Applicant which contended that the Abandonment Area was no longer necessary for public use. Mr. Willis noted for the record that the above-captioned matter was originally scheduled for a public hearing on December 15, 2021, but that the public hearing

was rescheduled for February 16, 2022 with notice of same being readvertised. In addition, Mr. Willis summarized the documents and correspondence that MCDOT had received in response to the Applicants' request for abandonment at the time of the hearing and introduced them as exhibits.

2. Ms. Françoise Carrier, Esq., Counsel for the Applicant

Ms. Carrier spoke briefly on behalf of the Applicant and introduced two witnesses, Mr. David Simez and Mr. Patrick LaVay, through whom she solicited statements in support of the Applicant's abandonment request.

3. Mr. David Simez, Representative for the Applicant

Through direct examination by Ms. Carrier, Mr. Simez stated that he is a Development Manager for Lidl U.S., LLC and has been working in that capacity for approximately the last 5 years. He stated that Lidl is a retail grocery store that is looking to expand in the Washington D.C. area, with specific plans to build a grocery store and surface parking on the land adjacent to and including the Abandonment Area (the "Project"). Mr. Simez stated that the Applicant is the contract purchaser of the parcels surrounding the Abandonment Area.

With regard to the Project, Mr. Simez identified several slides included in the Applicant's Power Point presentation (See Exhibit T). These slides included graphic presentations of the Applicant's proposed development vis a vis the Abandonment Area.

4. Mr. Patrick LaVay, Witness for the Applicant

Mr. LaVay stated that he is a Vice President and Senior Project Manager for Macris

Hendricks and Glasscock in Montgomery Village, Maryland. He has been a licensed

Professional Engineering (P.E.) in the State of Maryland for the past 12 years. Ms. Carrier introduced Mr. LaVay's resume into the record (See Exhibit S) and requested that he be accepted as an expert witness in the field of Civil Engineering. The Hearing Officer accepted him as an expert witness in that capacity.

Mr. LaVay was shown several of the slides included in the Applicant's Power Point presentation (See Exhibit T) and identified the Abandonment Area and the surrounding land under contract to the Applicant through those slides. In particular, Mr. LaVay identified the sketch and metes and bounds description of the Abandonment Area (See Exhibit T @ p. 5) showing it to consist of 13,451 square feet, more or less. Mr. LaVay stated that the previous dedication of the right of way that included the Abandonment Area was made in response to a condition described in a preliminary plan approval dating back to October 1995 (Prelim Plan No.1990680). He explained that at that time, it was thought that the dedicated right of way would provide for an internal north-south connection to Walter Johnson Road.

Mr. LaVay testified that subsequent planning documents, including the 2009

Germantown Master Plan and 2019 MARC Rail Communities Master Plan identified an internal east-west connection from Bowman Mill Road to the existing right of way. He further testified that the current plans for the Project include the construction of both an east-west connection between Bowman Mill Road and Wisteria Drive and a north-south connection from the Project site to Walter Johnson Road. Mr. LaVay opined that the proposed Project could not proceed without the abandonment of the Abandonment Area. He further opined that the two new road connections being proposed by the Applicant would fulfill the transportation goals stated in the

relevant master plan documents.

III. RESPONSES FROM GOVERNMENT AGENCIES AND PUBLIC UTILITY COMPANIES FROM WHICH RESPONSES WERE SOLICITED PURSUANT TO § 49-62(h) OF THE MONTGOMERY COUNTY CODE

- 1. County Fire and Rescue Service. By email dated December 9, 2021, the MCDPS Section of Fire Department Access and Water Supply indicated that it had no opposition to the Applicant's requested abandonment. See Exhibit J.
- 2. Montgomery County Department of Transportation ("MCDOT"). By memo dated February 9, 2022, MCDOT recommended approval of the requested abandonment subject to the following conditions: 1) that maintenance of the abandoned portions of the rights of way will be the responsibility of the Applicant; and 2) that all existing utilities within the Abandonment Area remain in place within a proposed public utility easement or be relocated at the Applicant's expense. See Exhibit H.
- 3. Montgomery County Department of Transportation Traffic Division. By email dated December 11, 2021, MCDOT's Traffic and Operations Division indicated that it had no objection to the requested abandonment. See Exhibit I.
- 4. <u>Montgomery County Police Department ("MCPD")</u>. By email dated February 9, 2022, MCPD indicated that it had no comment regarding the requested abandonment. See Exhibit K.
- 5. Montgomery County Department of Permitting Services ("DPS"). By e-mail dated December 10, 2021, DPS stated that it had no objection to the requested abandonment. See Exhibit L.
- 6. <u>Maryland National Capital Park and Planning Commission ("MNCPPC")</u>. MNCPPC indicated its support for the abandonment request for the reasons set forth in its Memorandum dated February 10, 2022. *See* Exhibit M.
- 7. <u>Verizon</u>. By email dated February 10, 2022, Verizon indicated that it had no facilities within the Abandonment Area and therefore no objection to the requested abandonment. *See* Exhibit O.
- 8. <u>Pepco.</u> By email dated February 15, 2022, Pepco noted that it objected to the requested abandonment. However, in a subsequent email dated March 1, 2022, Pepco indicated that after meeting with the Applicant to discuss the requested abandonment, it no longer objected to the requested abandonment. *See* Exhibits Q(1) and Q(2).

- 9. <u>Washington Gas</u>. By email dated February 9, 2022, Washington Gas indicated that it had no facilities within the Abandonment Area. *See* Exhibit P.
- 10. Washington Suburban Sanitary Commission (WSSC). By letter dated January 21, 2022, WSSC stated that it does not maintain any easements or facilities within the Abandonment Area and therefore has no objection to the abandonment request. See Exhibit N.

IV. COMMENTS/ CORRESPONDENCE RECEIVED FROM THE PUBLIC

No public comments were received in response to the notices concerning the public hearing.

V. CONCLUSIONS AND RECOMMENDATIONS

The abandonment of road rights-of way is governed by the provisions of sections 49-62 et seq., Montgomery County Code (2014) as amended. Section 49-62 permits application for abandonment of a right-of way by any person or government agency, provides for public agency and utility company review, and requires a public hearing with notice. In evaluating the evidence, I find that the hearing and notice procedures have been satisfied, and that the public, public agencies, and utility companies have been given an opportunity to review the petition for abandonment as described above and provide comment.

Section 49-63 allows the County Council to abandon or close a right of way if the Council finds by Resolution that: (1) the right of way is no longer needed for present public use or anticipated public use in the foreseeable future, or (2) the abandonment or closing is necessary to protect the health, safety and welfare of the residents in the neighborhood. In assessing health, safety and welfare issues, the Council may consider: 1) any adopted land use plan applicable to the neighborhood; 2) the safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives in the immediate neighborhood for local and through traffic; or 3) changes in fact and circumstances since the original dedication of the right of way.

Pursuant to Article 6 of Chapter 49 of the Montgomery County Code, right of way means "... any road, street, alley, crosswalk, pedestrian walkway, shared use path, sanitary sewer, storm sewer, or storm drainage right-of-way used at any time by the public, including use by pedestrians and bicyclists." In evaluating the evidence, I find that the Abandonment Area is clearly public right of way, having been dedicated to the County by Deed dated October 21, 1996 and recorded among the land records of Montgomery County at Liber 14594, folio 53 (See Exhibit C to Applicant's ltr requesting abandonment). It is further worth noting that the while the deed conveyed the land in fee simple, the sketch and description attached to the deed identify the dedicated area as "Public Use Area." While a road has never been constructed within the Abandonment Area, road improvements were constructed in other parts of the dedicated right of way, particularly the area fronting Walter Johnson Drive from the Abandonment Area to Wisteria Drive. Accordingly, I find that the County has jurisdiction to consider the Applicant's petition for abandonment.

While there were no statements made at the hearing on the issue of whether the subject right of way is needed for present or anticipated future public use, there was evidence introduced into the record that addressed that threshold issue. In particular, the Applicant's letter requesting abandonment (*See* Exhibit A) contains a section titled "No Further Public Need." In this section, the Applicant notes that the Abandonment Area has not been used as a roadway since the original dedication and that the new connection roads to be constructed with the Project will effectively supersede the utility of the existing paper street right of way making up the Abandonment Area. Furthermore, I find the statements by the Applicant's witnesses concerning the changes in the transportation network for this area since the original dedication in 1995 to be credible and persuasive. Of particular note, both the 2009 Germantown Master Plan and the

2019 MARC Rail Communities Master Plan highlight the desire for an east-west connection from Bowman Mill Road to Wisteria Drive, which is reflected in the Applicant's development plans.

Finally, in light of the fact that the proposed development project is proceeding through the preliminary and site plan process at the Maryland-National Park and Planning Commission, I put considerable weight in the recommendations being made by the planning staff. In their memo regarding the proposed abandonment (*See* Exhibit M), planning staff recommended approval of the requested abandonment noting, among other things, that, "this ROW area does not support any Master Plan road connection as recommended in either the 2019 *MARC Rail Communities Master Plan* or 2018 *Master Plan of Highways and Transitways*. Similarly, the 2018 *Bicycle Master Plan* does not envision designated bikeways in this abandonment area."

For all of the foregoing reasons, I find that subject to the conditions set forth herein, the Abandonment Area is no longer needed for present or anticipated future public use and therefore recommend that the Applicant's petition to abandon be granted, subject to the following requirements that are conditions precedent to the abandonment becoming effective:

- That the Applicant must obtain plan approvals and construct, at its sole cost, both the
 east-west roadway connection and the north-south roadway connection through the
 Project site;
- 2) That the Applicant must at its sole cost prepare and record a new subdivision plat that incorporates the Abandonment Area into the adjacent property.

| 3/29/2022 | Jose Thommana |
|-----------------------------|---|
| Date | Jose Thommana Public Hearing Officer |
| | |
| e e | |
| The Public Hearing Officer' | s Recommendations in Petition AB 779 have been reviewed and are |
| approved. | |
| | |
| 8/8/2022 | Mare Elf |
| Date | Marc Elrich, County Executive |

Date

Respectfully submitted,





2425 Reedie Drive Floor 14 Wheaton, MD 20902



MontgomeryPlanning.org

Memorandum

TO: Eric Willis, Chief, Property Acquisition Section

Montgomery County Department of Transportation

VIA: Patrick Butler, Chief, Upcounty Planning Division PB

Montgomery Planning

FROM: Gwen Wright, Planning Director L.M. Wight

Montgomery Planning

RE: Right-of-Way Abandonment Case No. AB-779

Portions of Walter Johnson Road (13,451 square feet total)

2019 MARC Rail Communities Master Plan Germantown Town Center Policy Area

DATE: February 10, 2022

Recommendation

Staff supports the abandonment petition for a portion (13,451 feet total) of the Walter Johnson Road right-of- way (ROW) and recommends that it be abandoned through the County Council's action on this petition.

This memorandum hereby transmits the following staff comments to the Montgomery County Department of Transportation (MCDOT) in accordance with Montgomery County Code Chapter 49-62, "Abandonment and Closing Rights-of-Way: Abandonment Authority; Scope of Article; Procedures." This item has not been heard by the Montgomery County Planning Board.

Discussion

On December 9, 2021 the Maryland - National Capital Park and Planning Commission (M-NCPPC) received Abandonment Petition No. AB-779, in accordance with Section 49-62(g) of the County Code (Attachment A). The Applicant is Lidl US, LLC, and they are requesting an abandonment of the public right-of-way interior to the property located at 19430 Walter Johnson Road. This property is currently under review for development applications property contained within the ongoing development applications, Preliminary Plan 120220030 and Site Plan 820220080.

Currently the property hosts two commercial office buildings. Under the Preliminary and Site Plan applications, one office building as well as the proposed abandonment area is proposed to be replaced with a grocery store.

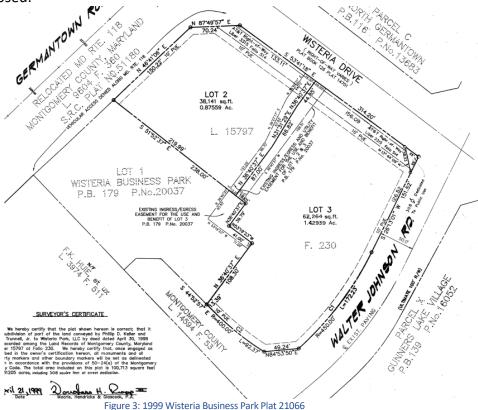


Figure 1: Subject Property Map (Property outlined in blue, abandonment in red)



Figure 2: Application for Grocery Store, Preliminary Plan 120220030 and Site Plan 820220080

A small portion of ROW extends into the subject property. The history and rationale for this ROW is lost, though there is a similar ROW dedication immediately adjacent to the property (on the left in Fig. 2), a duplicative segment also recorded under the name Walter Johnson Road. These segments are not to be confused with Walter Johnson Road proper, which runs along the southeast property frontage (bottom of Fig. 2). No abandonment of any portion of this active roadway is proposed.



The dedication of this portion of ROW appears connected to the subdivision and platting of Plat 21066 for the Wisteria Business Park in 1999. At the time of platting, this portion of ROW did not provide a continuous dedication connection to any road segment apart from Walter Johnson Road to the south; the duplicative segment of Walter Johnson to the southeast is separated by an additional property. There are no public improvements existing; this portion of ROW is not in public use.

As part of the aforementioned development applications, two private connections will be constructed to serve the Subject Property. Neither of these connections will utilize the abandonment area, which will instead be incorporated into the footprint of the proposed grocery store (Fig. 2). Full inter-parcel bike, pedestrian and vehicular movement will be accommodated in these private facilities. These applications continue under review and must meet all safety and adequacy requirements determined by Planning Staff, MCDOT, Montgomery DPS and Montgomery Fire and Rescue Services. These applications will receive an additional full public hearing before the Planning Board.

Necessary Findings

Section 49-63(c)(1) -(2) of the Montgomery County Code (the "Code") authorizes the County Council to abandon a right-of-way, including a public road, upon a finding that:

- 1. The right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future, or
- 2. The abandonment or closing is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned or closed

Furthermore, Section 49-62(a) of the Code defines right-of-way, as the following:

any road, street, alley, crosswalk, pedestrian walkway, shared use path, water main, sanitary sewer, storm sewer, or storm drainage right-of-way used at any time by the public, including use by pedestrians and bicyclists.

Through the initial review of Preliminary Plan 120220030 and Site Plan 820220080, Planning Staff explored options to extend the southeastern segment of the duplicative Walter Johnson Road to the northeast to connect to Wisteria Drive. However, this was determined to be unnecessary given the proximity of the completed and functional segment of existing Walter Johnson Road immediately parallel. Additionally, there would be inadequate signal spacing distance for a full public road connection at Wisteria Drive. Last, the dedication area would be a significant burden on the applicant given the alignment through the Property. It was determined that a private connection would accommodate all site traffic while still accommodating cross connectivity, particularly for bike and pedestrian movement. Without a public through connection to Wisteria Drive to intersect with the ROW to be abandoned, this portion of ROW does not serve a public purpose. Additionally, this ROW area does not support any Master Plan road connection as recommended in either the 2019 MARC Rail Communities Master Plan or 2018 Master Plan of Highways and Transitways. Similarly, the 2018 Bicycle Master Plan does not envision designated bikeways in this abandonment area.

Therefore, Staff concludes that the portion of right-of-way identified in the Abandonment Petition No. AB-779 is not necessary for present or future public use. This portion of right-of-way is not necessary to protect the health, safety and welfare of residents. The abandonment is consistent with the 2019 *MARC Rail Communities Master Plan*, 2018 *Master Plan of Highways and Transitways*, and 2018 *Bicycle Master Plan*. Staff is recommending approval of Abandonment Case No. AB-779, which will result in the abandonment of 13,451 square feet of ROW dedication.

Attachments

A. Request for Abandonment

Attachment A

Françoise M. Carrier, Of Counsel (MD DC CA) fcarrier@breqmanlaw.com



Bregman, Berbert, Schwartz & Gilday, LLC

T: 301-656-2707 F: 301-961-6525

June 3, 2021

Christopher Conklin, Director Department of Transportation Executive Office Building 101 Monroe St, 10th Floor Rockville, MD, 20850 David Dise, Director Department of General Services Executive Office Building 101 Monroe St, 9th Floor Rockville, MD, 20850

Re: Request for Abandonment and Disposition of County Real Property

Walter Johnson Road, Germantown

Dear Mr. Conklin and Mr. Dise:

I write on behalf of my client Lidl US, LLC ("Lidl") to request that the County abandon (if necessary) and convey to Lidl 13,451 square feet of county-owned real property located along Walter Johnson Road in Germantown, near the Germantown MARC station, described more fully in Exhibits A and B (the "Conveyance Area"). Enclosed is a check in the amount of \$2,500 in payment of the filing fee for the abandonment request.

Lidl, a German company with its US headquarters in Arlington, Virginia, is the world's fifth largest grocery store chain. Lidl is in the midst of a major US expansion, with stores open in College Park, under construction in Montgomery Village, and proposed in the City of Rockville and at the site where the Abandonment Area is located, in Germantown.

Project Site and Background

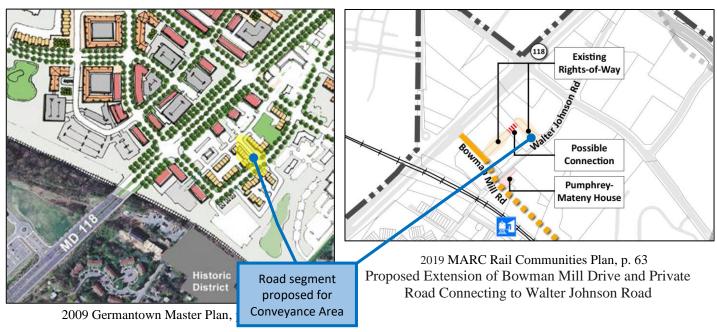
Lidl's proposed Germantown site is located on the northwest side of Walter Johnson Road about two blocks north of the Germantown MARC Station (the "Site"). As depicted on the Site Acquisition exhibit shown on the next page, the Site is comprised of three privately owned tracts and the Conveyance Area. Lidl is the contract purchaser of the three privately owned tracts: Lot 1 and part of Lot 3 in the Wisteria Business Park subdivision, located at 12800 and 12810 Wisteria Drive, and Parcel P965, located at 19430 Walter Johnson Road.

The Conveyance Area is part of an area of land that was dedicated and conveyed to the County in fee simple by the 1996 Deed of Dedication attached as Exhibit C (the "1996 Dedication"). This dedication was made in compliance with a condition of approval of the Wisteria Business Park subdivision. *See* Planning Board Opinion, Preliminary Plan No.1-90068, attached as Exhibit D.

^{1.} While the Deed of Dedication contains some indicia suggesting that the dedication was in the form of an easement, Lidl defers to the determination of its title insurer that the dedication conveyed to the County a fee simple interest.



The purpose of the 1996 Dedication was to support implementation of roadway recommendations in the 1992 Germantown Design Study – in particular, the construction of a road connecting Walter Johnson Road (the former Rte. 118) with a new road proposed slightly northwest of Walter Johnson Road. This was shown in the 1992 design study, but is easier to see in images from page 54 of the 2009 Germantown Master Plan and page 63 of the 2019 MARC Rail Communities Plan, excerpted below.¹

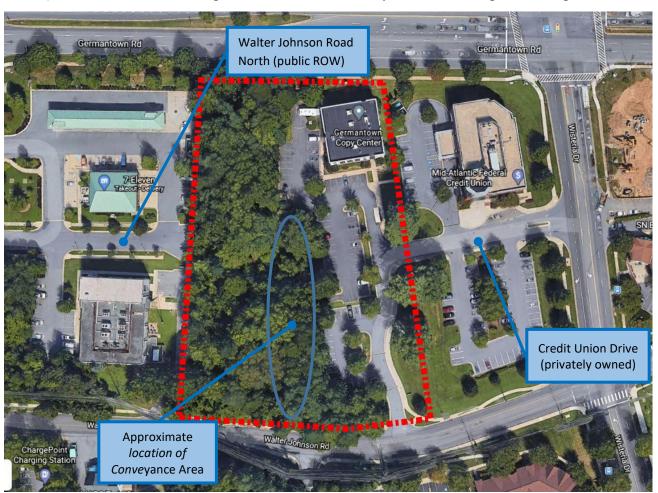


¹ Links to all three plans are provided at the close of this letter.

The Conveyance Area is a vacant piece of land, fully occupied by forest. Although it is depicted on the County GIS Map as right-of-way, it has never been used for a public purpose; all existing infrastructure associated with Walter Johnson Road is located outside the Conveyance Area. Lidl will assume for purposes of this letter that the Conveyance Area needs to be abandoned before it is eligible for disposition, but defers to the County's determination on this question. If the County determines that abandonment is not necessary because the Conveyance Area has never been used as public right-of-way, Lidl requests disposition of the Conveyance Area via conveyance of fee simple title to Lidl.

No Further Public Need

The Conveyance Area is no longer needed for public use because Lidl's proposed grocery store project will fulfill and surpass the public need for which the Conveyance Area was deeded to the County. The Conveyance Area was intended for construction of a segment of roadway perpendicular to Walter Johnson Road, as shown on the master plan excerpts on the previous page. This roadway was intended to connect to a new road parallel to Walter Johnson Road. The 1996 Dedication did not, however, provide land for the new parallel road. In the intervening years, two segments of the parallel road have been built, as highlighted on the aerial photograph below. One is a section of public road running between a 7-11 store and a Verizon utility building, which is also called Walter Johnson Road, but which we are referring to as Walter Johnson Road North to avoid confusion. The other is a private drive running between the Mid-Atlantic Federal Credit Union and associated parking (the "Credit Union Drive"), over which Lidl will acquire an access easement by virtue of its acquisition of part of Lot 3.



As highlighted on the Concept Site Plan excerpted below and attached in full as Exhibit E, Lidl proposes to build two sections of private roadway that will be open to public use: one parallel to Walter Johnson Road, connecting Walter Johnson Road North with the Credit Union Drive, and another perpendicular to Walter Johnson Road, roughly 50 feet northeast of the road segment shown in applicable master plans. In addition, by acquiring part of Lot 3, Lidl will be acquiring an easement allowing public use of Credit Union Drive. Thus, Lidl proposes to complete the road connections proposed for this block in the applicable master plan, connecting Bowman Mill Drive, Wisteria Drive and Walter Johnson Road. This site plan and roadway layout were designed based on feedback from the Planning Department, where staff emphasized connectivity and safe and efficient pedestrian and vehicular traffic patterns in the immediate neighborhood as the highest priority for the Site. Lidl's proposed project will fully implement master planned roadway connectivity, therefore there is no further public need for the Conveyance Area for present or anticipated future right of way.



Lidl Concept Plan

Lidl's preliminary open space plan is provided on the next page for additional background. Lidl has designed a multi-layered, inviting open space concept to soften the long side of the grocery store building, which was placed adjacent to Walter Johnson Road to accommodate the desired roadway connectivity.



Lidl Open Space Plan

Nominal Value/Waiver of Full Market Value Compensation

County law requires the County Executive to dispose of real property for no less than full market value unless the property is of nominal value (defined in published Code as under \$100,000) or the County Council waives the requirement for full market value compensation. *See* Code Section 11B-45(c). Lidl respectfully requests disposition of the Conveyance Area without monetary consideration, either as a property of nominal value or via County Council waiver of full market value consideration.

The Conveyance Area has no monetary value apart from its value as part of Lidl's grocery store project. Due to its size and shape, there is no reasonable expectation that the Conveyance Area could become an independent development site. It has been under County ownership for 25 years and has remained unused during that entire period. Under these circumstances, it would be appropriate to consider the Conveyance Area to be of nominal value, and therefore eligible for conveyance by the County Executive without a public hearing or referral to the County Council.

Alternatively, as a matter of public policy the County should recognize that transferring the Conveyance Area to Lidl will permit construction of a grocery store project with interconnecting roadways that will fulfill and surpass the public purpose for which the Conveyance Area was dedicated in 1996. The 1996 Dedication was intended to facilitate construction of a road perpendicular to Walter Johnson Road if the area were to redevelop in the future. Lidl is now poised to carry out a grocery store project that will implement the full master plan vision of roadway connectivity by building not only a road perpendicular

June 3, 2021 Page 6

to Walter Johnson Road, but the missing road segment that will connect Bowman Mill Drive and Wisteria Drive – Lidl's acquisition of part of Lot 3 even brings with it an easement for public use of the Credit Union Drive, making full connectivity possible. The cost of constructing the two road segments and their value to the public in completing the local roadway grid far exceed any monetary value that might be imputed to the Conveyance Area.

For all of the above reasons, Lidl requests abandonment of the Conveyance Area (if needed) and its disposition to Lidl via fee simple conveyance either as a nominal value property, or with a waiver of full market value compensation in recognition of Lidl's implementation of the public purpose for which the County originally acquired the Conveyance Area.

Sincerely yours,

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By: Prançoise M. Carrier

cc: Dustin Schade, Lidl Ronnie Warner, DGS Eric Willis, DOT

Links to planning documents cited in text:

 $\frac{https://montgomeryplanning.org/planning/communities/upcounty/germantown/germantown-town-center-design-study-1992/$

https://montgomeryplanning.org/planning/communities/upcounty/germantown/germantown-2009/https://montgomeryplanning.org/planning/communities/upcounty/marc-rail-communities/



PARENT TAX ID Number: 02-2744112

DESCRIPTION OF PART OF THE PROPERTY DEDICATED TO MONTGOMERY COUNTY, MARYLAND LIBER 14594 FOLIO 53

Being a parcel of land located in the Second (2nd) Election District in Montgomery County, Maryland, hereinafter described in, through, over and across the property dedicated in fee simple and released by Phillip D. Keller and W. K. Trummell, Jr. to Montgomery County, Maryland, by a deed of dedication dated October 21, 1996 and recorded among the Land Records of Montgomery County, Maryland in Liber 14594 at Folio 53; and being more particularly described by MHG, P. A. on March 30, 2021 in the datum of said deed as follows:

Beginning for said parcel of land at a rebar and cap found at the beginning of the fifth (5th) or North 46°21'17" East, 23.46 foot deed line of said Deed of Dedication to Montgomery County, Maryland recorded in Liber 14594 at Folio 53 among the aforesaid Land Records; said point being also at the southerly end of the South 46°21'17" West, 23.46 foot plat line as delineated on a plat entitled "LOT 1, WISTERIA BUSINESS PARK" recorded among said Land Records as Plat No. 20037, and running and binding then with the outline of said Lot 1 and with all of the fifth (5th) through seventh (7th) lines of said Deed of Dedication the following three (3) courses and distances:

- 1. North 46°21'17" East, 23.46 feet to a rebar and cap found, then
- 2. South 89°15'50" East, 35.74 feet to a rebar and cap found, then
- 3. South 44°52'57" East, 91.61 feet to a rebar and cap found, then leaving the outline of said Lot 1 and running and binding with the outline of Lot 3 as delineated on a plat of subdivision entitled "LOTS 2 & 3, WISTERIA BUSINESS PARK" as recorded among said Land Records as Plat No. 21066 and with the eighth (8th) through the tenth (10th) lines of the aforesaid Deed of Dedication the following three (3) courses and distances:
- 4. South 44°52'57" East, 13.39 feet to a rebar and cap found, then

- 5. 92.37 feet along the arc of a tangent curve deflecting to the left with a radius of 400.00 feet and a chord bearing and distance of South 51°29'52" East, 92.16 feet to an open pipe found, then
- 6. North 84°53'50" East, 49.24 feet to a rebar and cap found on the northwesterly right of way limits of Walter Johnson Road as shown on said Plat No. 21066, then by two (2) new lines of division
- 7. 20.58 feet along the arc of a non-tangent curve deflecting to the right with a radius of 450.00 feet and a chord bearing and distance of South 49°27'24" West, 20.58 feet to point, then
- 8. South 50°46'01" West, 82.07 feet to a point on the last line (described only as a straight line to the beginning) of Exhibit "A" of the lands conveyed by Fred K. Huie and Margaret P. Huie to Mahmoud Fallahi and Behjat Baharloo by a deed dated May 1, 2003 and recorded in Liber 23973 at Folio 138 among the aforesaid Land Records, then running and binding with part of said last line
- 9. North 43°38'43" West, 244.52 feet to the point of beginning; containing an area of 13,451 square feet or 0.30879 acres of land.

Certified correct to the best of my professional knowledge, information and belief and this description was prepared by me and is in conformance with Title 9, Subtitle 13, Chapter 6, Section .12 of the Minimum Standards of Practice for Land Surveyors.

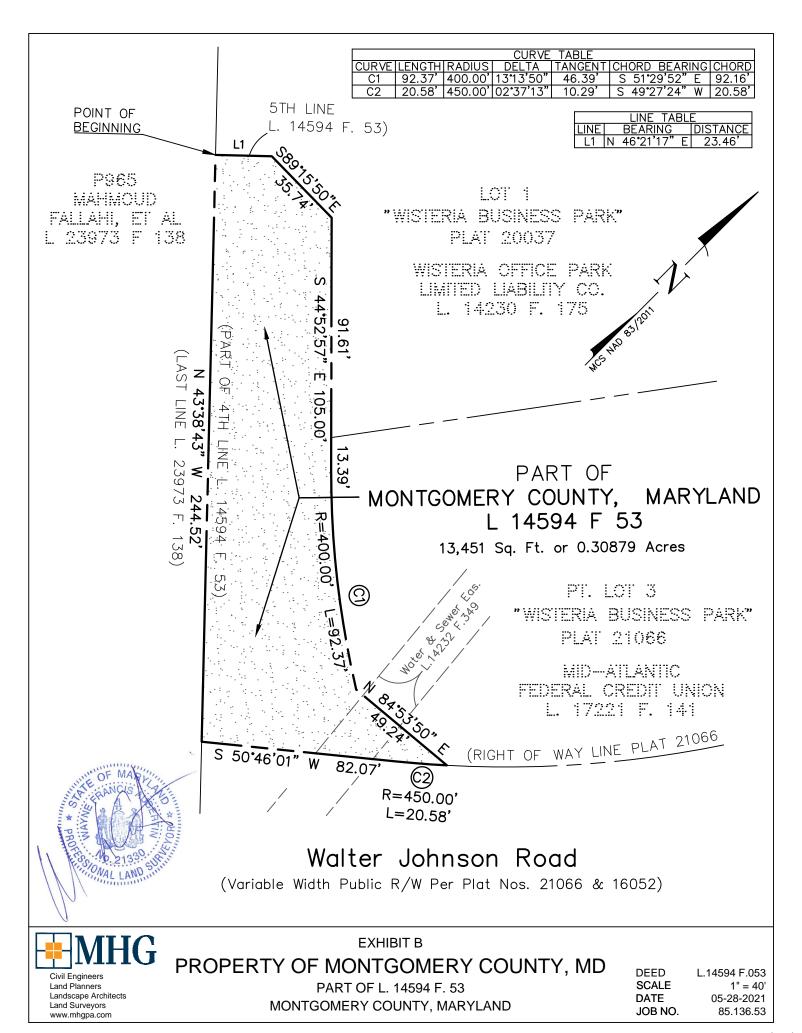
MHG, P.A.

Wayne F. Aubertin, Professional Land Surveyor

Maryland Registration No. 21330 License Expires: 01-07-2023

AFTER RECORDATION PLEASE RETURN TO:

MHG, P.A. 9220 Wightman Rd., Suite 120 Montgomery Village, MD 20086 Attn: Wayne Aubertin



(37)

10. AUG. 10. FIER. 10. FIER.

Tax ID No: 2-02-2744112 TITLYINS - NA -

DEED OF DEDICATION

THIS DEED OF DEDICATION, dated October 21, 1996, from PHILLIP D. KELLER and W. K. TRUMMELL, JR., Grantors, to MONTGOMERY COUNTY, MARYLAND, Grantee.

The Grantors, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do dedicate in fee simple and release unto the Grantee, its successors and assigns, the real property located in Montgomery County, Maryland, and described as follows:

See Schedule attached hereton and incorporated herein by reference Rest MODR

Blk # 4376 Together with all improvements thereuppn 68, and the 84:89 PA rights, alleys, ways, waters, easements, privileges, appurtenances and advantages belonging or appertaining thereto.

To have and to hold the property hereby conveyed to the Grantee, its successors and assigns, in fee simple, forever.

The Grantors covenant to warrant specially the property hereby conveyed, and to execute such further assurances of the property as may be requisite.

Witness the hands and seals of the Grantors.

State Department of Assessments & Taxation for Montgomery County

AGRICULTURE TRANSFER TAX IN THE

AMOUNT OF \$

LAW OFFICES

200-B MONROE STREET ROCKVILLE, MARYLAND 30: 762-5212

FREDERICK, MARYLAND

301 696-1380

ER. MILLER & CAKEY CHARTERED

ROPT # 34696

(39)

CIRCUIT COURT

STATE OF MARYLAND COUNTY OF MONTGOMERY

Notary Public of the State of Maryland, personally appeared PHILLIP D. KELLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and who acknowledged that he executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Stander D. Newman

My Commission Expires:

NOTACY PLOTE CHATTAND

I HEREBY CERTIFY that I am an attorney duly admitted to practice before the Court of Appeals of Maryland and that this instrument was prepared under my supervision. I

Diane MV Podle

MILLER, MILLER & CAMEY
CHARTERED
2008 MONROE STREET
ROCKVILLE, MARYLAND
201 782-5212
138-13 WEST PATRICK ST.
PREDERICK, MARYLAND

201 406-1280

SCHEDULE "A"

PUBLIC USE AREA

PART OF PHILLIP D. KELLER & W.K. TRUNNELL, JR. PROPERTY LIBER 8868 FOLIO 290

Being a strip or parcel of land located in the Second (2nd) Election District of Montgomery County, Maryland and being part of the land conveyed by Post Development to Phillip D. Keller et al by deed dated June 15, 1989 and recorded among the Land Records of Montgomery County, Maryland in Liber 8868 at Folio 290 and being more particularly described in the Maryland State Plain (MAD 27) datum by Macris, Hendricks and Glascock, P.A. as follows:

Beginning at a point on the westerly right-of-way line of Germantown Road (Old Route 118) said point being the beginning of the fifth (5th) line of Parcel Two as described in the aforesaid conveyance, then binding with the 5th thru 7th and part of the 1st line of said Parcel Two

- 1. South 25°48'23" West, 211.19 feet to a point, then
- South 37°18'13" West, 73.47 feet to a point, then
- 3. South 48°43'00" West, 146.95 feet to a point, then
 leaving the westerly limits of said
 Germantown Road and binding with part of
 the said 1st line of Liber \$868 Folio
 290
- 4. North 43°38'43" West, 271.88 feet to a point, said point being at the southeasterly end of the North 43°38'43" West, 186.00 foot line of Lot 1 as delineated on a plat of

subdivision entitled "Wisteria Business Park" as recorded among the aforesaid Land Records in Plat Book 179 at Plat No. 20037, then binding with the southerly platted limits of said Lot 1

- 5. North 46°21'17" East, 23.46 feet to a point, then
- 6. South 89°15'50" East, 35.74 feet to a point, then
- 7. South 44°52'57" East, 91.61 feet to a point, then leaving the southerly platted limits of said Lot 1 and continuing to cross and include part of said Liber 8868 at Folio 290
- 8. South 44°52'57" East, 13.39 feet to a point, then
- 9. 92.37 feet along the arc of a curve to the left, having a radius of 400.00 feet and a chord bearing and length of South 51°29'52" East, 92.16 feet to a point, then
- 10. North 84°53'50" East, 49.24 feet to a point, then
- 11. 172.23 feet along the arc of a curve to the left, having a radius of 450.00 feet and a chord bearing and length of North 37°10'54"

 East, 171.18 feet to a point of tangency, then
- 12. North 26°13'01" East, 151.52 feet to a point on the southerly right-of-way limits of Wisteria Drive (variable width R/W), then binding with said Wisteria Drive

13. South 53°41'18" East, 20.07 feet to the point of beginning; containing 23,376 square feet or 0.536639 of an acre of land.

Certified correct to the best of our professional knowledge, information and belief. If the seal and signature are not violet colored, the document is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.

Recris, Hendricks & Glascock, P.A.
Douglass H. Riggs III, Professional Land
NO Registration No. 10712

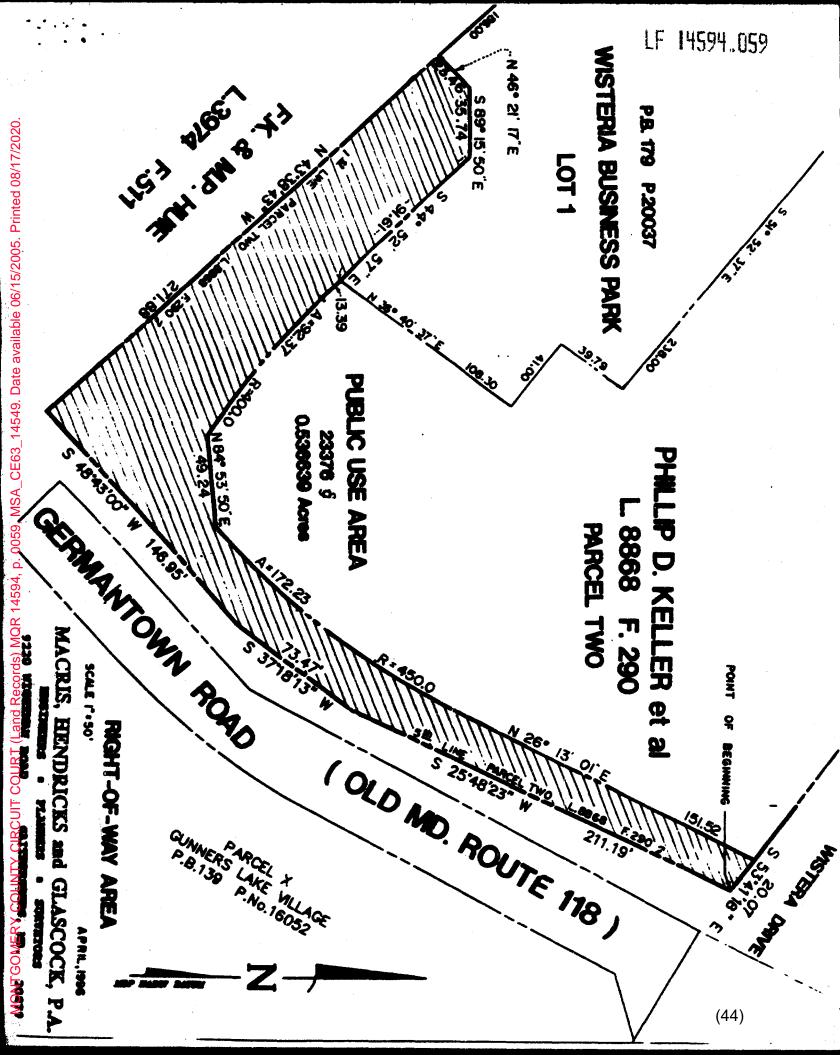
DEC 5 0 1996

2-2-2744112

All Taxes on assessments certified to the Collector, of Taxes for Montgomery County Md. by a Conf. have been paid Dept. of Pinance Montgomery County, Md. This statement is for the purpose of permitting recordation and is not assurance against further textalian even for prior periods, nor does it guarantee satisfaction of autotanding text sales.

TRANSFER TO GOVERNMENTAL, RELIGIOUS, OR CHARITABLE ORGANIZATION

\$A1005G1.DWR/85-136 4/19/96



Date of mailing: October 26, 1995

THE MAF

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation with Modifications (Motion of Comm. Richardson, seconded by Comm. Holmes, with a vote of 5-0; Comms. Richardson, Holmes, Baptiste, Aron, and Hussmann voting in favor).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

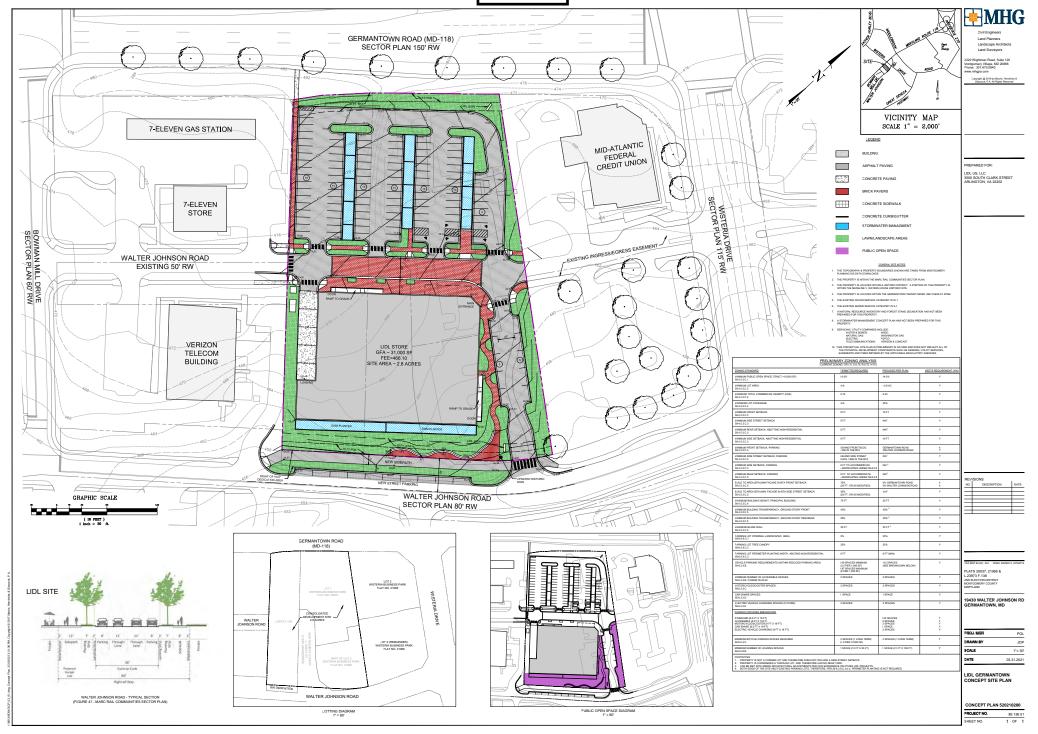
Preliminary Plan 1-90068 NAME OF PLAN: K & T DEVELOPMENT

On 02-16-90, W.K. TRUNNELL, JR. , submitted an application for the approval of a preliminary plan of subdivision of property in the R200 zone. The application proposed to create 1 lots on 3.92 ACRES of land. The application was designated Preliminary Plan 1-90068. On 10-12-95, Preliminary Plan 1-90068 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing , the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-90068 to be in accordance with the purposes and equirements of the Subdivision Regulations (Chapter 50, Montgomery County de, as amended) and approves Preliminary Plan 1-90068, subject to the following conditions:

- (1) Compliance with Environmental Planning Division approval regarding the requirements of the forest conservation legislation. Applicant shall satisfy all conditions prior to recording of plat(s) or MCDEP issuance of sediment and erosion control permit, as appropriate
- (2) Prior to recording of plat(s) applicant to submit agreement with Planning Board limiting development to a maximum of 200 children enrollment daycare center, 20,000 square feet of office, 7,450 square feet retail and 3,000 square feet bank facility as outlined in 10-5-95 Transportation Division memo
- (3) Final building locations shall be consistent with Historic Area Work Permit and finalized at site plan
- (4) Dedication of all rights-of-way to be in conformance with Germantown Town Center Study
- (5) Preservation and design of allee of trees to be developed at site plan
- Provide area of possible future dedication of MARC Train "loop road" as shown on plan

- (7) Conditions of MCDEP stormwater management approval dated 7-17-95
- Access and improvements including sidewalks, street trees, etc. as required and approved by MCDOT
- (9) No clearing, grading or recording of lots prior to site plan approval
- (10) Record plat(s) to reference ingress/egress easements
- (11) Other necessary easements
- (12) This preliminary plan will remain valid until November 26, 1998. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.

Exhibit E





Committee: Directly to Council **Committee Review:** N/A

Staff: Glenn Orlin, Senior Analyst

Purpose: Final action – vote expected

Keywords: #abandonment, Walter Johnson

AGENDA ITEM #4K September 13, 2022

Action

SUBJECT

ADDENDUM: Abandonment of a right-of-way adjacent to Walter Johnson Road in Germantown

EXPECTED ATTENDEES

Eric Willis, Chief, Property Acquisition Section, Department of Transportation (DOT)

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

After the publication of this staff report last week, the applicant and DOT have agreed to a revised condition in the Action section of the resolution. The revised draft adoption resolution is attached.

This report contains:

Revised draft adoption resolution

© 1-2

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| Resolution No: | |
|----------------|--|
| Introduced: | |
| Adopted: | |

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

| By | County | Council |
|----|--------|---------|
|----|--------|---------|

SUBJECT: DOT Docket Nos. AB779

Abandonment – Right of Way adjacent to Walter Johnson Road Germantown, 2nd Election District

Background

- 1. By letter dated June 3, 2021, Ms. Francoise Carrier of the law firm Bregman, Berbert, Schwartz and Gilday, LLC, on behalf of her client, Lidl US, LLC (the "Applicant") petitioned for an abandonment of an area of public right of way that is located adjacent to Walter Johnson Road in Germantown.
- 2. A Public Hearing to consider the abandonment proposal was held on February 16, 2022 by the designee of the County Executive.
- 3. The County Executive forwarded to the County Council the application for abandonment, a report based on the record of the proceedings, together with exhibits relied upon and a transcription of the hearing, and recommended approval of the proposed abandonment request subject to conditions contained in the Executive's report.

Action

The County Council for Montgomery County, Maryland, finds that the portion of the right of way located adjacent to Walter Johnson Road consisting of 13,451 square feet, more or less, that is proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment subject to the following condition which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective:

1. Applicant must prepare and record a plat in accordance with County Code Section 49-65.

The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area.

Any person aggrieved by the action of the Council for the abandonments may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

| This is a correct copy of Council Action. | | |
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| | | |
| Judy Rupp | | |
| Clerk of the Council | | |