



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

OFFICE OF
THE GENERAL COUNSEL

(301) 495-4646
FAX (301) 495-2173

July 23, 2004

MEMORANDUM

TO: Montgomery County Planning Board

FR: Michele Rosenfeld, Associate General Counsel
301-495-4646

RE: Preliminary Plan No. 1-99029
Wilgus East
North Bethesda Policy Area

I. Introduction

On August 30, 2002, the Planning Board issued a written opinion confirming the oral preliminary plan approval that it issued after a duly noticed public hearing held on February 17, 2000, approving the above-referenced preliminary plan subject to a number of conditions. The applicant, Wilgus Limited Partnership, filed a legal challenge to the Board's conditions of approval in the Circuit Court for Montgomery County. Subsequent to the filing of the appeal, the Planning Board, Wilgus Limited Partnership and Montgomery County entered into a three-party settlement agreement in the above-referenced case. Consistent with the terms of that settlement agreement, staff presents to the Board a recommendation of approval of the preliminary plan with amended conditions of approval. In summary, Mr. Cohen will dedicate the full right-of-way for the Montrose Parkway as required by the Board's prior approval of Preliminary Plan No. 1-99029, subject to the following parameters:

- a. The transfer is contingent upon County approval of access to the Washington Science Center (also owned by Mr. Cohen) to the Montrose Parkway, and County approval of a pedestrian bridge over Montrose Parkway between the Washington Science Center and the Wilgus property. County staff has indicated that both elements can be permitted.
- b. The County and Mr. Cohen will split, 50/50, the cost of constructing two lanes of the Parkway along the full frontage of the Wilgus site.
- c. The Board must approve an amended preliminary plan with these conditions; Mr. Cohen will dismiss the pending litigation, with prejudice, within 30 days of the mailing of the revised opinion.

A settlement on these terms potentially results in the public acquisition of a right-of-way currently valued in excess of two million dollars, plus pay an additional 50% of construction costs estimated to be \$200,000 toward construction of the roadway. Staff recommends approval of the terms of settlement, and seeks Board authorization to schedule a public hearing on the proposed amended conditions of the preliminary plan. The changes are reflected in the text below (new text underlined, deleted text stricken).

II. Staff Recommendation:

Approval of Preliminary Plan No 1-99029A; pursuant to the FY2000 Annual Growth Policy Alternative Review Procedure for Expedited Development Approval ("Pay-and-Go"), subject to the following conditions:

1. Limit approval of the preliminary plan to a maximum of 308,400 square feet of office use¹ and pay to the Montgomery County Department of Finance the balance of the expedited development approval excise tax prior to receipt of building permit(s), and provide for the following:
 - a) Dedicate right of way for Montrose Parkway for a minimum of 130 feet through the property frontage expanding to approximately 215 feet approaching "Old" Old Georgetown Road to accommodate the MDSHA's planned street grade design for the future MD355 and Montrose Road interchange. All rights of way, except for the area of reservation shown on the approved preliminary plan, shall be dedicated by the Applicant. The Applicant shall dedicate this right-of-way within six months of the mailing of this opinion but not later than December 31, 2004.
 - b) Provide a concept plan showing the transition of right of way for Montrose Parkway between "Old" Old Georgetown Road and East Jefferson Street to accommodate the proposed roadway improvements. The right of way should be approximately 215 feet in width at "Old" Georgetown Road tapering to 130 feet at the western edge of Wilgus East per Montrose Parkway design plans and expanding to 300 feet at East Jefferson Street. The concept plan should be submitted and reviewed by the technical Staffs of M-NCPPC and DPWT prior to the Planning Board approval of the site plan application.
 - c) (deleted)
 - ~~e) Design and construction of two lanes of the segment of Montrose Parkway through the property frontage, the two lanes to establish a parkway road character.~~
 - d) Join and participate in the North Bethesda Transportation Management District (TMD) to satisfy traffic mitigation requirement, for the North Bethesda/Garrett Park Master Plan.

¹ 5,500 square feet of space were not approved, as that portion of the site will be placed in reservation pursuant to Condition 3, below, and cannot be developed at this time.

~~2. Construction of Montrose Parkway to be in accordance with the DPWT recommendations dated October 27, 1999 and November 24, 1999, as modified by the conditions of this Opinion.~~

2. Applicant to participate in the construction of Montrose Parkway as provided for in the Settlement Agreement dated _____.

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

~~4. All roads shown on the approved preliminary plan shall be constructed by the Applicant to the full width mandated by the applicable Master Plan, except as modified in Condition #1 above.~~

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

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

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

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

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

9. Other necessary easements.

10. This Preliminary Plan will remain valid for ~~thirty-seven (37)~~ forty-eight (48) months from the date of mailing of the Planning Board opinion, as do all Pay-and-Go approvals. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be provided or a request for an extension must be filed.

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