

Zoning Case 119M - ARVC

Applicant/Protellant

Exhibit # 31 Date 7/29/12

Wilde Lake Business Trust, * Before The Howard County Zoning Board
Petitioner *
* Zoning Board Case No. 1096M
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DECISION AND ORDER

On June 12 and 20, 2012, the Zoning Board of Howard County considered the petition of Wilde Lake Business Trust proposing a Major Village Center Redevelopment through its petition to amend an approved Preliminary Development Plan for the existing Wilde Lake Village Center on approximately 10.21 acres of land located in the New Town Zoning District. The subject property is located to the southeast of the intersection of Lynx Lane and Twin Rivers Road, and generally the area to the northwest, northeast, east, and southeast of the Lynx Lane intersection with Cross Fox Lane, and is described as Tax Map 29, Grid 24, Parcel 272, Lots 3-6 and Tax Map 29, Grid 24, Parcel 132, Lots 1-3; currently 5430 Lynx Lane and 10451, 10461, and 10471 Twin Rivers Road.

The notice of the hearing was advertised, the subject property was posted and the adjoining property owners were notified of the hearing as required by law as evidenced by the certificates of advertising, posting and mailing to adjoining property owners, which was made part of the record. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning ("DPZ") and the Planning Board's Recommendation, were made part of the record of the case. A number of additional official documents specific to Village Center Redevelopment cases were also made part of the record including the Design Guidelines (Wilde Lake Design Criteria), the Concept Plan (sheets 1-10), the existing covenants

for the area covered by the petition, the Design Advisory Panel's ("DAP") Recommendations, the Petitioner's justification statement, the Wilde Lake Village Board Community Response Statement and the Village Center Community Plan. Both the DPZ and the Planning Board recommended approval of the entire petition with conditions which will be explained below in the findings of fact.

The Petitioner was represented by Scott Barhight, Esquire. Several witnesses, including Petitioner's expert witnesses and several supporters, testified in favor of the petition. Several individuals unrepresented by legal counsel, appeared and testified in opposition to the petition.

After consideration of all the information presented, the Zoning Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioner proposes an amendment to the existing Preliminary Development Plan for Columbia and to the Final Development Plan for the existing Wilde Lake Village Center located in the Village of Wilde Lake in the New Town Zoning District of Columbia in Howard County, hereafter referred to as the Village Center Redevelopment ("VCR"). The petition has been requested and will be evaluated and decided upon pursuant to the process provided for in Section 125.J. of the Howard County Zoning Regulations.

2. The Petitioner's request is to redevelop the subject property, a 10.21 acre portion of the existing Wilde Lake Village Center from a commercial-only to a mixed use development Village Center, so as to add a maximum of 250 apartment dwelling units and to reconfigure the existing commercial development and existing Courtyard. The details of the petition as particularly described in the Petitioner's Concept Plan will be provided below.

3. The subject property and its existing development were described by Mr. Jeff Glazer, the principal of Kimco, which owns the Wilde Lake Business Trust, and is shown on Applicant's Exhibit 2. A narrative of the existing conditions on the subject property is well described in the DPZ's Technical Staff Report (pages 2-4) as follows:

The Site is an irregularly-shaped area made up of a number of lots, and it can be viewed as having two distinct parts; an area to the west of Lynx Lane that is north of Cross Fox Lane and southwest of the adjoining fast food restaurant development on Lot 7 (the "West Area"), and an area to the east of Lynx Lane that is north of Cross Fox Lane and to the northwest and west of the Family Life Center building, the courtyard to the south of that building, the Slayton House front courtyard and building, and the Columbia Swim Center complex ("the East Area").

The West Area is improved with three buildings, all one-story (the "West Buildings"). The northernmost is a frame building that is oriented to the southeast, and this building is currently vacant. To the south of this building is a larger brick building that is oriented to face east, and beside its north end is a relatively small brick building, although this smaller building shares a roof connection with the larger building. The larger building is mostly occupied by a natural market, and the other current tenants in these two buildings are a restaurant, a salon, and a shipping store. There are small parking lots between Lynx Lane and the two larger buildings, and also one at the northwest corner of Lynx Lane and Cross Fox Lane.

The East Area has the greatest number of buildings and other structures. At the southeast corner of the Lynx Lane intersection with Twin Rivers Parkway is a one story brick gasoline service station and front canopy (the "Gas Station"). To the southeast of the Gas Station, across a small parking lot, is a bank drive-through structure (the "Drive-Through").

The area to the southwest and south of the Gas Station and the Drive-Through is a trapezoid-shaped parking lot and there is an existing bus shelter next to this. Further to the south is the largest building in the East Area, a brick, former grocery store that is vacant, and there is a two-story "building wing" adjoining to the east with a bank and other tenants (together, the "Central Building").

To the east of the Central Building is a landscaped and hardscaped courtyard which was originally designed to be an attractive, innovative, pedestrian-based social space in the Village Center (the "Courtyard"). The Central Building acts as the western side of this Courtyard.

The other two sides of the Courtyard are two, two-story buildings. On the north side of the Courtyard, the building is oriented to be generally parallel to Twin Rivers Road, which makes it angled to the other Courtyard buildings (the "Courtyard Building B", as designated on the concept plan). The retail space with entrances on the Courtyard is occupied by restaurants and a martial arts studio. On the opposite side of Courtyard Building B is a front parking lot. There are various offices in the building, and also a popular delicatessen and bagel establishment.

To the south of the Courtyard, the building is oriented at a right-angle to the Central Building, and the existing tenants fronting on the Courtyard include a wine and liquor store and, at the east end, a Howard County Police "satellite" station (the "Courtyard Building A", as designated on the plan).

The remainder of the Site is predominantly a parking lot, made up of rectangular areas to the west, southwest, and south of the Central Building and Courtyard Building A. The Site parking to the south of Courtyard Building A only extends slightly past the Slayton House site. Some of the existing parking area to the west of the Columbia Swim Center is not part of the Site.

4. Mr. Glazer testified that after Giant Food, the center's anchor, vacated the subject property, Kimco has struggled to re-tenant the vacant Central Building. Especially with the recent opening of Wegmans, Mr. Glazer indicated that a grocery store was not a realistic option for an anchor store, especially given the fact that David's Natural Market is and will continue to be also a tenant at Petitioner's VCR.

5. Mr. Glazer testified that Kimco initially proposed a larger area for the Wilde Lake Village Center ("WLVC") boundaries but that after going through the Village Center Community Planning Process mandated by Section 125.J.2. of the Howard County Zoning Regulations ("HCZR"), it was convinced that the boundaries as proposed by the community defining a smaller area for the proposed WLVC was acceptable. Mr. Glazer indicated that the proposed boundaries of the WLVC have been agreed to by the Petitioner, the Wilde Lake Village Board and DPZ. The WLVC boundary, which all parties agreed is reasonable, is as follows:

- a. The original Wilde Lake Interfaith Center properties;

- b. The Wilde Lake High School and the Wilde Lake Middle School and all public school properties;
- c. The Columbia Association properties [Slayton House, the Swim Center, the Tennis Courts and the Family Life Center building] including the open space on the east side of Trumpeter Road;
- d. All existing retail and commercial properties including Kimco and KFC;
- e. The Wilde Lake Village Board proposes that the following roads: Twin Rivers Road, Trumpeter Road, Lynx Lane up to the Cross Fox property line, and Cross Fox Lane collectively comprise the Boundaries of the Wilde Lake Village Center.

6. Mr. Glazer testified as to the proposed redevelopment of the subject property as shown on Applicant's Exhibit 3, the proposed redevelopment plan and Exhibit 9, the phasing site plan. Once again, DPZ's narrative of the proposed redevelopment in the Technical Staff Report (pages 4-5) is a good summary of the proposed redevelopment:

The demolition of the West Buildings, the Gas Station, the Drive-Through, and the Central Building, with the Courtyard Building A and Courtyard Building B to remain. The Courtyard also remains.

The reconstruction and/or removal of the existing parking lots and the creation of a multi-surfaced new parking lot and drive-aisle system, which would include anew reasonably direct north-south driveway connection between Twin Rivers Road and Cross Fox Lane, and new surfacing for a portion of Lynx Lane (the "New Parking/Circulation Design").

The construction of a new two-story retail and office building in the northern portion of the West Area (the "Market Building", as designated on the building elevations).

The construction of a new, one-story retail building with approximately 13,225square feet of floor area in the northern portion of the East Area, oriented to the southwest towards the new parking lot (the "Retail Building"). There is currently no known building elevation for the Retail Building.

The construction of two new five-story residential apartment buildings and a six level parking garage, with one apartment building to be located in the southern portion of the West Area ("Residential Building A"), and with the other apartment building and the parking garage to be located across Lynx Lane in the

southern portion of the East Area ("Residential Building B"). These two buildings would be joined by a partial three-floor connection above Lynx Lane for the third, fourth, and fifth floors.

The construction of a new landscaped and hardscaped area to the west of the existing Courtyard up to the east side of a new main driveway, as an extension of the Courtyard. Within this area, a small one-story retail building with approximately 1,300 square feet is also proposed.

Throughout the Site, the creation and placement of new landscaped areas, planters, sidewalks, other pedestrian improvements, bicycle racks, and various other relatively minor site improvements.

Mr. Glazer testified that there was a lot of discussion with the community as to the redevelopment plans, particularly the proposal to open up the Courtyard after the demolition of the Central Building. Mr. Glazer indicated that he felt this opening up of the Courtyard and its enlargement by 25% is crucial because today's shoppers want to be able to see what is available in a retail center, that visibility is very important in today's retail market. He added that the proposed curving of the entrance road further enhances this visibility.

Mr. Glazer indicated the first phase of the proposed redevelopment was the demolition of the West Buildings so that David's Natural Market could be re-located in a new facility at that location, with a two-story building, an outside eating area and offices above the store. Mr. Glazer indicated that the bank would be located at the end of David's with a drive-thru lane. He testified that after the old David's site was razed, that the residential part of the proposal, including the "donut" parking structure could be constructed in the southwest corner of the subject property as part of the second phase of the development and that both the apartment buildings and the parking structure would have a five-story height limit. Mr. Glazer noted that the residential development was tied together by the overhead bridge shown on the redevelopment plans. Mr. Glazer noted that the existing 95,000 square feet of office and retail in the existing WLVC would be reduced by approximately 10,000 square feet. Mr. Glazer noted that all of the proposed

redevelopment had been approved by the WLVB's Architectural Review Committee ("ARC") except for the proposed drug store, the plans for which have not been submitted for ARC approval. The redevelopment plan also proposes a restaurant use on the parcel next to the proposed residential development, hopefully to serve the dining needs of the students at Howard Community College.

Mr. Glazer testified that the last phase of the redevelopment would involve the razing of the old gas station and the replacement of it with a drug store. He also indicated that the Courtyard Buildings A and B would be renovated and upgraded. Mr. Glazer testified that Applicant's Exhibits 5 and 6 provided representations of the likely appearance of the completed redevelopment, from the east and from the north views, respectively. Mr. Glazer testified that the Petitioner is negotiating relocation plans with all the existing businesses in the VCR, and that all of the existing businesses would have such plans. The phasing plan information presented by Mr. Glazer was in response to the comments made by the WLVB, DPZ and the Planning Board as to the need for more specificity as to the phasing of the construction plans. Applicant's Exhibit 7 showed the proposed building elevations of the redevelopment. As to the phasing plan, Mr. Glazer testified that it was anticipated that all approvals could be received by the end of 2012 or the beginning of 2013, that they would break ground in the spring of 2013, and that the development process would take 1-2 years.

7. Mr. Glazer also testified that there was a need for better sign visibility since the original development of the subject property was approved but that the proposed signage would be sensitive in keeping with the Design Guidelines, as shown on Applicant's Exhibit 8. Mr. Glazer acknowledged that it would be required to comply with the Howard County Sign Code if its requirements were more restrictive than the proposed sign requirements of the Design

Guidelines. Mr. Glazer also testified that any signage within the subject property would require the approval of the ARC.

8. As to the environmental issues of the proposed development, Mr. Glazer testified that a significant amount of landscaping would be added as part of the proposed redevelopment, that cars would be parked on pervious pavers, that storm water management would be managed on-site and that the proposed redevelopment would be a LEED-certified development.

9. While Mr. Glazer testified that he could not commit with total certainty as to the identity of some of the tenants for the revamped VCR, despite the requests of the WLVB for a merchandising plan, he indicated the retention of existing tenants was a priority and that service business for local residents and more options for food stores were also being targeted. As far as offices were concerned, he testified that medical and legal offices are the most likely tenants to locate in the VCR.

10. Mr. Glazer testified that the apartments would be rentals designed for empty nesters and young professionals and that family-oriented housing was not being targeted in terms of the design of the rental units. He also testified that there would be a mix of one, two and three bedroom units in the apartments, with the exact numbers of each type of unit dependent upon market interest, and that this uncertainty was the reason for the range of units (220-250) mentioned in the various petition documents. Mr. Glazer testified that the maximum number of apartment units to be developed would be 250 units. Mr. Glazer testified that there would be mainly two bedroom units followed by one bedroom units and a few three bedroom units. He further indicated that the average square footage of the units would be about 900 square feet and that the total square footage of all the apartment units would be 275,000 square feet.

In response to the WLVB's Community Response Statement request for more ground floor retail in the residential units, Mr. Glazer indicated that the Petitioner had proposed retail attached to the residential building containing the proposed parking structure but that first floor retail with residential is problematic market-wise, and that it causes various practical problems including the venting needed for restaurant uses, for example.

11. Mr. Glazer testified that the Village Center Community Review Process and the Pre-Submission Community Meeting Process was a long and involved process but that it, overall, produced a better plan. As provided in Section 125.J.3.a. of the HCZR, the Petitioner submitted its initial Concept Plan and Design Guidelines for the VCR to the DAP and the community after the first pre-submission community meeting and before the second pre-submission community meeting. The DAP provided its October 27, 2010 recommendations to the Planning Board and Zoning Board for their consideration. The Petitioner, through Mr. Glazer's December 10, 2010 letter to Marsha McLaughlin, DPZ Director, responded positively to all of the DAP's recommendations except for the recommendation to move food service and food stores closer to the Courtyard retailers, based on Petitioner's explanations that these changes would run counter to the market needs of retail tenants for visibility, easy access accessible parking, and that the DAP's concerns could be adequately addressed through design adjustments. The Petitioner's final plan submitted to the Board reflects many of the changes recommended by the DAP.

12. The WLVB, pursuant to Section 125.J.3.b(1) of the HCZR, provided the following Community Response Statement identifying the impacts of the proposed Major Village Center Redevelopment on the nature and purpose of the Village Center and its relation to the

surrounding community in response to the Petitioner's Concept Plan and Design Guidelines as it relates to whether the plan complies with the criteria of Section 125.J.4.a.(8). of the HCZR:

§ 125.J.4.a.(8)(a): The Village Center Redevelopment will foster orderly growth and promote the purposes of the Village Center in accordance with the planned character of the NT District:

In the general case, the Wilde Lake Village Board believes that the Wilde Lake Village Center redevelopment will foster orderly growth and promote the purposes of the Village Center in accordance with the planned character of the NT District. While the property owner has provided a phasing plan at other public meetings, there are no details regarding the redevelopment phasing in this petitions and it is this aspect of orderly growth that is of great concern to the community. Since residential parcels in the remainder of the Village are fully built out and occupied and require continued commercial services, the phasing must take into account the continued use of Wilde Lake Village Center as a functioning commercial Village Center during construction. Furthermore, other adjacent properties will continue in operation and issues such as construction traffic, road and pathway closures must be carefully planned.

§125.J4.a.(8)(b): The amount of commercial business floor area contained in the Village Center Redevelopment is appropriate to provide retail and commercial service to the Village as a location for convenient, diverse commercial business uses which serve the local neighborhoods of the Village and surrounding local community;

While the amount of commercial business floor area is appropriate, it may not be ideal given the reduction in square footage and increase in residents. As proposed, the Wilde Lake Village Center contains approximately 87,000 square feet of commercial space. In total, this is a reduction in the existing commercial space within the Village Center. The proposed commercial space is delineated in terms of office (26,700 square feet) and retail (61,600 square feet) uses, with retail occupying the ground floor of each commercial building and a 5,000 square foot retail establishment integrated into the proposed residential building. Office space is provided on the second level of the preserved retail buildings and on the second level of the proposed commercial structure at the west end of the Village Center.

The Wilde Lake Village Board has consulted with a variety of retail leasing and retail economics professionals and all have stated the amount of proposed retail reflects market conditions. Lastly, the Wilde Lake Village Board has collected data regarding other Village Centers within Columbia, Maryland. Table 1 below lists seven of the other eight Village Centers in Columbia and their retail gross square footage. Given that each of these Village Centers contains a large grocery store, the proposed retail square footage for the Wilde Lake Village Center is in line with the offerings at other Columbia Village Centers.

River Hill	105,907
Kings	
Contrivance	119,117
Hickory Ridge	100,803
Harper's Choice	108,489
Dorseys Search	86,456
Long Reach	105,000
Oakland Mills	58,224

The Wilde Lake Village Board has solicited input from the community and has found no direct opposition to the proposed amount of retail space; however, the reduction may not be ideal given the increase in the number of residential units by virtue of this redevelopment. The community has expressed a desire for a wide range of uses, from grocery stores to delis, drug stores to specialty shops, restaurants and pubs.

§ 125.J.4.A.a.(8)(c): The Village Center Redevelopment will foster the purpose of a Village Center as a community focal point providing good opportunities for community interaction and communication;

The Wilde Lake Village Board agrees that the redevelopment will foster the purpose of a Village Center and provide opportunities for community interaction. With respect to the purpose of the Village Center, it is important to recognize that the Wilde Lake Village Center is the original Columbia Village Center. Today it exists as both the prototype and operating model. Taken in this context, a brief description of the current opportunities for community interaction and communication is appropriate.

Today, the Wilde Lake Village Center exists as a collection of retail space lining the perimeter of a Center courtyard. This courtyard contains a central fountain, landscaping, benches and some seasonal outdoor seating. Mature trees provide shade during the warmer months. Its location is remote from the parking lot on the property and provides isolation from the externalities related to automobiles, trucks, and transit buses. In terms of communication, a single community kiosk exists within the courtyard and allows for posting of community notices. Signage throughout the Center is minimal and requires time and exploration by the casual patron to determine what services and retail opportunities exist within the Center.

Other than this central courtyard, there is little else on the property to engender community interaction. The north side of the property features a drive-thru bank kiosk and a gas station along Twin Rivers Road. These commercial entities, although important features for a retail Center, speak to the isolation within automobiles and present little opportunity for community interaction. The strip retail Center west of Lynx Lane provides a few benches for seating, but is not well connected to the rest of the Village Center.

On the whole, the proposed Village Center redevelopment increases opportunities for community interaction and communication; however, the approach taken to achieve this is a departure from the original Center design. To its credit, the property owner has recognized strong community desire to preserve the original Village Center courtyard. The courtyard proposed is in fact larger

than the courtyard that exists today. This enlargement is possible by the removal of a retail building along the western perimeter of the courtyard. In addition to a larger courtyard area, the proposed open side courtyard also allows community members to see into the courtyard as well residents in the courtyard to see out into the remainder of the Village Center. This aspect does increase the ability for members of the community to interact to a greater capacity than over what exists today. However, it should be noted that by opening the courtyard to the balance of the Village Center, the noise levels from traffic may at times be increased.

With respect to the balance of the proposed Village Center redevelopment, the property owner has expressed interest and stated at previous public meetings the desire to place an outdoor seating area and street furniture on the north side of the residential building. This will effectively extend the opportunities for public interactions along a second side of the Village Center. This pattern is also repeated in front of the food store building located at the west end of the Village Center.

Taken in whole, the amount of area dedicated to allowing the community to congregate, interact and socialize exceeds that of the current Village Center design. In addition to volume, the proposed locations of the amenities allow for an archipelago of interaction throughout the Center. This is viewed as an improvement over the original remote, intimate courtyard.

§ 125.J.4.a.(8)(d): The location and the relative proportions of the permitted uses for commercial businesses, dwellings, and open space uses, and the project design will enhance the existing development surrounding the Village Center Redevelopment.

The location and relative proportions associated with the redevelopment will enhance the existing development. See above discussion under c). The existing development both within the Village Center and adjacent to it will be enhanced by improvements to pathways and signage to adjacent locations such as Slayton House, the tennis and swim Centers and items of interest that draw people on pathways among the various uses. It will be mutually beneficial to the developer and to other nearby hubs such as Howard Community College, Howard County General Hospital and Town Center to have improved interconnecting pathways with destination signs.

The location for the permitted uses (commercial, retail, residential and open space) in the Village Center enhances the existing development surrounding the Village Center. Since the Village Center still functions as the activity Center where residents can now live, and still shop and play, this serves as a one-stop destination for local residents. Furthermore, the Village Center still serves its current function and in the same location. This provides residents the opportunity to walk to their necessities using the sidewalks or pathways, or take public transit to this local activity node. This bodes well for Wilde Lake residents who still have this asset in their community.

The proportion of uses will enhance the surrounding community. While the total number of square feet of retail space has actually decreased from its current total as indicated in the previous section, the Wilde Lake Village Board accepts this number because economic professionals have informed the Board that this is an appropriate number.

Residential units do not currently exist in the Wilde Lake Village Center but are a welcome addition to the proposed redevelopment plan. This provides a greater mix of land-uses and increases vibrancy in the Village Center as more residents will likely patronize the local businesses and utilize the open space because of their prime location. While the community was hesitant about the number of units expected in the Village Center, the current proposal by Kimco of 220 units is a good medium between what residents wanted (200 units maximum) and what Kimco wanted (250 units). The two residential buildings will be five stories high, which are the largest in the Village Center. The closest buildings will be two stories high in the Village Center, and three stories outside of the Village Center in the adjacent Cross Fox Condominiums.

While the difference between the new residential buildings and these buildings are between two and three stories, this is not out of context and preserves the human scale environment. The Wilde Lake Village Board agrees however the new residential buildings should be broken up with various architectural details and have building setback of at least 12 feet as stated in the covenant process.

The proposed redevelopment plan has preserved the passive open space located in the courtyard, and has increased this passive open space throughout the Village Center. The courtyard still serves as the focal open space point in the Village Center where residents can interact. Additional passive open space has been added across the parking lot from the existing retail to the new food store/office to accommodate a bioswale. This is a significant upgrade to the Village Center by reducing runoff and ultimately improving the environment for Wilde Lake and Columbia as whole.

While Kimco did an excellent job of increasing open space in the Village Center, more could be added, especially in the residential building on the west of the site. This u-shape building could also have a courtyard or passive green space for the residents of this building. Passive open space has also been incorporated in the mixed-use residential and retail building on the southern end of the site. The first floor retail also has passive open space with a large area for a street side cafe. This hardscape open space is valuable in increasing pedestrian interaction and creating a more vibrant environment in the Village Center.

§125.J.4.a.(8)(e): The Village Center Redevelopment provides accessible useable landscaped areas such as courtyards, plazas or squares;

The Wilde Lake Village Board agrees the redevelopment will provide access to useable landscaped areas. As proposed, the Wilde Lake Village Board can identify three accessible useable landscape areas: the original Village Center Courtyard, the plaza area north of the residential building, and the seating area in front of the proposed food store. See comments above about better connecting the areas.

§ 125.J.4.a.(8)(f): The Village Center Redevelopment is compliant with all applicable environmental policies and requirements, and provides new environmental improvements to the redevelopment area through the use of methods such as, but not limited to, green building standards, water conservation, natural drainage systems, the planting of native vegetation, the removal of existing invasive plants, the improvement of storm water deficiencies, and following low impact development practices;

The Wilde Lake Village Board welcomes the incorporation of elements such as bioswales, pervious pavement, and the use of native species into the proposed design. In the past, Kimco has stated its intention for LEED certification for new buildings on the property. The Wilde Lake Village Board strongly encourages this language or meeting comparable green building criteria be incorporated into the Decision and Order at the end of this process.

Transportation is also a major factor in sustainability and this requires keeping enough retail that serves the neighborhood with less car travel. See comments elsewhere about incorporating more retail space in the ground floor of the residential buildings and about improved bicycle and pedestrian transportation.

§ 125.J.4.a.(8)(g): The Village Center Redevelopment fosters pedestrian and bicycle access;

The Village Center redevelopment incorporates several positive pedestrian features. By removing the existing supermarket building and one side of the retail surrounding the courtyard, sightlines are opened to the pedestrian, resulting in an increase in way finding and perceived safety. The proposal includes the extensive use of covered walkways to protect pedestrians from the summer sun and precipitation. The central promenade, adjacent to the bioswale, provides a stronger connection between the eastern and western elements of the property than currently exists. The use of specialized road pavers and an elevated, "table" traffic calming element in front of both the food store and the courtyard is a welcome addition, as it will slow traffic in the vicinity of pedestrians.

With respect to bicycle access, the site is generally accessible to bicycle traffic and the redevelopment does not discourage bicycle use. The redevelopment does include more bicycle racks than exist today and that is viewed as a plus.

The Wilde Lake Village Board requests that the Order require the petitioner to prepare a Pedestrian bicycle plan that addresses pedestrian and bicycle transportation both within and through the Village Center and to nearby major hubs including Howard Community College, Howard County General Hospital and Town Center. We also ask that this plan is coordinated with the Connecting Columbia plan under development by the Columbia Association and the prospective bicycle master plan by Howard County.

Both Lynx Lane and the new roadway adjacent to the Village Courtyard should have full sized bicycle lanes that eventually connect to a lane on Twin Rivers Road, Cross Fox Lane and connectors to Howard Community College, Town Center and the rest of Columbia Association's pathway system.

§ 125.J.4.a.(8)(h): Public transit opportunities are appropriately incorporated into the Village Center Redevelopment;

At the time of this writing, the Wilde Lake Village Board is aware of at least one bus stop that will be incorporated into the proposed redevelopment and therefore has public transit opportunities. This is consistent with the current number of bus stops available in the Wilde Lake Village Center today. The Wilde Lake Village Board has two concerns with respect to transit opportunities within the redeveloped Village Center: First, the structural details of the bus stop are unclear. The Wilde Lake Village Board requires at a minimum a bus shelter that will protect transit riders from wind, summer sun, and precipitation. Moreover, the Board would like to see the bus stop become the standard for quality bus shelter design.

Secondly, even the best bus stop is only as good as the types of services that utilize it. The Wilde Lake Village Board seeks to determine, in partnership with the property owner and transit providers, an array of services to utilize the bus stop. In addition to the Howard Transit System, the Wilde Lake Village Board would like to see regular service to this bus stop from Howard Community College via their Dragon Wagon and entities in downtown Columbia via the proposed Downtown Circulator service. The Wilde Lake Village Board understands that some of this may be out of the scope of the Howard County Zoning process, but feels it is important to start the discussion here.

§ 125.J.4.a.(8)(i): The Village Center Redevelopment is compatible with the surrounding Community;

The Wilde Lake Village Board believes the redevelopment is generally compatible with the surrounding community. The Wilde Lake Village Board understands "the surrounding community" to mean the area outside of the Village Center boundaries, since 125.J.4.a. (8)(b) makes a distinction between "neighborhoods of the Village" and "surrounding local community." Some of the areas surrounding Wilde Lake Village are Downtown Columbia, the Village of Harper's Choice, Village of Hickory Ridge; and specific major destinations such as the Columbia Mall, Howard Community College and Howard County General Hospital.

The proposed redevelopment is generally compatible with the surrounding community if it incorporates the connectivity discussed above. The Village Center must continue to serve as a neighborhood retail and shopping hub. The types of retail and development in Wilde Lake must fill a niche competitive with the development in Downtown Columbia.

The addition of residential units in the Village Center is an essential component to increasing vibrancy in the Village Center. Keeping and expanding various retail, restaurant and recreational facilities on-site in a pedestrian-friendly environment will mitigate the need to use automobiles as residents can easily walk to daily necessities. For these reasons, the Wilde Lake Village Board would like to see more of the residential buildings incorporate ground level retail.

§ 125.J.4.a.(8)(j): The Village Center will continue to meet the definition of a New Town Village Center.

The Wilde Lake Village Center does meet the definition of a New Town Village Center. For the purpose of review, the Howard County Zoning Regulations (§ 103.A.201) define a New Town Village Center as follows:

Village Center, New Town: A Mixed-Use Development in the New Town District which is in a location designated on the New Town Preliminary Development Plan as a "Village Center", which is designed to be a community focal point and gathering place for the surrounding Village neighborhoods by including the following items:

- a. An outdoor, public, Village green, plaza or square, which has both hardscape and softscape elements. This public space shall be designed to function as an accessible, primarily pedestrian-oriented promenade connecting the various Village Center buildings and shall include public seating features;
- b. Stores, shops, offices or other commercial uses which provide opportunities to fulfill the day-to-day needs of the Village residents, such as food stores, specialty stores, service agencies, financial institutions, personal services, medical services, and restaurants;
- c. Space for community uses and/or institutional uses; and
- d. Residential uses, to the extent appropriate to support and enhance, but not overwhelm, other uses in the Village Center. The public space is not primarily a pedestrian-oriented promenade and therefore does not meet item a above. There is insufficient information in the petition to evaluate item b. and whether day-to-day needs of residents will be served. The Wilde Lake Village Board believes that a merchandising plan and other information describing the intention of the developer should be provided. Items c. and d. appear to be met.

The WLVB, pursuant to Section 125.J.3.b(2) of the HCZR, provided the following additional comments in terms of any other specific approval criteria to be considered by the Board in its decision on the petition:

While the Wilde Lake Village Board understands that negotiations with individual prospective tenants may be confidential, it sees no reason that a general merchandising plan cannot be shared with the public and the Howard County Department of Planning and Zoning. This would give an indication of the developer's intentions that could provide assurance to the community those basic needs will be served. Will there be a theme to the retail merchandising that will distinguish Wilde Lake Village Center? How will the Village Center retail retain and create its niche? The destination merchants in the current Village Center are

not national chains and this is a large part of what makes these merchants competitive in the market. How will this be accommodated and encouraged in the future?

In accordance with the Howard County Zoning Regulations, §125.J.3.b.(3), the Wilde Lake Village Board endeavors to provide a response on the Wilde Lake Village Center redevelopment.

§ 125.J.3.b.(3)(a): The boundary of the Village Center proposed by the petitioner.

The Wilde Lake Village Board accepts Kimco's response to this statement.

§ 125.J.3.b.(3)(b): Planning and Design Concepts, including but not limited to how it fits into the surrounding area.

Proposed planning and design concepts do fit into the surround area. Connectivity within the Wilde Lake Village Center is improved by creating a more direct route from the non-signalized intersection to Cross Fox Lane. The current road does not go straight to Cross Fox Lane, but ends at the parking lot.

Mixed-use, density and diversity is achieved in the proposed redevelopment plan by incorporated new five story apartment residential units into the Village Center.

Green transportation is also incorporated by having a bus stop serviced by Howard Transit. This allows residents to take public transportation to get to multiple locations throughout Howard County. The Village Center is also connected to Columbia pathways, which should be further improved as described in other sections to allow residents and visitors to easily walk, run or bike to the Village Center and other hubs of activity without crossing a major thoroughfare such as Twin Rivers Road.

Ultimately, the Wilde Lake Village Board believes the Village Center redevelopment with the enhancements suggested will improve the quality of life for all Wilde Lake residents as it will once again be a lively destination.

13. Ms. Christine Logan and Mr. Elliott Simons both testified in favor of the petition, as shown on Applicant's Exhibits 10A and 10B respectively. In addition, Ms. Joyce Ardo, Chair of the WLVB, presented the testimony of the Board in support of the petition. Ms. Ardo outlined only two areas for which the Board wanted the Zoning Board to condition approval: 1) that the Petitioner prepare a pedestrian and bicycle plan within and through the Village Center to nearby hubs, and that roadways within the Village Center should have bicycle lanes connecting major roadways to the Columbia Association pathway system; and 2) that the Board require Petitioner

to develop its buildings according to green building criteria. Mr. Lawrence Schuen, who testified as a supporter, echoed the same concerns outlined by Ms. Ardo.

Mr. Glazer testified that the Petitioner was willing to work in cooperation with the Board of Education and Howard County in the development of a pedestrian/bicycle pathway system in the larger Wilde Lake Village Center but that he could not unilaterally accomplish this goal since much of the land in the proposed Wilde Lake Village Center is not owned or controlled by the Petitioner.

14. Mr. Glazer testified that the Petitioner was working with local transit providers and Howard County's Office of Transportation as to whether there would be one or two bus stops in the VCR and as to the location of the stop or stops. Mr. Glazer testified that the Petitioner was fine with either one or two bus stops being located within the VCR.

15. Petitioner's architect, Mr. Bryce Turner, referring to Applicant's Exhibits 6 and 7, testified that the massing and scale, design and materials of the proposed apartment buildings were similar to and in keeping with the older buildings but that the new buildings were also distinguished from the older retail buildings left on site, although those buildings would be renovated as well. Mr. Turner noted that there were undulations designed into the facades of the residential buildings to help create a division in character.

As to the proposed opening up of the Courtyard, Mr. Turner testified that in today's retail market, customers have high expectations of retail space, and that if they can't drive through a retail area and see the stores, there won't be as much interest in shopping there. He also added that the opening up of the Courtyard would facilitate better bicycle access.

Mr. Henry Alinger, Petitioner's land planner, testified as to how the Wilde Lake Design Criteria addressed the criteria for VCR redevelopment. He testified that all of the DAP's

concerns raised in its report had been appropriately addressed by the Petitioner. Mr. Alinger testified that scale of the plan was walkable and that the connection of both ends of the VCR was achieved by the opening up of the Courtyard and the proposed pedestrian system and gathering areas. Mr. Alinger testified that the covered walkways, the incorporation of the bioswales into the pedestrian system and the linking of the Courtyard with the overall activities of the VCR were significant achievements of Petitioner's proposed plan.

16. Mr. Glazer and Mr. Adam Volanth, P.E., Petitioner's engineer, testified on parking and other minima and maxima issues to be established for the proposed Preliminary Development Plan as contemplated for any VCR pursuant to Section 125.J.5.d(3) of the HCZR . Mr. Volanth testified that the Petitioner's parking calculations are summarized on sheet 10 of 10 on the Concept Plan, that Applicant's Exhibit 18 is a summary of the specific PDP Criteria proposed for change from the existing FDP Criteria (Amended Final Development Plan Phase Two-A-VIII recorded as Plat 3054A 1789-1801), and that Applicant's Exhibit 20 is a summary of a comparison of all existing FDP Criteria versus proposed PDP Criteria for the VCR whether they are proposed for change or not.

As to parking, Mr. Volanth summarized that the total number of parking spaces proposed to be provided, 690 spaces, was based on an Urban Land Institute ("ULI") assumption of 1.25 spaces provided per residential dwelling unit. Mr. Volanth also indicated that the 710 parking spaces calculated as required under the parking requirements as shown on Applicant's Exhibits 18 and 20, 710 spaces, was reduced by 20 spaces to 690 based on the ULI recommendation for reduction attributable to shared uses and reflected the calculations of the maximum weekday hourly demand for parking based on ULI studies as indicated on Sheet 10 of 10 of the Concept

Plan. Mr. Volanth noted that the parking required by the zoning process was supplemented by the total parking spaces assumed to be provided for CA's existing swim facility.

Mr. Volanth noted that the existing FDP does not have parking requirements for residential uses applicable to the area of the VCR since residential uses were not previously permitted for that portion of the FDP but did require only 3 spaces per 1000 square feet of retail, while the PDP proposes 5 spaces per 1000 square feet of retail.

Mr. Volanth testified that the trend in commercial development was to decrease the amount of parking required to be provided, and that excess parking could increase the area of impervious surfaces.

Mr. Glazer testified that the proposed layout on the Concept Plan was based on the amount of parking currently proposed in the Concept Plan, and that any substantial increase in the parking required to be provided would have a significant impact on the project because the plan would have to be re-designed which would cause further delay. Mr. Glazer added that his company wouldn't invest the amount which they have invested in this plan if they thought the parking wouldn't work. He echoed Mr. Volanth's testimony that many counties have modified their parking requirements downward since the lower requirements are more than sufficient for 362 of 365 days of the year, rather than require parking which is 1/3 unused on the overwhelming majority of days out of the year. In addition, Mr. Glazer noted that his retail tenants are more than comfortable with the proposed amount of parking, and they obviously would not want insufficient parking proposed for their prospective customers.

Mr. Glazer also testified that the first floor of the parking structure was open to retail customers of the VCR but that the garage parking would be reserved for residents of the VCR above the first floor of the parking structure. Mr. Glazer testified that they are not planning to

have uses with high parking ratios, such as surgi-centers, as tenants in the VCR. Mr. Glazer testified that the other Village Centers in Columbia had more than sufficient parking with similar amounts of parking provided as is proposed in this petition. Mr. Glazer also testified that there was not much discussion regarding parking as an issue throughout the Village Board review process. Both Ms. Joan Lancos, a former Hickory Ridge Village Board member and Planning Board member and Bill Santos, a former WLVB member and current Planning Board member, testified that they thought the proposed amount of parking by Petitioner was more than sufficient to satisfy the parking needs of the VCR.

17. DPZ, at the request of the Zoning Board, submitted a June 20, 2012 memo, Applicant's Exhibit 19, evaluating Petitioner's proposed parking. Ms. McLaughlin, DPZ Director, indicated that Petitioner's use of local parking ratios, particularly the 1.25 parking spaces/dwelling unit ratio, was recommended by ULI, and that use of these ratios produced the parking as proposed by Petitioner. DPZ indicated that since the mix of possible uses on the VCR was still uncertain, the parking to be generated by those uses could not be determined precisely at this time. DPZ indicated that it "will seek additional information in subsequent planning phases and a detailed parking analysis that will account for variables, including" the mix of uses and "permissible adjustments to account for transit, biking, walking, and inter-project uses that will impact the final number of required spaces."

18. Mr. Glazer testified that the Petitioner had committed to a maximum of 250 apartment units and a maximum of 90,000 square feet of non-residential development as part of the VCR, but he also committed to a minimum of 85,000 square feet of non-residential development in the VCR, as long as it was understood that the minimum requirement would not be enforced until the end of the redevelopment process.

19. Several individuals testified in opposition to certain aspects of the petition. Ms. Maureen Shettle, a Cross Fox Lane resident, despite indicating that she looked forward to the proposed redevelopment, testified that she objected to the height of the proposed 5 story apartment buildings. She also indicated that she objected to seeing the backs of the proposed buildings, that the development would block her sunlight, that the development could cause drainage problems, that she was concerned about VCR customers parking on Cross Fox Lane and that she questioned whether the redevelopment would affect her property values. Ms. Shettle did not provide any basis for her testimony.

Two other witnesses, Mr. Jervis Dorton and Mr. Cyril Paumier, testified that they were in favor of the Petitioner's project except that they were in opposition to the proposed demolition of the building attached to the vacant former Giant Food store building and its replacement with a single retail building. Both Mr. Dorton and Mr. Paumier testified as to their longstanding history with the early development of Columbia, particularly the existing retail development of the subject property and its Courtyard or "village green". Both witnesses testified that the proposed demolition of the building in question would destroy the Courtyard because you need a space enclosed on three sides to be a Courtyard in their opinion. Mr. Dorton submitted exhibits showing a rendering of the site and photographs of the Courtyard. Mr. Paumier submitted a letter signed by Mr. Dorton, Mr. Paumier and Mr. Robert Tennenbaum in opposition to the demolition of the building in question. They indicated that they had met with Kimco several times to try to convince them to not demolish the building in question, and that Kimco considered their request but in the end disagreed with their position. Mr. Paumier testified that he understood Mr. Glazer's visibility concerns as his basis for the proposed demolition but he thought it was more

important to create great places for people. He also testified that not approving the proposed demolition of the building in question would show respect for the memory of Jim Rouse.

Mr. Glazer, in rebuttal, testified that they seriously considered the position of those wanting to maintain the current design of the Courtyard by not demolishing the building in question, but that in the end he just disagreed with them. Mr. Glazer pointed out that they had taken the advice of Mr. Dorton, Mr. Paumier and Mr. Tennenbaum on a number of issues in relation to the proposed plan but that it had to recognize that the market had changed since the days of Jim Rouse, when he had control of all the development in Columbia, and that in today's market developers had to make it as easy and friendly as possible for their retailers and their customers in order to meet their needs.

20. The Department of Planning and Zoning made evaluations and conclusions in its Technical Staff Report based on the criteria in Section 125.J.5.a.(1) through (4) of the HCZR for deciding a proposed VCR petition. The criteria and DPZ's evaluations and conclusions on those criteria are addressed as follows:

- a. **Whether the petition complies with the applicable general guides and standards set forth in Howard County Zoning Regulations Section 125.B.3;**

DPZ, on pages 15-17 of the Technical Staff Report, addressed the extensive list of guides and standards the Zoning Board is required to consider in Section 125.B.3 before it considers a proposed rezoning to the New Town District based on the criteria in subsections(a) through (c) of Section 125.B.3. Since the subject property is already zoned New Town, the Zoning Board finds that many of these guides and standards for New Town rezoning petitions are inapplicable to this petition as noted by DPZ. The Zoning Board finds that DPZ's evaluation of these general guides and standards are reasonable to the extent they could be applicable and adopts them as its

own for their limited applicability. However, as in previous Zoning Board cases applying the standards of Section 125.B.3. to proposed PDP amendments, the Board finds that the applicable guide and standard to be applied in this case is "that the Preliminary Development Plan constitute a general land use plan for the area covered thereby, designed to meet the objectives set forth in these Regulations". Section 125.B.3.c. of the HCZR. The Board finds that Petitioner presented substantial evidence upon which the Board could find, and it does find that the proposed Preliminary Development Plan does in fact constitute a general land use plan for the area covered thereby, designed to meet the objectives set forth in these Regulations, namely the preservation and promotion of the community's health, safety and welfare by the guiding of future growth and development of the County representing the most beneficial and convenient relationships among the residential, non-residential and public areas within the County considering the suitability of each area for such uses under Section 100.A of the HCZR. The specifics of this finding will be addressed in the section of the Board's decision in applying Section 125.J.5.a.(3) as to whether the petition complies with the Major Village Center Redevelopment criteria in Section 125.J.4.a.(8) of the HCZR. However the Board agrees with and adopts DPZ's evaluation of the proposed VCR as it relates to the criteria of Section 125.B.3.c of the HCZR: "The commercial characteristics of the Redevelopment are certainly well suited to the current character of the land. There is no apparent unsuitability to the addition of a residential component in the proposed location, in fact, the residential component would create more of a mixed use character and would likely add to the perception of the Village Center being a distinctive place within the community."

b. Whether the proposed Major Village Center Redevelopment complies with the specific definition for a New Town Village Center;

1. The specific definition of a New Town Village Center in Definitions Section 103A.201:

A Mixed-Use Development in the New Town District which is in a location designated on the New Town Preliminary Development Plan as a "Village Center" which is designed to be a community focal point and gathering place for the surrounding village neighborhoods by including the following items:

- a. **An outdoor, public, village green, plaza or square, which has both hardscape and softscape elements. This public space shall be designed to function as an accessible, primarily pedestrian-oriented promenade connecting the various Village Center buildings and shall include public seating features;**

DPZ found:

The maintenance and enhancement of the Courtyard is in compliance with this part of the definition. While it is acknowledged that the Courtyard features mentioned do not extend west to any great degree, and that the rest of the Redevelopment does not include all these features, in comparison to the current development the rest of the Redevelopment is a significant improvement, because it will include similar hardscape elements throughout, which will better tie together all elements of the Site.

- b. **Stores, shops, offices or other commercial uses which provide opportunities to fulfill the day-to-day needs of the village residents, such as food stores, specialty stores, service agencies, financial institutions, personal services, medical services, and restaurants;**

DPZ found:

The Redevelopment will still provide such opportunities and will likely enable the Village Center to be much more successful. Precise types of commercial uses cannot be mandated because these are determined by the market, and in commercial centers, uses can come and go over time.

However, all neighborhood commercial centers tend to have similar typical uses such as cleaners, salons and/or barber shops, wine and liquor stores, convenience stores and small markets, and restaurants. These types of uses are likely to continue in the Redevelopment.

If the Retail Building does indeed become a pharmacy as noted, modern pharmacies or drug stores have a greatly expanded offering of products, including offering many more grocery items. Granted these are exceedingly limited in comparison to a modern grocery store with tens of thousands of square feet, but from a certain perspective even these limited grocery items can be convenient to have available for purchase close-by.

c. Space for community uses and/or institutional uses;

DPZ found:

The Village Center will continue to have space for community uses and/or institutional uses.

d. Residential uses, to the extent appropriate to support and enhance, but not overwhelm, other uses in the Village Center.

DPZ found:

As noted above, the precise number of residential units must still be confirmed, but the Department believes that the general range of 200 to 250 dwelling units is reasonable to support, and would not overwhelm, the Village Center. The Department has no specific recommendation on a precise number, but it does note that a compromise on this issue is ultimately in the best interest of all parties.

c. Whether the petition complies with the Major Village Center Redevelopment criteria in Section 125.J.4.a.(8);

1. Those criteria are:

- (a) **The Village Center Redevelopment will foster orderly growth and promote the purposes of the Village Center in accordance with the planned character of the NT District;**

DPZ found:

. . . That the Redevelopment . . . allows for change and growth of the Village Center and maintains its function as a community focal point, and this is accomplished through an orderly, carefully considered, planned process.

- (b) The amount of commercial business floor area contained in the Village Center Redevelopment is appropriate to provide retail and commercial service to the village as a location for convenient, diverse commercial business uses which serve the local neighborhoods of the village and surrounding local community;**

DPZ found:

. . .the amount of commercial space appears to still provide adequate room for "Stores, shops, offices or other commercial uses which provide opportunities to fulfill the day-to-day needs of the village residents..."

- (c) The Village Center Redevelopment will foster the purpose of a Village Center as a community focal point providing good opportunities for community interaction and communication;**

DPZ found:

Much of the current focal point as provided by the Courtyard area does not change and is actually improved by the Redevelopment. Having a more successful, and therefore a more active Village Center also can improve community interaction and communication. In fact, this very process to evaluate and approve the Redevelopment has led to such improvements in communication because the community is very involved in it, as is the Petitioner, because it is also a partner in the community.

- (d) The location and the relative proportions of the permitted uses for commercial businesses, dwellings, and open space uses, and the project design will enhance the existing development surrounding the Village Center Redevelopment;**

DPZ found:

As noted above, certain elements of the Redevelopment do not change to any great degree, such as the Courtyard area and its buildings, so the lack of any significant change to these elements could be interpreted as maintaining an enhancement. The new elements of the Redevelopment, based on the representations on the building elevations, appear to be attractive and well designed, and merely by being "new" features can be considered an enhancement over some of the existing development features. The location and the relative proportions of the uses in the Redevelopment do appear to be appropriate and are not excessive within the Village Center and as part of the greater community.

- (e) **The Village Center Redevelopment provides accessible useable landscaped areas such as courtyards, plazas or squares;**

DPZ found:

The Redevelopment complies with this criteria.

- (f) **The Village Center Redevelopment is compliant with all applicable environmental policies and requirements, and provides new environmental improvements to the redevelopment area through the use of methods such as, but not limited to, green building standards, water conservation, natural drainage systems, the planting of native vegetation, the removal of existing invasive plants, the improvement of stormwater deficiencies, and following low impact development practices;**

DPZ found:

DPZ. . . concurs with the statement in the Executive Summary of the Wilde Lake Village Board that the Redevelopment "...is compliant with all environmental policies and requirements and welcomes the incorporation of elements such as bioswales, pervious pavement, and the use of native species into the proposed design.

- (g) **The Village Center Redevelopment fosters pedestrian and bicycle access;**

DPZ found:

The Redevelopment should significantly improve the pedestrian experience in the Village Center. Bicycle access to the Site is maintained, and more bicycle racks are available, however, the proposed rack at the northwest corner of the Retail Building is not in an ideal, easily viewed location as is often recommended for bicycle racks.

- (h) **Public transit opportunities are appropriately incorporated into the Village Center Redevelopment;**

DPZ found:

As noted above, the precise details on this issue will require an evaluation by transit officials, and this initial evaluation is currently underway, but there is no information to date to reach a finding on this criteria.

(i) The Village Center Redevelopment is compatible with the surrounding community; and

DPZ found:

The Redevelopment appears to be compatible. . .

(j) The Village Center will continue to meet the definition of a New Town Village Center.

See Finding 20.b. above.

d. Regardless of the Zoning Board's findings on Subsections 5.a. (1) through (3) above, whether the petitioner's property is within the appropriate boundaries of the New Town Village Center.

DPZ found:

As it is proper that the principal responsibility for recommending a Village Center boundary should rest with a Village Board, the Department of Planning and Zoning concurs with this boundary definition and recommends that it be adopted by the Zoning Board.

21. The Planning Board recommended approval of the petition "provided that the Redevelopment proposal takes appropriate consideration of improving neighborhood connectivity, provides a phasing plan for the Redevelopment, addresses the issues of mass, scale and setbacks of the residential buildings, and incorporates a transit stop." The Board finds that all of the Planning Board's concerns were addressed in Petitioner's presentation to the Zoning Board.

22. The criteria for deciding whether approval of a proposed amendment to an already approved PDP and Criteria for a VCR is justified are contained in Section 125.J.5. of the HCZR. It is the petition's compliance with these criteria or standards for approval which will be applied as provided below in deciding the petition. The Board makes its findings below based on the findings of DPZ, as noted in Board Finding 20 above, the findings of WLVB, as noted in Board Finding 12 above, and the testimony of and evidence presented by Mr. Glazer and the

Petitioner's various expert witnesses, which the Board's accepts as convincing and persuasive, as specifically noted above and below, and the Board adopts the findings of DPZ and the WLVB as its own except as otherwise noted in this decision. Based on these findings, the Board finds that the Petitioner provided substantial evidence for the Board to determine, and the Board does determine that the Petitioner has met all of these standards of approval, thereby justifying the grant of PDP amendment, and makes the specific findings of fact on these criteria as follows:

a. The Zoning Board shall make a decision on the Village Center boundaries.

Section 125.J.5.b of the HCZR requires that the Zoning Board determine the boundaries of the proposed Village Center, in this case the Wilde Lake Village Center. The Zoning Board finds that the Petitioner, DPZ and the WLVB all agreed that the boundaries of the Wilde Lake Village Center should be the area described in the Finding 5(a) through (e) above, and the Board finds that these are the appropriate boundaries of the Wilde Lake Village Center based on Finding 5(a) through(e) above, the statements of the WLVB in its Community Response Statement on the WLVC boundaries as noted in Board Finding 12 above, and the findings of DPZ as noted in Board Finding 20. d. above. The Board further notes that, pursuant to Section 125.J.5.a(4), the subject property is within the boundaries of the proposed WLVC.

b. Whether the petition complies with the applicable general guides and standards set forth in Howard County Zoning Regulations Section 125.B.3.

Based on its Finding 20.a., the Board finds that the petition complies with the applicable guides and standards of Section 125.B.3 of the HCZR, and consequently finds that the proposed VCR as shown on the Preliminary Development Plan constitutes a general land use plan for the area covered thereby, designed to meet the objectives set forth in these Regulations.

c. Whether the proposed Major Village Center Redevelopment complies with the specific definition for a New Town Village Center.

Based on DPZ's findings on these criteria as noted in Finding 20.b. above, and the WLVB's findings on these criteria as noted in Board Finding 12 above, and the substantial evidence presented by Petitioner as to the design details of the Courtyard improvements, including the pedestrian areas, seating and other proposed improvements, as noted in Finding 15 above, the Board finds that this definition was substantially met by the Petitioner's VCR, and the Board finds that the Major Village Center Redevelopment complies with the specific definition for a New Town Village Center as provided in Section 103A.201. of the Howard County Zoning Regulations. The Board makes this finding with the understanding that the subject property is only a portion of the larger WLVC, and that the proposed VCR, once completed, will constitute a significant improvement over the existing retail center in terms of meeting this definition. The Board does not accept the WLVB's view that the VCR's public space, particularly the Courtyard, is not designed to function as an accessible, primarily pedestrian-oriented promenade. The Board finds that proposed VCR, as a part of the larger WLVC, is much improved in terms of being pedestrian-oriented and will continue to provide the commercial uses that fulfill the needs of the existing community and the new residents of the VCR. The Board agrees with DPZ, and disagrees with the WLVB, that Petitioner should be required to present a merchandising plan for approval by the Board, since the most realistic approach is to allow the market to guide the commercial occupancy of the retail/office space in the VCR, as supported by the testimony presented by the petitioner in Finding 9 above.

d. Whether the petition complies with the Major Village Center Redevelopment criteria in Section 125.J.4.a.(8).

1. The Village Center Redevelopment will foster orderly growth and promote the purposes of the Village Center in accordance with the planned character of the NT District.

Based on DPZ's findings on this criterion as noted in Finding 20.c.1.(a) above, and the WLVB's findings on this criterion, as noted in Finding 12 above, and the substantial evidence presented by Petitioner as to the phasing plans for the development of the subject property, as noted in Finding 6 above, the Board finds that the VCR will foster orderly growth and promote the purposes of the Village Center in accordance with the planned character of the NT District. The Board notes that the Petitioner provided sufficient detailed answers as to the phasing of the proposed development to answer the concerns about phasing raised by the WLVB, DPZ and the Planning Board.

2. The amount of commercial business floor area contained in the Village Center Redevelopment is appropriate to provide retail and commercial service to the village as a location for convenient, diverse commercial business uses which serve the local neighborhoods of the village and surrounding local community.

Based on DPZ's findings on this criterion, as noted in Finding 20.c.1.(b) above, and the WLVB's findings on this criterion, as noted in Finding 12 above, and the substantial evidence presented by Petitioner as to the minimum of 85,000 square feet and maximum of 90,000 square feet of commercial development which will be provided as part of the VCR, as noted in Finding 18, the Board finds that the amount of commercial business floor area contained in the Village Center Redevelopment is appropriate to provide retail and commercial service to the village as a location for convenient, diverse commercial business uses which serve the local neighborhoods of the village and surrounding local community.

3. The Village Center Redevelopment will foster the purpose of a Village Center as a community focal point providing good opportunities for community interaction and communication.

Based on DPZ's findings on this criterion, as noted in Finding 20.c.1.(c) above, and the WLVB's findings on this criterion, as noted in Finding 12 above, and the substantial evidence presented by Petitioner supporting the proposed opening up of the Courtyard, as noted in Findings 6, 15 and 19, the Board finds that Village Center Redevelopment will foster the purpose of a Village Center as a community focal point providing good opportunities for community interaction and communication.

While the Board considered and values the testimony of those in opposition who wanted the building attached to the Central Building not to be demolished in order to maintain a Courtyard completely enclosed on three sides, that Board finds that this concern must be balanced against the Petitioner's well-supported contention that the visibility achieved by this building's demolition and the Courtyard's opening up is likely necessary for the successful marketing of the project. The Board decides that it is important and necessary to accept the position of Petitioner on this issue.

4. The location and the relative proportions of the permitted uses for commercial businesses, dwellings, and open space uses, and the project design will enhance the existing development surrounding the Village Center Redevelopment.

Based on DPZ's findings on this criterion, as noted in Finding 20.c.1.(d) above, and the WLVB's findings on this criterion, as noted in Finding 12 above, and the substantial evidence presented by Petitioner supporting the design of the project, as noted in Finding 15 above, the Board finds that the location and the relative proportions of the permitted uses for commercial businesses, dwellings, and open space uses, and the project design will enhance the existing development surrounding the Village Center Redevelopment.

5. The Village Center Redevelopment provides accessible useable landscaped areas such as courtyards, plazas or squares.

Based on DPZ's findings on this criterion, as noted in Finding 20.c.1.(e) above, and the WLVB's findings on this criterion, as noted in Finding 12 above, and the substantial evidence presented by Petitioner on this criterion, as noted in Finding 15 above, the Board finds that The Village Center Redevelopment provides accessible useable landscaped areas such as courtyards, plazas or squares.

6. The Village Center Redevelopment is compliant with all applicable environmental policies and requirements, and provides new environmental improvements to the redevelopment area through the use of methods such as, but not limited to, green building standards, water conservation, natural drainage systems, the planting of native vegetation, the removal of existing invasive plants, the improvement of stormwater deficiencies, and following low impact development practices.

Based on DPZ's findings on this criterion, as noted in Finding 20.c.1.(f) above, and the WLVB's findings on this criterion, as noted in Finding 12 above, and the substantial evidence presented by Petitioner on this criterion, as noted in Finding 8 above, the Board finds that the Village Center Redevelopment is compliant with all applicable environmental policies and requirements, and provides new environmental improvements to the redevelopment area through the use of methods such as, but not limited to, green building standards, water conservation, natural drainage systems, the planting of native vegetation, the removal of existing invasive plants, the improvement of stormwater deficiencies, and following low impact development practices.

The WLVB and several other individuals testified that the Board should require that the buildings in the project be LEED-certified. The Board notes that the "Green Building" law in Howard County is a voluntary program, and the Board finds that there was no justification

provided for requiring, under this criterion, compliance with a voluntary environmental program that is one of several redevelopment environmental improvements which is suggested for use in a VCR.

7. The Village Center Redevelopment fosters pedestrian and bicycle access

Based on DPZ's findings on this criterion, as noted in Finding 20.c.1.(g) above, and the WLVB's findings on this criterion, as noted in Finding 12 above, and the substantial evidence presented by Petitioner on this criterion, as noted in Finding 13, the Board finds that the Village Center Redevelopment fosters pedestrian and bicycle access. The Board notes that the WLVB and several individuals requested that a bicycle and pedestrian plan for the WLVC be required to be prepared by Petitioner and that bicycle lanes be provided by Petitioner to connect to the pathway system near the WLVC as conditions of approval. The Board finds these requirements would be unworkable and are not advisable since Petitioner is only in control of the property in the VCR and not in the WLVC, and would not be able to meet these proposed conditions.

8. Public transit opportunities are appropriately incorporated into the Village Center Redevelopment.

Based on DPZ's findings on this criterion, as noted in Finding 20.c.1.(h) above, and the WLVB's findings on this criterion, as noted in Finding 12 above, and the substantial evidence presented by Petitioner on this criterion, as noted in Finding 14, the Board finds that public transit opportunities are appropriately incorporated into the Village Center Redevelopment.

9. The Village Center Redevelopment is compatible with the surrounding community.

Based on DPZ's findings on this criterion, as noted in Finding 20.c.1.(i) above, and the WLVB's findings on this criterion, as noted in Finding 12 above, and the substantial evidence

presented by Petitioner on this criterion, as noted in Findings 7, 11, 15 and 19, the Board finds that the Village Center Redevelopment is compatible with the surrounding community.

10. The Village Center will continue to meet the definition of a New Town Village Center.

Based on the Finding in Finding 22.c., this criteria has been addressed.

- e. The petition shall be granted only if the Zoning Board finds that the petition complies with these regulations and that the amendment to the Preliminary Development Plan shall be permitted at the proposed site.**

Based on all of these above findings, the Board finds that the petition complies with these regulations and that the amendment to the preliminary Development Plan shall be permitted at the proposed site.

CONCLUSIONS OF LAW

1. Pursuant to Sections 125.J.5.b and 125.J.5.a.4 of the HCZR, the Zoning Board is required to make a decision on the proposed Village Center boundaries and whether the Petitioner's property is within those boundaries.

2. The Petitioner has met its burden of convincing the Board, based on the Board's Finding 22.a, and pursuant to the applicable decision-making criteria noted above in Conclusions of Law 1, that the WLVC boundaries are those as described in Finding 5, and that the subject property is within that defined WLVC boundary based on Finding 5 as well.

3. It is Petitioner's burden, pursuant to Rule 2.403D.3. of the Board's Rules of Procedure, to establish by a preponderance of the evidence that the petition in this case, the proposed amendments to the PDP and the proposed approval of the VCR, meet the criteria for approval in Section 125.J.5.a. (1) through (3) of the HCZR. If the Board determines that Petitioner has met that burden, the Board may grant the petition.

4. The Petitioner has met its burden, based on the Board's Findings 20.a. and 22.b., of proving that the petition complies with the applicable general guides and standards set forth in Howard County Zoning Regulations Section 125.B.3. as required by Section 125.J.5.a.(1) of the HCZR.

5. The Petitioner has met its burden, based on the Board's Findings 20.b. and 22.c., of proving that the proposed Major Village Center Redevelopment complies with the specific definition for a New Town Village Center as required by Section 125.J.5.a.(2) of the HCZR.

6. The Petitioner has met its burden, based on the Board's Findings 20.c. and 22.d., of proving that the petition complies with the Major Village Center Redevelopment criteria in Section 125.J.4.a.(8) of the HCZR as required by Section 125.J.5.a.(3) of the HCZR.

7. The Petitioner has met its burden, based on the Board's Finding 22.e., of proving that the petition complies with these regulations and that the amendment to the preliminary Development Plan shall be permitted at the proposed site.

8. Based on the Board's determination that all of the applicable criteria for approval of the petition have been met, and that the Board is approving the petition, that Board makes the following conclusions on the matters covered by Section 125.J.5.d. of the HCZR:

a. The Board approves the Petitioner's proposed Design Guidelines, except that if the Howard County Sign Code is in conflict with the signage portion of the Design Guidelines, the more restrictive requirement shall apply;

b. The Board approves the Petitioner's proposed Concept Plan (Sheets 1-10), as proposed, including the requirements summarized on Applicant's Exhibits 18 and 20, and including a maximum of 250 apartment dwelling units, a minimum of 85,000 square feet of commercial development subject to the Petitioner's phasing plan as outlined in the testimony,

and subject to the ULI shared parking model parking requirements reflected in these documents being accepted, and if necessary being adjusted by DPZ upon the submission of a detailed parking analysis as necessary based on the variables of the mix of uses and permissible parking adjustments as described in DPZ's June 20, 2012 memo to the Zoning Board;

c. The Board establishes the minima, maxima, precise values and specific requirements concerning the Village Amenity Areas, building heights, bulk requirements, parking, density and permitted uses, as proposed on the Concept Plan as described and modified in subsection b. above;

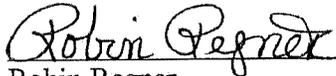
d. The Wilde Lake Village Center boundaries are established as provided in this decision.

e. The Board approves 150 dwelling units in addition to the 100 dwelling units already authorized by the Zoning Board in ZB Case 1031M for non-Downtown Columbia Village development, for the maximum 250 apartment dwelling units approved in this decision, and requests that DPZ compute the additional density represented by those 150 dwelling units approved in this decision and reflect it on the New Town PDP, based on the existing density of 2.3695 dwelling units per gross acre as it exists after the Zoning Board's decision in ZB Case 1095M.

For the foregoing reasons, the Zoning Board of Howard County, Maryland on this 9th day of July, 2012, hereby GRANTS Petitioner's petition for approval of a Major Village Center Redevelopment and PDP amendment, as described herein, for the 10.21 acre NT-zoned subject property, subject to the conditions outlined above.

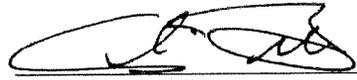
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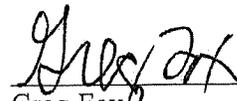
ZONING BOARD OF HOWARD COUNTY

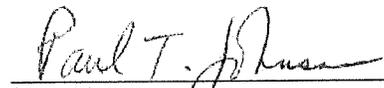

Robin Regner
Administrative Assistant

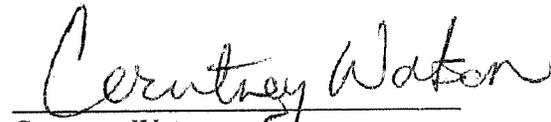

Jennifer Terrasa, Chairperson

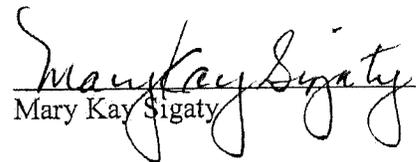
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