

R E S O L U T I O N

WHEREAS, 4100 RI, LLC is the owner of a 2.59-acre parcel of land known as Artisan, Parcel 1 and Outlot A, Block 27, being in the 17th Election District of Prince George's County, Maryland, and being zoned One-Family Detached Residential (R-55), Mixed Use-Infill (M-U-I), Development District Overlay (D-D-O); and

WHEREAS, on December 20, 2017, Landex Companies filed an application for approval of a Final Plat of Subdivision for one parcel and one outlot; and

WHEREAS, the application for approval of the aforesaid Final Plat of Subdivision, also known as Final Plat 5-17051 for Artisan, Parcel 1 and Outlot A, Block 27, was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission (M-NCPPC) by the staff of the Commission on March 1, 2018, for its review and action in accordance with the Land Use Article of the Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application; and

WHEREAS, on March 1, 2018, the Prince George's County Planning Board approved the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED Final Plat of Subdivision 5-17051 for Artisan, Parcel 1 and Outlot A, Block 27, including a Variation from Section 24-122(a) for alternate locations for public utility easements, pursuant to the conditions of Preliminary Plan of Subdivision 4-17009.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

1. The subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and the Land Use Article of the Annotated Code of Maryland.

2. **Development Data Summary**—The following information relates to the subject final plat of subdivision application.

	EXISTING	APPROVED
Zone(s)	M-U-I (2.40 ac.) R-55 (0.19 ac.) D-D-O (2.59 ac.)	M-U-I (2.40 ac.) R-55 (0.19 ac.) D-D-O (2.59 ac.)
Use(s)	Vacant	Residential/Retail
Acreage	2.59	2.59
Lots	0	0
Outlots	0	1
Parcels	2	1
Public Safety Mitigation Fee	No	No
Variance(s)	No	No
Variation	No	Yes 24-122(a)

The requested variation from Section 24-122(a) of the Subdivision Regulations was accepted on March 20, 2017, as discussed in Finding 2 below, and heard on April 7, 2017 at the Subdivision and Development Review Committee (SDRC) meeting as required by Section 24-113(b) of the Subdivision Regulations.

3. **Variation**—Section 24-122(a) requires the following:

Section 24-122-Public facilities requirements.

- (a) **When utility easements are required by a public utility company, the subdivider shall include the following statement in the dedication documents: Utility easements are granted pursuant to the declaration recorded among the County Land Records in Liber 3703 at Folio 748.**

The standard requirement for public utility easements (PUEs) is 10 feet wide along both sides of all public rights-of-way. The subject site is adjacent to three existing public roads, Rhode Island Avenue, Shepherd Street, and 40th Avenue. The applicant is not proposing to provide PUEs along any of the streets because utilities exist in the public rights-of-way abutting the site.

Section 24-113 of the Subdivision Regulations sets forth the required findings for approval of a variation request:

Section 24-113. Variations.

- (a) **Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle and Section 9-206 of the Environment Article; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon the evidence presented to it in each specific case that:**

- (1) **The granting of the variation will not be detrimental to the public safety, health, or welfare, or injurious to other property;**

The development does not propose PUEs along the adjacent roads; Rhode Island Avenue, Shepherd Street, and 40th Avenue, which are all public rights-of-way. Not providing PUEs will not be detrimental to the public safety, health, or welfare, or injurious to other property because utilities exist in each public right-of-way and will be available to serve the subject site without impact to other properties.

- (2) **The conditions on which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties;**

This property is adjacent to three existing roads; Rhode Island Avenue, Shepherd Street, and 40th Avenue. Rhode Island Avenue is a State Highway roadway. It has all necessary utilities, which would be provided within a PUE, already located within the abutting rights-of-way. Therefore, a PUE is not necessary for the site frontage along the abutting rights-of-way. Additionally, the site falls within the Gateway Arts Development District Overlay Zone. It is more specifically located with the "Brentwood Arts Production & Entertainment" character area. This character area requires that buildings along Rhode Island Avenue to be constructed at five to twelve feet from the right-of-way. The inclusion of a PUE in this area is mostly impossible to achieve due to the distance of the right-of-way line from the curb, proposed sidewalks, micro-bio devices, and necessary gradient needed for compliance to ADA regulations. Although it is impossible to achieve, the site design still strives to achieve this character area requirement. In doing so, and with the other reason mentioned above, there is physically no room for a PUE.

Shepherd Street is a public street and has all necessary utilities located within its right-of-way. Therefore, a PUE is not necessary for the site's frontage along this right-of-way. Additionally, similar build-to-line (BTL) requirements apply to this frontage as well. Meeting this requirement is impossible due to the existing utilities in Shepherd Street and the Americans with Disabilities Act (ADA) regulations, micro-bio devices, and distance from the right-of-way curb. Since the design of the site attempts to get as close to the BTL requirement, there is no room for a PUE.

Utilities also exist within the 40th Avenue public right-of-way. It would not be financially or physically feasible to relocate the existing over-head and underground utilities onto the subject site and then off the property again in order to reconnect with the existing utilities adjacent to the site, which will remain in the public right-of-way. The existing utilities function efficiently within the existing right-of-way.

(3) The variation does not constitute a violation of any other applicable law, ordinance, or regulation; and

Notwithstanding the variation to Section 24-122(a), this application conforms with the Subdivision Regulations and all other applicable authority, and is consistent with approved Preliminary Plan of Subdivision 4-16027. This variation request for the location of PUEs was referred to the Potomac Power and Electric Company (PEPCO), the Washington Suburban Sanitary Commission (WSSC), Washington Gas, and Verizon. WSSC will be provided with separate easements for wet utilities per their standard requirement. The applicant provided letters of concurrence from Washington Gas and Comcast. No other comments were received in response to the variation request. Therefore, the variation will not violate any other applicable law, ordinance, or regulation.

(4) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;

The site is surrounded by existing development on all sides. Much of this area was built in the 1950s and platted in the 1930s without PUEs. The roads adjacent to the site contain all utilities with the right-of-way that would be necessary within a PUE. Additionally, there is a WSSC easement and BTL requirements, which severely limit the space in which a PUE could be provided on the subject site. The practical and economic implications would be further exacerbated if the strict letter of these regulations are carried out. It would also be in direct violation of the Gateway Arts District Plan BTL requirement. It would impose another limitation to this development and hardship to the applicant.

- (5) **In the R-30, R-30C, R-18, R-18C, R-10A, R-10, and R-H Zones, where multifamily dwellings are proposed, the Planning Board may approve a variation if the applicant proposes and demonstrates that, in addition to the criteria in Section 24-113(a), above, the percentage of dwelling units accessible to the physically handicapped and aged will be increased above the minimum number of units required by Subtitle 4 of the Prince George's County Code.**

The subject property is zoned M-U-I and R-55; therefore, this provision does not apply.

The Planning Board finds that this site is unique to the surrounding properties and that the variation request is supported by the required findings herein. Approval of the applicant's request will not have the effect of nullifying the intent and purpose of the Subdivision Regulations, which in part is to encourage creative design that accomplishes the purpose of the Subdivision Regulations in a more efficient manner.

4. **Further Planning Board Findings and Comments from Other Entities**—The requested variation was referred to PEPCO, WSSC, and Verizon. The applicant provided letters of concurrence from Washington Gas and Comcast regarding the requested variation.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the Circuit Court for Prince George's County, Maryland within thirty (30) days following the date of notice of the adoption of this resolution.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Bailey, seconded by Commissioner Washington, with Commissioners Bailey, Washington, Doerner, Geraldo, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, March 1, 2018, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 15th day of March 2018.

Elizabeth M. Hewlett
Chairman

By Jessica Jones
Planning Board Administrator

EMH:JJ:CB:rpg