

R E S O L U T I O N

WHEREAS, Pregnancy Aid Center, Inc. is the owner of a 1.40-acre parcel of land known as Lot 20-A and Lot 21-A, being in the 21st Election District of Prince George's County, Maryland, and being zoned Mixed Use-Infill (M-U-I), Development District Overlay (D-D-O); and

WHEREAS, on January 29, 2019, Pregnancy Aid Center, Inc. filed an application for approval of a Final Plat of Subdivision for two parcels; and

WHEREAS, the application for approval of the aforesaid Final Plat of Subdivision, also known as Final Plat 5-18004 for Pregnancy Aid Center, Parcels 1 and 2, was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on February 14, 2019, 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 February 14, 2019, 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 5-18004 for Pregnancy Aid Center, Parcels 1 and 2, including a Variation from Section 24-122(a) for a reduction in the width of a segment of the on-site public utility easement (PUE) along US 1, pursuant to the conditions of Preliminary Plan of Subdivision 4-13012.

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. **Background**—The subject property is located in the northeast quadrant of the intersection of US 1 (Baltimore Avenue) and Erie Street. The site is currently improved with a medical office building with an accessory garage and shed buildings and is the subject of a Preliminary Plan of Subdivision (PPS) 4-13012, approved by the Prince George's County Planning Board on July 16, 2015 (PGCPB Resolution No. 15-77). The subject site is 1.40 acres located in the Mixed Use-Infill (M-U-I) and Development District Overlay (D-D-O) Zones.

This final plat of subdivision application includes two parcels and is in conformance with PPS 4-13012. The application includes the Planning Board's approval of a variation from

Section 24-122(a) of the Subdivision Regulations, for a reduction in the width of a segment of the on-site public utility easement (PUE) along US 1.

3. **Setting**—The property is located in the City of College Park on Tax Map 25, Grid E3 in Planning Area 66, and is zoned M-U-I and D-D-O. The site is bound to the north by a commercial office use in the M-U-I and D-D-O Zones and single-family detached residential uses in the One-Family Detached Residential (R-55) Zone; to the east, the site is bound by 48th Avenue; to the west by US 1; and to the south, the site is bound by Erie Street. Properties east of 48th Avenue are zoned R-55 and developed with single-family detached residential uses. The properties south of Erie Street are zoned M-U-I and R-55, within the D-D-O Zone, and are developed with commercial and single-family detached residential uses.
4. **Development Data Summary**—The following information relates to the subject final plat of subdivision application.

	EXISTING	APPROVED
Zone(s)	M-U-I (1.40 acres) D-D-O (1.40 acres)	M-U-I (1.40 acres) D-D-O (1.40 acres)
Use(s)	Medical Office	Medical Office
Acreage	1.40	1.40
Lots	2	0
Outlots	0	0
Parcels	0	2
Public Safety Mitigation Fee	No	No
Variance(s)	No	No
Variation	No	Yes
		24-122(a)

The variation from Section 24-122(a) of the Subdivision Regulations was accepted on January 19, 2018, as set forth in Finding 5 below, and heard on February 9, 2018 at the Subdivision Review Committee meeting, as required by Section 24-113(b) of the Subdivision Regulations.

5. **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 PUEs is 10 feet wide along both sides of all public rights-of-way. The subject site is adjacent to three existing public rights-of-way: US 1 (Baltimore Avenue), Erie Street, and 48th Avenue. The application provides PUEs along each of these streets. However, approximately 140 linear feet of the PUE abutting US 1 will be 8 feet wide, in lieu of the 10-foot standard PUE width. The site is currently developed with a building, which is to remain. Approximately 20 feet of right-of-way dedication for US 1 is provided with this application, and the location of the existing medical office building on the subject property provides insufficient area to support a 10-foot-wide PUE along a portion of the subject property's US 1 frontage.

Section 24-113 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 application provides PUEs along the adjacent roads: US 1, Erie Street, and 48th Avenue. Ten-foot-wide PUEs are proposed on the property's frontage along Erie Street and 48th Street. Providing an eight-foot-wide PUE on the subject property along a portion of US 1 will not be detrimental to the public safety, health, or welfare, or injurious to other property. The subject site and surrounding properties currently have utility service, which will continue and will not be impacted by the approval of this variation.

(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;

The required right-of-way dedication to US 1 and the location of the existing medical office building on-site creates a unique condition on the property, which is prohibitive to providing the 10-foot-wide PUE. US 1 is identified as a 100-foot-wide, master plan, major collector road. Approximately 140 linear feet of the PUE, along the subject property abutting US 1, will be eight feet wide. As a condition of approval in PPS 4-13012, Condition 7 states:

“At the time of final plat approval, the applicant shall dedicate right-of-way along Baltimore Avenue (US 1), to an ultimate right-of-way width of 100 feet (50 feet from centerline), and additional right-of-way along Erie Street to an ultimate right-of-way of 50 feet (25 feet from centerline), as reflected on the approved preliminary plan of subdivision.”

As a result of this requirement to dedicate right-of-way along US 1, the property area between the right-of-way and the existing building is reduced.

The property is the subject of Detailed Site Plan DSP-12030, which approved a request to deviate from the development district standards of the D-D-O Zone for a 9- to 14-foot building setback from the property line and right-of-way of US 1 for the existing building and the proposed addition, which is proposed to be in line with the existing building, in lieu of the standard setback of 20 to 25 feet. Thus, the property has already obtained approval of a nonstandard setback to accommodate the existing building in its present location and in recognition of the required right-of-way.

The combination of the property area required for the right-of-way dedication and its proximity to the existing building provides insufficient area for a 10-foot-wide PUE. In addition, there are two other rights-of-way abutting the subject property for which full-width PUEs are provided. These features are a unique condition to the property which warrant a variation from the standard 10-foot-wide PUE along a portion of the property abutting US 1.

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

The variation from Section 24-122(a) is unique to the Subdivision Regulations and under the sole authority of the Planning Board. This variation was referred to the Potomac Electric Power Company (PEPCO), the Washington Suburban Sanitary Commission (WSSC), Comcast, and Washington Gas. WSSC will be provided separate easements for wet utilities, per their standard requirement. The applicant provided letters of concurrence from Washington Gas, Comcast, PEPCO, and Verizon, which indicate that the utility companies have no conflict with the variation and that the modified eight-foot-wide PUE will be acceptable to accommodate utilities. 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 property is surrounded by rights-of-way on three sides with existing development beyond. PUEs will be provided along all the rights-of-way abutting the subject property. The site and abutting properties are adequately served by existing utilities. The combination of the existing built environment, the location of the existing building on-site, and the land required to be dedicated to the US 1 right-of-way create a unique physical condition on this specific property, which warrants a modified eight-foot-wide PUE. The practical implications would be further exacerbated if the strict letter of these regulations is carried out. The US 1 right-of-way dedication effectively locates the existing building less than 10 feet from the right-of-way. As a result, a requirement for the 10-foot-wide contiguous PUE along US 1 would require demolition of the existing building on the subject site, which represents a particular hardship to the owner, as distinguished from a mere inconvenience.

- (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 D-D-O and does not propose multifamily dwellings; therefore, this provision does not apply.

The Planning Board finds that this site is unique to the surrounding properties and that the variation approval is supported by the required findings herein. This approval 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.

6. **Further Planning Board Findings and Comments from Other Entities**—The variation was referred to PEPCO, WSSC, Comcast, and Washington Gas. The applicant provided letters of concurrence from Washington Gas, Comcast, PEPCO, and Verizon regarding the variation. No other comments were received from the agencies referred.

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 Geraldo, with Commissioners Bailey, Geraldo, Doerner, Washington, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, February 14, 2019, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 7th day of March 2019.

Elizabeth M. Hewlett
Chairman

By Jessica Jones
Planning Board Administrator

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