

R E S O L U T I O N

WHEREAS, CalAtlantic Group, Inc. and The Brick Yard Homeowners Association, Inc., are the owners of a 12.71-acre parcel of land known as The Brick Yard, Plats 15 and 16, being in the 10th Election District of Prince George's County, Maryland, and being zoned Heavy Industrial (I-2); and

WHEREAS, on May 29, 2018, CalAtlantic Group, Inc. and The Brick Yard Homeowners Association, Inc. filed an application for approval of Final Plats of Subdivision for 188 lots and 15 parcels which included a Variation request from Section 24-128(b)(12) of the Subdivision Regulations;

WHEREAS, the application for approval of the aforesaid Final Plats of Subdivision, also known as Final Plats 5-18037 and 5-18038 for The Brick Yard, Plats 15 and 16, were 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 June 7, 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 June 7, 2018, the Prince George's County Planning Board approved the aforesaid application.

WHEREAS, by letter dated June 14, 2018, the staff of the Commission requested the Planning Board reconsider the approval action of the final plats to include approval of a Variation for the width and location of public utility easements; and

WHEREAS, on June 28, 2018, the Planning Board approved the request for reconsideration due to error caused by inadvertence (Rules of Procedure, Section 10(e)); and

WHEREAS, on June 28, 2018, the Planning Board heard testimony regarding the reconsideration.

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 Plats of Subdivision 5-18037 and 5-18038, including a Variation from Section 24-128(b)(12) for the width and location of public utility easements.

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 plats of subdivision application.

	EXISTING	APPROVED
Zone	I-2	I-2
Use(s)	MPC/Cell Tower and Billboard (to remain)	Single-Family Attached (188 units)
Acreage	12.71	12.71
Lots	0	188
Outlots	0	0
Parcels	5	15
Dwelling Units:	0	188
Public Safety	No	No
Variance(s)	No	No
Variation(s)	No	Yes
		Section 24-128(b)(12)

The requested variation from Section 24-128(b)(12) of the Subdivision Regulations was accepted on May 7, 2018, and heard on May 18, 2018 at the Subdivision and Development Review Committee meeting, as required by Section 24-113(b) of the Subdivision Regulations.

3. **Variation**—Section 24-128(b)(12) requires the following:

(b) The Planning Board may approve plats and plans of development containing private roads, rights-of-way, alleys, and/or easements under the following conditions:

(12) Private roads provided for by this Subsection shall have a public utility easement contiguous to the right-of-way. Said easement shall be at least ten (10) feet in width and shall be adjacent to either right-of-way line.

The standard requirement for public utility easements (PUEs) is 10 feet wide along at least one side of all private rights-of-way. The subject property's unique shape, border constraints, location, and density requirements challenge traditional design approaches for lot arrangement and other design elements. Because of these design challenges, the proposed layout utilizes private roadways and alleys, which contain water, sewer, and stormdrains. The Washington Suburban Sanitary Commission (WSSC) requires a 30-foot easement over these areas and does not allow their easements to overlap PUEs. Therefore, this requires that some of the PUEs are provided in alternative locations and alternative widths. Thus, the purpose of the regulation is met, as PUEs are provided, but in a different location and configuration. All units will be served from the alternative PUE layout and all utilities will have access thereto.

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;**

Granting the variation from the required PUE location and width will not be detrimental in any way to the public safety, health, or welfare, or be injurious to other property. The purpose of the requirement in Section 24-128(b)(12) is to ensure that adequate provision is made for public utilities in projects served by private roads. In this case, the shape and physical site constraints of the subject property severely constrain design alternatives and unit yield for providing a PUE layout as required by the Subdivision Regulations. These constraints create an untenable situation whereby the applicant would experience practical difficulties in developing the property with townhouse units in sufficient density, to adhere to the MARC Planned Community development requirements, if it were not able to explore alternative PUE locations. As proposed, adequate provisions have been made for public utilities, ensuring that granting the requested variation will not create any detriment to public safety, health, or welfare. The granting of the variation also has no impact on other property.

- (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;**

Existing major infrastructure and transportation facilities on, and adjacent to, the property have required a lot design, which cannot fully meet the requirements for PUE locations and widths and, at the same time, implement the densities required by the MARC Planned Community legislation. These conditions are unique to this site and there are no other properties that are similarly constrained by existing major infrastructure, transportation facilities, natural features, property size, and shape, which is exceptionally narrow and elongated when compared to other properties.

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

The variation to Section 24-128(b)(12) is unique to the Subdivision Regulations and under the sole authority of the Planning Board. This variation request for the location of PUEs was referred to Baltimore Gas and Electric (BGE), WSSC, Washington Gas, Comcast, the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE), Verizon, and American Telephone and Telegraph (AT&T). WSSC will be provided separate easements for wet utilities, per their standard requirement. DPIE provided a response indicating no objection to the proposed PUE locations. A response from the remaining utility companies referred was not received. Therefore, the granting of the variation does not constitute a violation of 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 physical characteristics of the site and their impact on the site layout have been stated above. It is not feasible to locate PUEs adjacent to all private right-of-way lines in the required width and develop the property as envisioned in the MARC Planned Community legislation. The impact of not granting the variation would be a severe and unnecessary loss of units, where alternate options for the location and design of PUEs can be accommodated, which would place a particular hardship on 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.

This section does not apply to the variation request regarding the location and width of the PUEs because the property is zoned I-2.

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 BGE, WSSC, Washington Gas, Comcast, DPIE, Verizon, and AT&T. A letter of concurrence was received from DPIE regarding the requested variation. A response from the remaining utility companies was not received.

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 Washington, seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, Bailey, and Hewlett voting in favor of the motion, and with Commissioner Doerner absent at its regular meeting held on Thursday, June 28, 2018, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 28th day of June 2018.

Elizabeth M. Hewlett
Chairman

By Jessica Jones
Planning Board Administrator

EMH:JJ:CB:gh