

R E S O L U T I O N

WHEREAS, Buena Vista West, LLC is the owner of a 10.23-acre and an 8.56-acre parcel of land known as Vista Gardens West, being in the 20th Election District of Prince George's County, Maryland, and being zoned Mixed Use–Transportation Oriented (M-X-T); and

WHEREAS, on October 3, 2018, Buena Vista West, LLC filed an application for approval of Final Plats of Subdivision for 115 lots and 22 parcels which included a Variation request from Section 24-122(a) and Section 24-128(b)(12) of the Subdivision Regulations; and

WHEREAS, the application for approval of the aforesaid Final Plats of Subdivision, also known as Final Plats 5-18039 and 5-18041 for Vista Garden West were 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 October 25, 2018, for its review and action in accordance with the Land Use Article, Section 20-202, 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 October 25, 2018, the Prince George's County Planning Board reviewed 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 Plats of Subdivision 5-18039 and 5-18041, including a Variation from Section 24-122(a) and Section 24-128(b)(12) for nonstandard 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 of the Land Use Article, Annotated Code of Maryland.
2. The requested Variations from Sections 24-122(a) and 24-128(b)(12) were heard on May 18, 2018, at the Subdivision and Development Review Committee meeting, as required by Section 24-113(b) of the Subdivision Regulations, as a companion request to final plats of subdivision.
3. **Variations**—The public utility easements (PUE) along the public and private rights-of-way are a minimum of 10 feet in width, as required. However, in several locations the easements are not contiguous to the public right-of-way (Section 24-122(a)) and proposed private rights-of-way (Section 24-128(b)(12)) as required. The applicant filed a variation request for easements at two

locations in the subdivision that are not abutting the proposed private rights-of-way and at one location that is not abutting a public right-of-way.

Variations from Section 24-122(a) and Section 24-128(b)(12)—Section 24-122(a) and Section 24-128(b)(12) require 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.**

A 10-foot-wide PUE located along the public street is the standard requirement of the public utility companies. The applicant proposes to maintain 10-foot-wide PUEs, although the PUE would not abut the right-of-way boundary in one location. The location, as described in the applicant's statement of justification (SOJ), deviates from the right-of-way boundary to avoid an existing sewer manhole cover.

Section 24-128. Private roads and easements.

- (b) **The Planning Board may approve preliminary 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 proposed development includes a network of private roads, which provide 10-foot-wide PUEs, although the PUE would not abut the right-of-way boundaries in two locations. Washington Suburban Sanitary Commission (WSSC) utility design restrictions do not permit overlapping PUEs within their easements. Therefore, at the two locations as described in the applicant's SOJ, the applicant proposes that the PUE deviate from the right-of-way boundary.

Section 24-113 of the Subdivision Regulations sets forth the required findings for approval of a Variation. The variations were analyzed together because they are identical in their requirements. The following findings are made for both variations together:

- (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 granting of this variation to permit the PUE in alternate locations will not be detrimental to public health, safety, or welfare. PUEs are provided along all public rights-of-way, and along all private rights-of-way in the subdivision, save for three locations as described in the applicant's SOJ. In no case are the PUEs along the public or private rights-of-way less than 10 feet in width and will not affect 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;**

The circumstances impacting the development of the subject property are unique and do not allow the applicant to avoid impacting the locations identified in the SOJ. The location of the existing WSSC easements and an existing sewer manhole do not allow the PUEs to be placed in strict conformance with the Subdivision Regulations. These conditions are unique to the subject property and are not generally applicable to other properties.

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

The final design of the lots, private roadways, and public utility easements will be reviewed and approved by the appropriate reviewing authorities during the development process. Each lot or parcel will have PUEs of sufficient width to meet the needs of the associated dry utility providers. Therefore, the variations do 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 incorporation of the public use pedestrian trail, 100-year floodplain, and tree preservation areas into the overall development plan to utilize existing sewer utilities along the frontage of MD 704 (Martin Luther King Jr. Highway) at Parcels 3 and 4, has added increased constraints on the overall layout/design of the development. The resulting configuration requires the need for the variation to offset the PUE in three locations. To require the PUEs along the entire frontage would result in a particular hardship in having to relocate existing WSSC easements, and relocation of utility poles.

- (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-X-T; therefore, this provision does not apply.

As described above, the site is unique to the surrounding properties and the variations are supported by the required findings. The approval of the variations will not have the effect of nullifying the intent and purpose of the Subdivision Regulations. Therefore, the Planning Board approved the Variation from Section 24-122(a) and the Variation from Section 24-128(b)(12) for the nonadjacent locations of the PUE.

4. **Further Planning Board Findings and Comments from other Entities**—The requested variations were referred to the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE), Prince George's County Department of Public Works and Transportation (DPW&T), WSSC, Comcast, Verizon, AT&T, Baltimore Gas and Electric Company, and Washington Gas. None of the above-referenced referral agencies, objected to the approval of this application.

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 final notice of the Planning Board's action.

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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, and Hewlett voting in favor of the motion, and with Commissioner Washington absent at its regular meeting held on Thursday, October 18, 2018, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 25th day of October 2018.

Elizabeth M. Hewlett
Chairman

By Jessica Jones
Planning Board Administrator

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