



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

PGCPB No. 2022-115

File No. 5-21152

R E S O L U T I O N

WHEREAS, Konterra Core Ventures, LLC is the owner of a 10.98-acre parcel of land known as Parcel 169, said property being in the 1st Election District of Prince George's County, Maryland, and being zoned Town Activity Center-Core (TAC-C); and

WHEREAS, on October 20, 2022, Konterra Core Ventures, LLC filed an application for approval of a Final Plat of Subdivision for 2 lots; and

WHEREAS, the application for approval of the aforesaid Final Plat of Subdivision, also known as Final Plat 5-21152 for Konterra Town Center East, Plat 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 November 10, 2022; and

WHEREAS, new Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code went into effect on April 1, 2022; and

WHEREAS, pursuant to Section 24-1704(a) of the Subdivision Regulations, the associated Preliminary Plan of Subdivision 4-07108 approval remains valid under the prior Subdivision Regulations and the subject final plats of subdivision must be reviewed and decided in accordance with the Subdivision Regulations in existence at the time of the subdivision approval; and

WHEREAS, therefore, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed the application under the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code in existence prior to April 1, 2022; and

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

WHEREAS, on November 10, 2022, 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 5-21152, including a Variation from Section 24-122(a) of the prior Subdivision Regulations, pursuant to the conditions of Preliminary Plan of Subdivision 4-07108,

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 meets the legal requirements of prior 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 currently known as Parcel 169, as described in a deed recorded among the Prince George’s County Land Records in Liber 40138 at folio 232. The property is located on Tax Map 9 in Grids C-2, C-3, D-2, and D-3. The property is within the Town Activity Center-Core (TAC-C) Zone and was previously zoned Mixed Use-Transportation Oriented (M-X-T). This application was submitted for review under the prior Prince George’s County Zoning Ordinance and prior Prince George’s County Subdivision Regulations, pursuant to Section 24-1704(a) of the Subdivision Regulations because the preliminary plan of subdivision (PPS) approval was obtained under the prior regulations, which remains valid.

The subject site is being platted in accordance with PPS 4-07108, for Konterra Town Center East, which was approved by the Prince George’s County Planning Board on July 24, 2008 (PGCPB Resolution No. 08-116), for mixed-use development on 402.58 acres. The PPS approved 980 lots and 67 parcels for development of 5.9 million square feet of commercial, office, hotel, and residential uses. The property is also subject to a Detailed Site Plan, DSP-08011, which was approved by the Planning Board on February 12, 2009 (PGCPB Resolution No. 09-33).

The final plat contains two lots, Lots 1 and 2, Block I, and is in conformance with PPS 4-07108 and DSP-08011. However, the applicant has requested the Planning Board’s approval of a variation from Section 24 122(a) of the prior Subdivision Regulations, to eliminate the standard 10-foot public utility easement (PUE) requirement on Lots 1 and 2, along the following proposed public streets; the south side of Broadway Boulevard, the east side of Mezzo Street, the north side of Fashion Place, and the west side of Konterra Boulevard East (only along Lot 1), as discussed further below.

3. **Setting**—The subject property is located adjacent to the east side of I-95/495 (Capital Beltway) and bounded by Konterra Drive to the north and east, and MD 200 (Intercounty Connector) to the south, in Planning Area 60. The downtown core area of the Konterra Town Center East is bounded on the east and west sides by Perimeter Drive East and Perimeter Drive West, and on the north and south side by North End Road and South End Road. Further to the east of the overall Konterra site is the right-of-way to I-95/495; and to the west is Konterra Boulevard east and undeveloped properties in the TAC-C Zone. Further to the south of the site is green space allocated for a future public building in the TAC-C Zone and the right-of-way to MD 200; and to the north is Potomac Electric Power Company (PEPCO) and Baltimore Gas and Electric (BGE) utility easements and undeveloped properties in the TAC-C Zone.
4. **Development Data Summary**—The following information relates to the subject final plat of subdivision application.

	EXISTING	APPROVED
Zone(s)	TAC-C	TAC-C (previously zoned M-X-T)
Use(s)	Vacant	Mixed Use (Commercial and Residential)
Acreage	10.98	10.98
Lots	0	2
Outlots	0	0
Parcels	1	0
Variance	No	No
Variation	No	Yes, Section 24-122(a)

The requested variation from Section 24-122(a) was received on February 16, 2022, prior to the March 4, 2022 Subdivision and Development Review Committee meeting, as required by Section 24-113(b) of the prior Subdivision Regulations, as a companion request to the subject final plat of subdivision.

5. **Variation**—The applicant filed a variation request from Section 24 122(a) to eliminate the standard 10-foot PUE requirement on Lots 1 and 2 along either side of the following public streets:

- Broadway Boulevard (No PUE along the south side)
- Mezzo Street (No PUE along the east side)
- Fashion Place (No PUE along the north side)
- Konterra Boulevard East (No PUE along the west side on Lot 1)

The variation is necessary to accommodate the development required by Conceptual Site Plan CSP-07003, which was analyzed and approved with the PPS and DSP for the site. The variation has now been filed to meet the technical submittal requirements, and the applicable findings for approval of the variation are outlined below.

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 a 10-foot-wide easement along both sides of all public rights-of-way to ensure adequate and continuous utility access and provision for

all development. For purposes of platting, pursuant to PPS 4-07108, the applicant requested a variation from the above requirement. The required PUE is provided on Lot 2 along Konterra Boulevard East. However, the plat does not show the required PUEs along the other public rights-of-way, and instead utilities are to be provided within the public rights-of-way.

Section 24-113 sets forth the required findings for approval of a variation request.

There are four criteria that must be met for this variation to be approved (a fifth criterion is not applicable to the prior M-X-T-zoning of the subject property), which are addressed by the applicant's variation request, incorporated by reference herein. The criteria, with discussion, are noted below:

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;

Ten-foot-wide easements for public utilities along both sides of all public rights-of-way ensure utility access will be able to serve the subject site and surrounding development. The applicant, however, proposed to locate utilities on Lot 2 along Konterra Boulevard East, but not along the other public rights-of-way on Lots 1 and 2. The utilities are to be located within the rights-of-way for the referenced public streets, in conformance with the approved DSP-08011, rather than along the streets. The location of the PUEs still provides sufficient space to install the utility infrastructure necessary to serve the development and surrounding properties. Granting a variation to the PUE requirements will not be detrimental to public safety, health, or welfare, or injurious to other property because the utilities within the rights-of-way for the referenced public streets are sufficient to serve the subdivision and surrounding 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;

The condition of this property is unique, due to the design standard, as envisioned in the DSP and CSP, which defines the development guidelines of the core area of Konterra Town Center East. The property is subject to CSP-07003, which approved the Konterra Town Center East design and architectural standards and street pattern. These development guidelines call for the unique design of the subject site, which may require nonstandard design of rights-of-ways where utilities are placed within them. The applicant's request to eliminate the PUE requirement along either side of the referenced public streets is warranted, given the unique nature of the design guidelines imposed on the subject property.

(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. The final plats and variation request for the location of PUEs was referred to the public utility companies. No referred agency opposed this request. The utilities will need to be designed in direct coordination with the individual utility companies, in order to meet all the requirements and design standards, at time of permitting. No known applicable law, ordinance, or regulation will be violated if this variation is granted.

(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 overall Konterra Town Center is surrounded by public rights-of-way I-95/495 and MD 200 to the west and south. Also, the property is bounded to the north by 400foot-wide PEPCO and BGE easements. The property's particular physical surroundings, and the design guidelines envisioned by the CSP and DSP, restrict the location of the standard PUE's, as required, and would result in a hardship on the owner. The requirements of the design guidelines imposed on this development are features that are arguably unique and, in this particular case, the standard PUE requirement would negatively impact the owner's ability to meet the development approved in the CSP for the subject site and surrounding properties. As a result, implementing the standard 10-foot PUE requirement would impact the design of the approved DSP-08011.

By virtue of positive findings for each of the criteria for variation approval, a variation from Section 24-122(a), for elimination of the standard 10-foot PUE requirement on Lots 1 and 2 along the referenced rights-of-way, is approved.

6. **Referrals and Comments from other Entities**—The requested variation was referred to the Prince George’s County Department of Permitting, Inspections and Enforcement (DPIE), the Washington Suburban Sanitary Commission, PEPCO, Comcast, AT&T, and Verizon for review. DPIE responded and had no objections to the request. AT&T responded that they have no facilities in the area. No responses objecting to the approval of this application were provided by any of the other agencies.


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

* * * * *

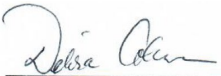
This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George’s County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, and Shapiro voting in favor of the motion, and with Commissioners Bailey and Doerner absent at its regular meeting held on Thursday, November 10, 2022, in Upper Marlboro, Maryland.

Adopted by the Prince George’s County Planning Board this 1st day of December 2022.

Peter A. Shapiro
Chairman

By 
Jessica Jones
Planning Board Administrator

PAS:JJ:MV:jah


Approved for Legal Sufficiency
M-NCPPC Office of General
Counsel

Dated 11/28/22