



The Maryland-National Capital Park and Planning Commission  
Prince George's County Planning Department  
Development Review Division  
301-952-3530

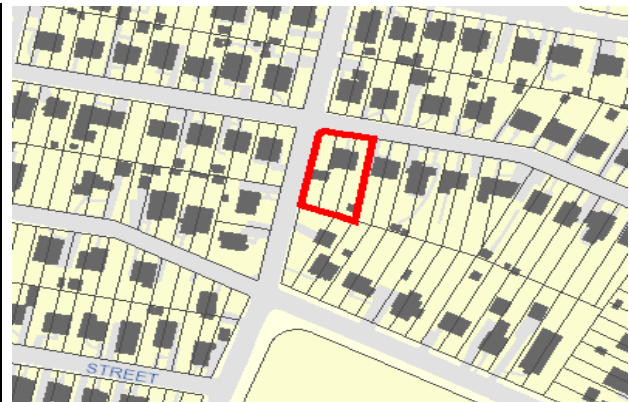
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# Preliminary Plan of Subdivision Daniel's Park

## 4-22019

REQUEST	STAFF RECOMMENDATION
<p>This case was continued from the Planning Board hearing date of January 19, 2023 to January 26, 2023.</p> <p>Two lots for development of two single-family detached dwellings</p>	<ul style="list-style-type: none"><li>• Disapproval of Preliminary Plan of Subdivision 4-22019</li><li>• Disapproval of a Variance to Section 27-442(b)</li><li>• Disapproval of a Variance to Section 27-442(e)</li><li>• Disapproval of a Variance to Section 27-442(h)</li></ul>

<b>Location:</b> At the southeast quadrant of the intersection of Iroquois Street and 51st Avenue	
Gross Acreage:	10,175 sq. ft.
Zone:	RSF-65
Prior Zone:	R-55
Reviewed per prior Subdivision Regulations:	Section 24-1900
Gross Floor Area:	N/A
Dwelling Units:	2
Lots:	2
Parcels:	0
Planning Area:	66
Council District:	01
Municipality:	College Park
<b>Applicant/Address:</b> Chalabi Hanadi 5101 Iroquois Street College Park, MD 20740	
<b>Staff Reviewer:</b> Antoine Heath <b>Phone Number:</b> 301-952-3554 <b>Email:</b> Antoine.Heath@ppd.mncppc.org	



Planning Board Date:	01/26/2023
Planning Board Action Limit:	04/04/2023
Mandatory Action Timeframe:	140 days
Staff Report Date:	01/18/2023
Date Accepted:	11/01/2022
Informational Mailing:	04/18/2022
Acceptance Mailing:	10/27/2022
Sign Posting Deadline:	12/20/2022

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at [http://www.mncppcapps.org/planning/Person\\_of\\_Record/](http://www.mncppcapps.org/planning/Person_of_Record/). Please call 301-952-3530 for additional information.

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THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

SUBJECT: Preliminary Plan of Subdivision 4-22019  
Variance to Section 27-442(b)  
Variance to Section 27-442(e)  
Variance to Section 27-442(h)  
Daniels Park

**OVERVIEW**

The subject property is located at the southeast quadrant of the intersection of Iroquois Street and 51st Avenue and has an area of 10,175 square feet. The subject property is comprised of three lots, known as Lots 1–3 recorded in the Prince George's County Land Records, as Addition to Daniel's Park in Plat Book LIB A, page 131. The property is within the Residential, Single-Family–65 (RSF-65) Zone. However, this application is being reviewed, in accordance with the prior Prince George's County Zoning Ordinance and prior Prince George's County Subdivision Regulations, pursuant to Section 24-1900 of the Subdivision Regulations. The property is located within the One-Family Detached Residential (R-55) Zone in the prior Zoning Ordinance. In accordance with Section 24-1904(c) of the Subdivision Regulations, this preliminary plan of subdivision (PPS) is supported by and subject to approved Certificate of Adequacy ADQ-2022-025. The site is subject to the 2001 *Approved Sector Plan and Sectional Map Amendment for the Greenbelt Metro Area* (sector plan), Subtitles 24 and 27 of the prior Prince George's County Code, and other applicable plans, as outlined herein. This PPS proposes to resubdivide the three lots to establish two lots (proposed Lots 49 and 50), for development of two single-family detached dwellings, one of which is existing. The existing dwelling fronts on Iroquois Street and occupies on Lots 1–3. The site also contains a covered driveway (carport), that fronts on 51st Avenue, and a shed in the rear yard. The existing dwelling will remain, while the carport is proposed to be removed or relocated, due to its location along the newly proposed lot line.

The subdivision, as proposed, will require several variances, described in further detail in this technical staff report. The subject PPS is considered a minor subdivision, under Section 24-117(a) of the prior Subdivision Regulations; however, it is being heard by the Prince George's County Planning Board, due to the requested variances.

The applicant requested variances to Section 27-442, subsections (b), (e), and (h), of the prior Zoning Ordinance. Subsection (b) requires a minimum net lot area and the applicant is requesting approval of two lots with net lot areas less than the required minimum. Subsection (e) requires a minimum rear yard setback and the applicant is requesting the existing dwelling be allowed to remain within the minimum rear yard setback of new Lot 50. Subsection (h) limits dwellings to a maximum density per net lot area and the applicant is requesting the existing

dwelling be allowed to remain on Lot 50, and a new dwelling be allowed on Lot 49, despite such dwellings exceeding the maximum permissible density.

Staff recommends **disapproval** of the three requested variances and, therefore, **disapproval** of the PPS, due to failure of the proposed lots to conform to the requirements of the prior Zoning Ordinance, based on the findings contained in this technical staff report.

## SETTING

The property is located on Tax Map 25 in Grid F4 and is within Planning Area 66. The properties abutting the subject site to the east and south are developed with a single-family detached dwellings within the RSF-65 (formerly the R-55) Zone. The properties to the north beyond Iroquois Street, and west beyond 51st Avenue, consist of single-family detached dwellings within the RSF-65 Zone.

## FINDINGS AND REASONS FOR STAFF RECOMMENDATION

- 1. Development Data Summary**—The following information relates to the subject PPS application and the proposed development.

	EXISTING	PROPOSED
Zone	RSF-65	RSF-65
Use(s)	Residential	Residential
Acreage	0.23	0.23
Lots	3	2
Parcels	0	0
Outlots	0	0
Dwelling Units	1	2
Variance	No	Yes Section 27-442(b) Section 27-442(e) Section 27-442(h)
Variation	No	No

Pursuant to Section 24-119(d)(2) of the prior Subdivision Regulations, this case was heard at the Subdivision and Development Review Committee (SDRC) meeting on November 14, 2022.

- 2. Previous Approvals**—The land area subject to this PPS is platted as Lots 1–3, Block 10, of Daniels Park recorded in Plat Book LIB A, page 131, in November 1906. Each of the three record lots is 25 feet wide, and fronts on Iroquois Street (Street “G” as shown on the record plat). This plat also created numerous other 25-foot-wide record lots in the neighborhood, which are still in existence today. These record lots are generally combined with one or two other record lots, to create a minimum 50-foot-wide 5,000-square-foot lot for each single-family detached dwelling. A lot is defined as one or more lots used to create a building site. Therefore, the subject property is, by definition, a single lot.

According to Section 27-442, 5,000-square-foot lots, at a minimum of 50 feet wide, are permitted, as long as the record plat dates prior to 1949 (for the lot area standard see Section 27-442(b)). This PPS proposes Lot 50 at 5,163 square feet and Lot 49 at 5,049 square feet; however, conformance with the Zoning Ordinance requirement of 6,500-square-foot lots is applicable because this is a new PPS and the project would be platted after 1949, if this subdivision were approved.

The approved Certificate of Adequacy ADQ-2022-025 associated with this PPS is valid, so long as the PPS remains valid, in accordance with Section 24-4503(c) of the Subdivision Regulations. Consequently, if this PPS is disapproved, ADQ-2022-025 will be invalid.

3. **Community Planning**—The 2014 *Plan Prince George's 2035 Approved General Plan* (Plan 2035) and conformance with the sector plan are evaluated, as follows:

#### **Plan 2035**

This application is located within the Established Communities policy area. Plan 2035 describes Established Communities as areas appropriate for context-sensitive infill and low- to medium-density development, and recommends maintaining and enhancing existing public services, facilities, and infrastructure to ensure that the needs of residents are met (page 20).

#### **Sector Plan Conformance**

The sector plan recommends medium-suburban density residential uses on the subject property (Map 4, page 32). The associated sectional map amendment retained the property in the R-55 Zone (Map 38, page 168). The sector plan specifies retention of the residential character and uses in this community and recommends compatible residential infill development (page 34). In addition, the sector plan notes that, the residential character and architectural integrity of the existing residential community should be maintained, especially when planning and developing vacant parcels (page 121).

Staff finds that, pursuant to Section 24-121(a)(5) of the prior Subdivision Regulations, this application conforms to the land use recommendation of the sector plan.

4. **Stormwater Management**—An approved Stormwater Management (SWM) Exemption Letter (5170-2022-00) and plan was submitted with this application. The letter states that the site is exempt from SWM requirements, as less than 5,000 square feet is proposed to be disturbed.
5. **Parks and Recreation**—This PPS has been reviewed for conformance with the requirements and recommendations of Plan 2035, the 2017 *Land Preservation, Parks and Recreation Plan for Prince George's County*, the 2013 *Formula 2040: Functional Master Plan for Parks, Recreation and Open Space*, and the prior Subdivision Regulations, as they pertain to public parks and recreation and facilities.

Staff reviewed this PPS for conformance to the sector plan, per Section 24-121(a)(5). The proposed development has no impact on the sector plan park and open space recommendations.

Park and recreation amenities serving the subject property include Hollywood Park, within 0.73 mile of the development, which is improved with a basketball court, picnic area and shelter, a playground, an outdoor tennis court, and a lighted softball diamond. The Paint Branch Golf Course is within 1.34 miles of the development, and is improved with a golf driving range, a 9-hole golf course, a mini golf course, a pro-shop, and a clubhouse.

Separate from the evaluation of adequacy, the mandatory dedication of parkland requirements is applicable. This PPS is being reviewed, per the provisions of Sections 24-134 and 24-135 of the prior Subdivision Regulations, which pertains to mandatory dedication of parkland and provides for the dedication of land, the payment of a fee-in-lieu, or recreational facilities, to meet the requirement. Based on the proposed density of development, 7.5 percent of the net residential lot area should be required to be dedicated to the Maryland-National Capital Park and Planning Commission (M-NCPPC) for public parks, which equates to 0.02 acre. The subject property is not adjacent or contiguous to any property currently owned by M-NCPPC. Therefore, the 0.02 acre of dedicated land would not be sufficient to provide for the types of active recreational activities that are needed. The applicant has proposed to pay a fee in-lieu of parkland dedication.

The recreational guidelines for Prince George's County also set standards, based on population. The projected population for the development is six new residents, which will have a de minimis impact. Per Section 24-135(a):

**The Planning Board may require the payment of a fee in lieu of dedication equal to five percent (5%) of the total new market value of the land as stated on the final assessment notice issued by the State Department of Assessments and Taxation when it finds that dedication of parkland is unsuitable or impractical due to size, topography, drainage, physical characteristics, or similar reasons, or if adequate open space has been acquired and is available to serve the subdivision. The fee shall be paid prior to recording the subdivision and shall be used by the Commission to purchase or improve parkland for the benefit of the future residents. Preliminary plans approved prior to the effective date of this legislation shall not be subject to this change.**

Staff recommends the payment of a fee in-lieu of mandatory dedication of parkland.

Staff finds that the applicant's proposal to provide payment of a fee, in lieu of parkland dedication, will meet the requirements of Section 24-135(a). The fee in-lieu should be paid, prior to recordation of the final plat.

6. **Transportation (pedestrian, bicycle, and vehicular)**—This PPS was reviewed for conformance with the 2009 *Approved Countywide Master Plan of Transportation* (MPOT) and the sector plan, to provide the appropriate transportation recommendations.

#### **Master Plan Right of Way**

The subject site is not adjacent to any master plan right-of-way, per the MPOT.

#### **Master Plan Pedestrian and Bike Facilities**

The subject site is not adjacent to any pedestrian or bicycle facilities, per the MPOT.

The MPOT provides policy guidance regarding multimodal transportation, and the Complete Streets element of the MPOT recommends how to accommodate infrastructure for people walking and bicycling.

**Policy 4: Develop bicycle-friendly roadways in conformance with the latest standards and guidelines, including the 1999 AASHTO *Guide for the Development of Bicycle Facilities*. (page 10)**

**Policy 5: Evaluate new development proposals in the Developed and Developing Tiers for conformance with the complete streets principles. (page 10)**

The MPOT does not include any pedestrian and bicycle facilities along the adjacent roads and there are no existing pedestrian and bike facilities along the frontage of Iroquois Street and 51st Avenue, staff agrees with the applicant's proposal of not including pedestrian and bike facilities along the frontage roads at this time.

#### **Transportation Planning Review**

Staff finds that the overall access and circulation are acceptable.

Based on the preceding findings, transportation facilities are found to be in conformance with Subtitle 24 of the County Code, the sector plan, and the MPOT.

7. **Public Facilities**—This PPS was reviewed for conformance to the sector plan, in accordance with Section 24-121(a)(5). The sector plan contains a chapter dedicated to the provision of adequate public facilities (pages 97–100). The primary objective is, as follows:

**Provide needed public infrastructure and services — including schools, health facilities, libraries, fire and rescue, and police — in a timely manner and with attention given to the needs of specific user groups. (page 97)**

The proposed development will not impede achievement of any of the above-referenced vision and policy statements. The sector plan does not propose any police, fire and emergency medical service facilities, schools, parks, or libraries on the subject property. This application is further supported by an approved Certificate of Adequacy (ADQ-2022-025), which ensures adequate public facilities to support the proposed land use. The 2008 *Approved Public Safety Facilities Master Plan* also provides guidance on the location and timing of upgrades and renovations to existing facilities and construction of new facilities, however, none of its recommendations affect the subject site.

8. **Public Utility Easement**—Section 24-122(a) of the prior Subdivision Regulations requires that, when utility easements are required by a public company, the subdivider shall include the following statement in the dedication documents recorded on the final plat:

“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 has frontage along the existing public rights-of-way, Iroquois Street and 51st Avenue. The PPS depicts the 10-foot-wide PUEs, along both rights-of-way.

9. **Historic**—A search of current and historic photographs, topographic and historic maps, and locations of currently known archeological sites indicates that the probability of archeological sites within the subject property is low. A Phase I archeology survey is not recommended. The subject property does not contain and is not adjacent to any designated Prince George’s County historic sites or resources. The sector plan contains goals and policies related to historic preservation (pages 83–87). However, these are not specific to the subject site or applicable to the proposed development. This proposal will not impact any County historic sites, historic resources, or known archeological sites.
10. **Environmental**—PPS 4-22019 was accepted for review on November 1, 2022. Comments were provided to the applicant at the SDRC meeting on November 11, 2022. The following applications and associated plans have been reviewed for the subject site:

Development Review Case #	Associated Tree Conservation Plan or Natural Resources Inventory #	Authority	Status	Action Date	Resolution Number
N/A	NRI-033-2022	Staff	Approved	3/30/2022	N/A
N/A	S-045-2022	Staff	Approved	3/10/2022	N/A
4-22019	N/A	Planning Board	Pending	Pending	Pending

### **Grandfathering**

The project is subject to the environmental regulations contained in Subtitles 24, 25, and 27 of the County Code because the application is for a new PPS.

### **Plan 2035**

The site is located within Environmental Strategy Area 1 of the Regulated Environmental Protection Areas Map, as designated by Plan 2035.

### **Sector Plan Conformance**

The sector plan does not indicate any environmental issues associated with this property.

### **Green Infrastructure Plan Conformance**

This property is not within the designated network of the *Countywide Green Infrastructure Plan* of the *Approved Prince George’s County Resource Conservation Plan: A Countywide Functional Master Plan*

The site was entirely cleared, graded, and developed, prior to enactment of the Prince George’s County Woodland and Wildlife Habitat Conservation Ordinance (WCO).

## **ENVIRONMENTAL REVIEW**

### **Natural Resources Inventory**

The site has an approved Natural Resources Inventory (NRI-033-2022), which correctly shows the existing conditions of the property. Only one specimen tree is located on-site,



situated at the intersection of Iroquois Street and 51st Avenue. This site is not associated with any regulated environmental features, such as streams, wetlands, or associated buffers. No County regulated 100-year floodplain is located on-site. This site is not within any primary management area.

### **Woodland Conservation**

The site is exempt from the provisions of the WCO because the property is less than 40,000 square feet in size. A standard letter of exemption (S-045-2022) from the WCO was issued for this site, which expires on March 10, 2024. No additional information is required regarding woodland conservation.

### **Specimen, Champion, or Historic Trees**

In accordance with approved NRI-033-2022, one specimen tree has been identified on the subject property, along the northeastern corner of the property boundary. This tree is labelled as a 36-inch willow oak, in fair condition. Although this site is exempt from the WCO, preservation of this specimen tree, to the fullest extent practicable, should be considered during the final site design process. Particular care should be made to protect this specimen tree through the use of best management practices on-site. No further information is required regarding specimen, champion, or historic trees.

### **Soils**

The predominant soils found to occur, according to the U.S. Department of Agriculture, Natural Resource Conservation Service, Web Soil Survey, is Christiana-Downer-Urban Lane Complex (5–15 percent slopes).

No soils containing Marlboro clay are mapped on or within the immediate vicinity of this site; however, unsafe soils containing Christiana complexes have been identified on and within the immediate vicinity of this property. The soils containing Christiana complexes are contained in previously disturbed urban soils, on relatively flat slopes. There are no geotechnical concerns with this project.

- 11. Urban Design**—Staff reviewed the PPS for conformance with the requirements of the Zoning Ordinance, the Prince George’s County Tree Canopy Coverage Ordinance, and the 2010 *Prince George’s County Landscape Manual* (Landscape Manual), and finds the following:

### **Conformance with the Zoning Ordinance**

The applicant proposes two lots for development of two single-family detached dwellings, which is a permitted use within the R-55 Zone, per Section 27-441 of the prior Zoning Ordinance. Conformance with the prior Zoning Ordinance is required for the proposed development, at the time of permitting including, but not limited to, the following:

- Section 27-430. - R-55 Zone (One-family Detached Residential)
- Section 27-441(b). - Table of Uses for the R-55 Zone
- Section 27-442. - Regulations in the R-55 Zone
- Part 11. - Off Street Parking and Loading

The applicant is requesting variances to Sections 27-442(b) and 27-442(h), due to the size and configuration of proposed Lots 49 and 50. The applicant is also requesting a variance to Section 27-442(e) for the rear yard depth, for the existing house on proposed Lot 50. The requested variances are discussed further in Finding 13.

The applicant states that the subject property should be permitted a 5,000-square-foot minimum net lot area, as the original lots are “part of a resubdivision of land on a plat that was originally recorded prior to November 29, 1949, and was composed of lots having an average net area of 5,000 square feet or less.” Staff disagrees and finds the resubdivision of this property is required, to meet the regulations for a new subdivision. An application proposing a new subdivision of lots does not meet the specified criteria, as the new subdivision application will require a new plat, post 1949. The applicant justifies that Lots 1–3 are being resubdivided with this proposal, into two lots. Section 24-111(a) of the prior Subdivision Regulations addressed requirements for resubdivision, as follows:

- (a) In any case where land has been legally subdivided according to the law in existence at the time of such subdivision and the present owner desires to change the relationships between a lot and the street shown on the record plat, or between one lot and another, action by the Planning Board shall be governed by the same procedures, rules, and regulations as for a new subdivision, except where filing a final plat is optional, as provided by Section 24-107(d).**

In considering the applicant’s position that this application is a resubdivision, staff finds that the regulations of a new subdivision apply, in accordance with the above requirement. The applicant is proposing creation of two lots, which are not in conformance with the 6,500 minimum net lot area standard for a new subdivision.

#### **Conformance with the 2010 Prince George’s County Landscape Manual**

The site will be subject to Section 4.1, Residential Requirements; and Section 4.9, Sustainable Landscaping Requirements, of the Landscape Manual. Conformance with landscaping requirements will be evaluated at the time of building permit review, should the PPS be approved.

#### **Conformance with the Tree Canopy Coverage Ordinance**

Subtitle 25, Division 3, the Tree Canopy Coverage Ordinance, requires a minimum percentage of the site to be covered by tree canopy for any development projects that propose more than 5,000 square feet of gross floor area or disturbance and require a grading permit. The property is in the R-55 Zone and is required to provide a minimum of 15 percent of the gross tract area in tree canopy. Any permit pertaining to an existing single-family detached home is exempt from the Tree Canopy Coverage Ordinance, per Section 25-127(b)(1)(B). The applicable area of the subject site is 0.12 acre and requires 0.017 acre (or 757.35 square feet), to be covered by tree canopy. Compliance with this requirement will be evaluated at the time of building permit review, should this PPS be approved.

- 12. City of College Park**—The City of College Park provided verbal comments at the SDRC meeting on November 14, 2022. These comments related to protection of the specimen tree on-site, which are addressed in the Environmental finding of this technical staff report. No

objection to the requested variances was stated. At the time of this writing, final comments have not been received from the City.

13. **Requested Variances**—Section 24-121(a)(1) requires that all lots be platted, in conformance with all of the requirements of the Zoning Ordinance. The applicant is proposing to create two lots for two single-family detached dwellings. The site contains one existing single-family detached dwelling, that is to remain. The existing dwellings sit on three lots, which total 10,175 square feet in area, which meets the net lot area, setback, and density requirements of Subtitle 27. However, the applicant’s proposal to create an additional lot has created the need for variances. The existing dwelling is located on proposed Lot 50 and the proposed dwelling is located on Lot 49. The following table lists the requested variances and staff’s recommendation for each:

<b>4-22019 Daniels Park: Requested Variances</b>						
Section	Minimum Standard	Applicable Lot/Location	Requested Value	Required Value	Existing or Proposed Condition	Staff Recommendation
27-442(b)	Net lot area	Lot 49	5,049 sq. ft.	6,500 sq. ft.	Proposed	Disapproval
	Net lot area	Lot 50	5,163 sq. ft.	6,500 sq. ft.	Proposed	Disapproval
27-442(e)	Rear yard setback	Lot 50	13 feet	20 feet	Proposed	Disapproval
27-442(h)	Maximum Density	Lot 49	8.6	6.7	Proposed	Disapproval
	Maximum Density	Lot 50	8.5	6.7	Proposed	Disapproval

#### **Authority**

Section 27-239.03 of the prior Zoning Ordinance states the following:

**When the District Council or Planning Board makes a final decision in a zoning case, site plan, or other request, the District Council or Planning Board shall have the sole authority to grant variances from the strict application of this Subtitle in conjunction with its approval. The Council and Planning Board shall be governed by the provisions of Section 27-230 when it grants the variance.**

Based on this section, the Planning Board has sole authority to grant the variances currently requested by the applicant, in conjunction with this PPS.

#### **Required Findings**

As stated above, Section 27-239.03 requires that, when the Planning Board has sole authority to grant variances, the Planning Board shall be governed by the provisions of Section 27-230 of the prior Zoning Ordinance when it grants the variance. The basic criteria which must be met for all variances are given in Section 27-230(a). The Prince George’s County District Council recently amended the criteria on November 2, 2021 (CB-16-2021). The changes are reflected below:

#### **Prior Law:**

- (a) **A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:**

- (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;
- (2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and
- (3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

Following Adoption of CB-16-2021 (effective December 17, 2021):

- (a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:
  - (1) A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);
  - (2) The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property;
  - (3) Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions;
  - (4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any area master plan, sector plan, or transit district development plan affecting the subject property; and
  - (5) Such variance will not substantially impair the use and enjoyment of adjacent properties.
  - (6) Notwithstanding any other provision of this Section, a variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.

The criteria in Section 27-230(a) are in **BOLD** text below, while staff findings for each criterion are in plain text.

- (a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:

- (1) **A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);**

The burden of proof is on the applicant to provide substantial evidence, in support of its request for a variance. The applicant failed to address Criteria 1 in its statement of justification (SOJ) and, therefore, staff recommends denial of the variance for that reason alone. However, when evaluating the development proposal, staff also find that the subject parcel is not physically unique and unusual, in a manner different from the surrounding properties, with respect to exceptional narrowness, shallowness, shape, or exceptional topographic conditions. The subject property has similar topography to surrounding properties and the three existing rectangularly shaped lots, composing the site, are similar in width, depth, and lot size to almost all of the other lots platted by the original subdivision. In addition, properties that have been subsequently developed on larger lots are of comparable size and shape to the subject property. For example, the property immediately to the south, and also within Block 10, is comprised of Lots 46 and 47 and has a total area of 11,387 square feet. In addition, both the Historic Preservation and Environmental Planning Sections failed to identify any extraordinary conditions peculiar to the subject property.

Citing Section 27-230(a)(1) of the Prior Law, the applicant claims an “extraordinary situation or condition” exists because the “current Ordinance and the Prior Ordinance allowed the minimum lot size to be 5000 SF platted prior to November 29, 1949,” and there are “multiple properties within one block of the subject site that are similarly sized.” The applicant also cites the Planning Board’s decision in PGCPB Resolution No. 2021-132, claiming the two applications reflect “the same fact pattern.”

It is self-evident that, if the prior ordinance allowed a minimum lot size of 5,000 square feet, no variance from Section 27-442(b) would be required. Staff, however, disagrees with the applicant’s contention that a resubdivision of the existing property permits two new minimum 5,000-square-foot lots. The R-55 Zone requires a minimum net lot area of 6,500 square feet. There is an exception, however, for certain lots platted or resubdivided, prior to November 29, 1949, that are allowed to have a minimum net lot area of 5,000 square feet. While such provisions cause the existing lots on the subject property to be conforming, these provisions do not apply to new resubdivisions occurring in 2022. To find otherwise would allow every property platted in the R-55 Zone, prior to November 29, 1949, the right to indefinitely develop on a minimum net lot area of 5,000 square feet. Staff believe the District Council did not intend the result the applicant is seeking to apply.

In addition, the fact that there are “multiple properties within one block that are similarly sized” is evidence that the subject property is not physically unique and unusual. Finally, the Planning Board’s findings in Resolution No. 2021-132 applied the variance standards in the prior law. The Planning Board found that the age of the house (68 years) was a sufficient “extraordinary condition” to justify variances that would permit a portion of the house to remain in the proposed setback. Under the new variance law, the mere age of a house is not a satisfactory finding, in and of itself, to satisfy the requirement of Section 27-230(a)(1). Instead, the property would require, for example, some level of extraordinary historical significance that causes it to be unique or unusual. As a result, there is no evidence the subject property satisfies such criteria.

**(2) The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property;**

The language above mirrors relevant Maryland case law. In short, in order to satisfy Criteria 2, the applicant must show that the subject property where the structures are to be built is—in and of itself—unique and unusual in a manner different from the surrounding properties, such that the owner will suffer a disproportionate impact if zoning is applied to them. For example, where two properties of the same size and shape are in the same zone, but one property has a steep hillside that prohibits construction of a similarly sized home that would be permitted on the other property, the former may be able to show that the unique physical condition of their property causes them to incur a disproportionate impact.

As previously discussed in Criteria 1, staff found that the land was not physically unique and unusual, in a manner different from the nature of surrounding properties, making further analysis of Criteria 2 unnecessary. According to the applicant, however, the “practical difficulty to this owner, is that compliance to the new Ordinance would prevent the legal use of the property to have lots with a minimum net lot area of 5000 SF and in this case: Lot 49 at 5049 SF and Lot 50 at 5126 SF...[and]...Providing the standard rear yard setback of 20 feet would require the removal of the existing dwelling and would result in only nominal changes to the form and function of the development. Forcing the removal of the existing residence would result in a practical difficulty...”

Zoning requirements, on their own, for setbacks, density, and net lot area do not establish a practical difficulty for purposes of a variance analysis. If so, every property would be entitled to a variance because a setback imposes a “practical difficulty” on every owner – it prohibits them from building in the setback. Instead, the practical difficulty must relate to a condition imposed on an owner that prohibits them from developing their property, in a manner enjoyed by other similarly situated property owners. The size of the owner’s existing property, 10,175 square feet, is

not unique or unusual in size or shape and the application of the zoning requirements limit this owner, in the same manner they limit the owners of comparably sized properties in the area.

In regard to the requested variances for minimum net lot area and density, the applicant states that the minimum 5,000 square feet provided for both lots conforms to Section 27-442(b), as these lots were platted prior to November 29, 1949. However, as previously stated, this is a new PPS which would require a new plat and conformance to the 6,500-square-foot net lot area minimum in the R-55 Zone. It is noted that the applicant's justification contains information to indicate they are being subject to the lot size requirements of the Zoning Ordinance effective April 1, 2022; however, a 6,500-square-foot lot size is applicable under the prior Zoning Ordinance for new lots. The applicant goes on to cite comparison to PPS 4-20041, which had a variance approved for the lot size requirement, under the prior Zoning Ordinance, and runs counter to the applicant's claim that a 5,000-square-foot lot size applies, per the prior Zoning Ordinance. Staff finds the applicant's justification, that the project meets the minimum lot size and density requirement, does not address the requirements for granting of the variance and, therefore, this criterion is unmet.

In regard to the requested variance to provide 13 feet for the rear yard setback, instead of 20 feet, the applicant states that strict application of this provision would prevent the legal use of the property, forcing the removal of the existing dwelling, resulting in practical difficulty. While the removal of the existing dwelling may present a practical difficulty to the applicant, this practical difficulty only arises due to the proposed subdivision, which is not required and has only been requested at the will of the applicant. Legal use of the property for a single-family dwelling is currently being realized with the existing development, which currently meets the required setbacks with the existing lot. Therefore, staff finds that the strict application of this provision does not result in peculiar or unusual practical difficulties to the owner.

Staff further finds that there is no particular uniqueness or peculiarity of the property causing impact disproportionately to the site. The subject property and all other properties within Block 10 are similarly developed with the same existing rear lot line, from which setbacks are currently met. In contrast, granting the variance in this case would be disproportionate to the surrounding properties.

**(3) Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions;**

The applicant states that the exceptional physical conditions are the existing 67-year-old dwelling. The site's existing conditions, however, does not offer any justification for creating new lots and a rear yard setback which falls short of the requirements. Any new property line created on the property should be sufficiently set back from existing structures. The applicant's SOJ speaks only to the site's history and does not describe any additional

exceptional physical conditions on the property, which would help justify granting the variances for newly proposed conditions. Therefore, staff finds that this criterion is not met.

- (4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any area master plan, sector plan, or transit district development plan affecting the subject property; and**

The applicant notes, in the SOJ, that Plan 2035 shows the site's area as recommended for medium-density residential development and the sector plan recommends medium-suburban density residential uses on the subject property. Staff concurs with the applicant's statement. Medium density is defined as 3.5 to 8 dwelling units per acre. This plan proposes 8.6 dwelling units per acre, which marginally exceeds medium density. Adjacent development blocks do contain lots at 5,000 square feet, and so the immediate request is not out of character with the neighborhood. Staff finds that granting the requested variance to this site alone would not cause substantial impairment to the intent, purposes, and integrity of Plan 2035 or the sector plan.

- (5) Such variance will not substantially impair the use and enjoyment of adjacent properties.**

The applicant provided an Exhibit A, included in the backup, which provides a map of approximately 40 adjacent properties which have net lot areas of 5,000 square feet and net lot areas between 5,001 and 6,000 square feet. The variances requested do not include infringement upon the setbacks to abutting properties. Accordingly, staff finds that this variance will not substantially impair the use and enjoyment of adjacent properties.

- (6) Notwithstanding any other provision of this Section, a variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.**

In regard to the requested variances as stated above, it is staff's determination that practical difficulty only arises, due to the proposed subdivision, which is not required, and has only been requested at the will of the applicant. The variances requested to the minimum lot size requirement, the maximum density, and the minimum setback requirements, necessary to establish a second lot, are together indicative that the District Council found the property to be too small to create an additional lot. The property can be used for its intended purpose for single-family detached development, which is already existing on the site. Therefore, staff find the practical difficulty of meeting the minimum net lot area, rear yard setback, and maximum density are self-inflicted by the owner of the property; thereby, prohibiting these variances from being granted.



Based on the proceeding findings, staff recommends **DISAPPROVAL** of the variances to Sections 27-442(b), 27-442(e), and 27-442(h) for the required net lot area, rear yard setback, and density.

## **RECOMMENDATION**

Notwithstanding the determination of adequacy, sector plan conformance, and conformance with the Subdivision Regulations which are made in this technical staff report, this subdivision cannot be completed without the granting of the requested variances. The criteria for approval of the variances is not met for the subject application and, therefore, staff recommend **DISAPPROVAL**, due to nonconformance with Sections 27-442(b), 27-442(e), and 27-442(h) of the prior Zoning Ordinance, for the required net lot area, rear yard setback, and density.

## **STAFF RECOMMENDS:**

- Disapproval of Preliminary Plan of Subdivision 4-22019
- Disapproval Variance from Section 27-442(b)
- Disapproval Variance from Section 27-442(e)
- Disapproval Variance from Section 27-442(h)