



Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

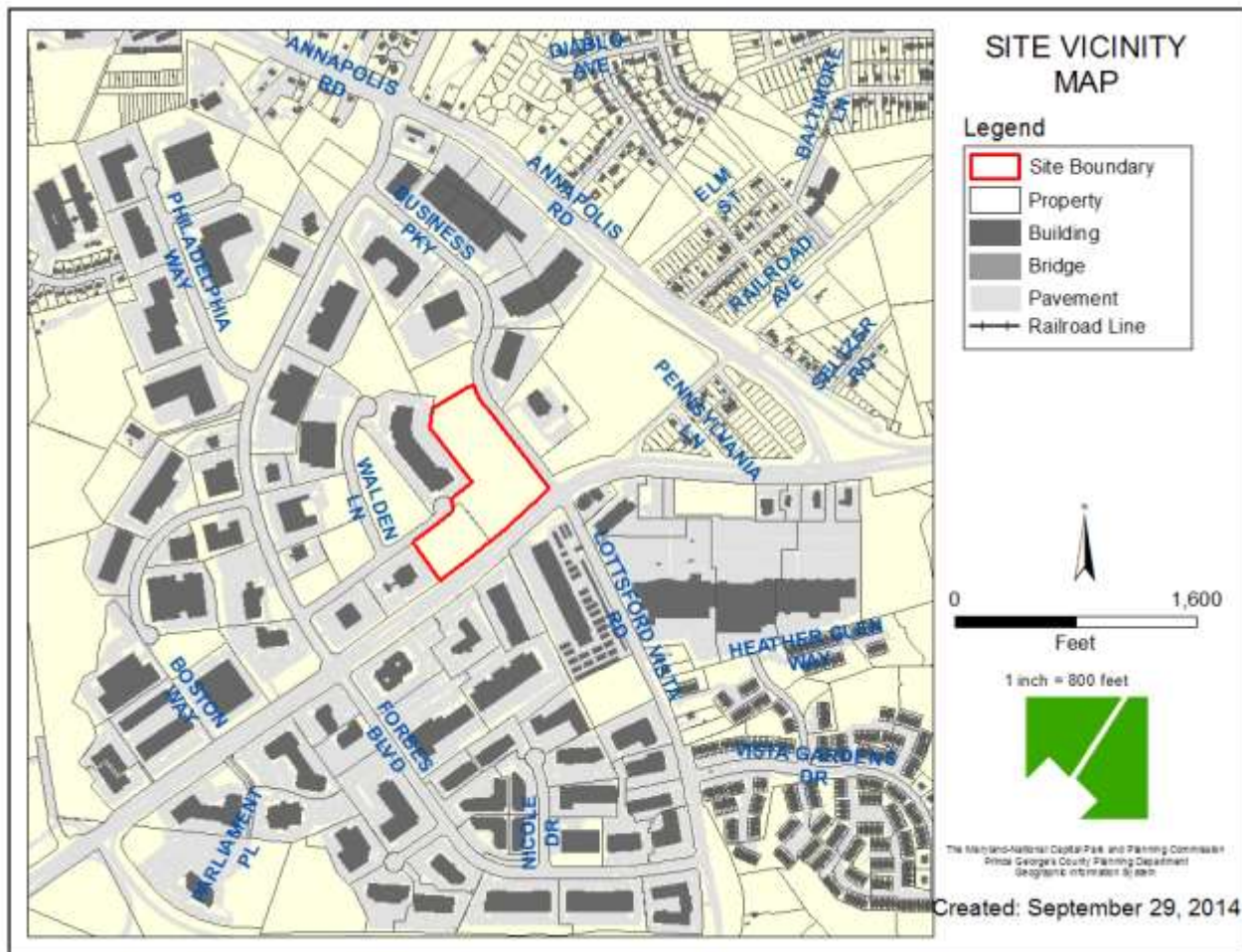
Final Plat of Subdivision

5-14099

Application	General Data	
Project Name & Record Plat Affected: Washington Business Park, Lots 31 and 32, Block B Location: South side of Willowdale Road and North of Martin Luther King Jr Highway (MD 704), approximately 535 feet west of the intersection of MD 704 and Business Parkway. Petitioner: Perseus Washington Business Park Investments, LLC 1850 M Street, NW, Suite 820 Washington, DC 20036 Applicant/Address: Law Offices of Shipley & Horne, P.A. Robert J. Antonetti Jr., Esq. 1101 Mercantile Lane, Suite 240 Largo, MD 20774	Planning Board Hearing Date:	12/04/14
	Staff Report Date:	01/20/15
	Date Accepted:	09/09/14
	Planning Board Action Limit:	N/A
	Plan Area:	12.11 acres
	Zone:	I-1/I-2
	Tax Map Grid:	45/F4
	Lots:	2
	Square Footage:	N/A
	Planning Area:	70
	Council District:	05
	Election District:	20
	Municipality:	None
	200-Scale Base Map:	207NE09

Purpose of Application	Notice Dates	
Final plat with a variation from Section 24-121(a)(3) for direct access to an arterial (MD 704) for Lot 31.	Abutting Property Owners:	N/A
	Sign(s) Posted on Site:	N/A

Staff Recommendation		Staff Reviewer: Sherri Conner Phone Number: 301-952-3168 E-mail: Sherri.Conner@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	



THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

SUBJECT: Final Plat of Subdivision 5-14099
Variation from Section 24-121(a)(3)
Washington Business Park, Lots 31 and 32, Block B

OVERVIEW

The subject property is known as Lots 31 and 32, Block B, recorded on March 13, 2014 (Plat MMB 240-18) in the Prince George's County Land Records. The property is located on Tax Map 45 in Grid F-4, and is approximately 12.11 acres. Both lots are currently unimproved. The subject application is a final plat of subdivision with a companion variation request for Lot 31 to Section 24-121(a)(3) of the Subdivision Regulations to allow direct access to MD 704 for Lot 31. If approved, the note indicating the denial of access to Martin Luther King Jr. Highway (MD 704) along Lot 31 will be removed. If the variation is not granted, the applicant will not proceed with the final plat. The sole purpose of this application is to request approval from the Planning Board for direct access to MD 704.

Pursuant to Section 24-111(a) of the Subdivision Regulations, the resubdivision of land shown on a record plat shall be governed by the same procedures, rules, and regulations as for a new subdivision and thereby subjects the proposed plat to the Subdivision Regulations. This plat has been filed as a plat of correction to remove the note indicating access denied along Lot 31 for which a minor final plat for approval by the Planning Director may typically be filed. However, the applicant is requesting the Prince George's County Planning Board's approval of a variation from Section 24-121(a)(3).

The site has frontage on MD 704 a master plan arterial right-of-way to the south and frontage on Willowdale Road to the north, a master plan 70-foot-wide right-of-way (I-314) dedicate to public use. Section 24-121(a)(3) of the Subdivision Regulations states that, "When lots are proposed on land adjacent to an existing or planned roadway of arterial or higher classification, they shall be designed to front on either an interior street or a service road." The underlying Preliminary Plan of Subdivision (PPS), 4-86041, was designed to provide access to the subject lots via an interior street, Willowdale Road, which is an improved 70-foot-wide public right-of-way. At the time of the review and approval of the preliminary plan of subdivision (PPS) Martin Luther King Jr. Highway (MD 704) was classified as an arterial and the Subdivision Regulations contained the regulation which established the design standard that lots shall be designed to provide alternative access from directly onto an arterial facility (Section 24-121(a)(3)).

The applicant is requesting that direct access from Lot 31 to MD 704 be granted by the Planning Board via the approval of a variation to Section 24-121(a)(3), as discussed further. A variation is subject to the standards contained in Section 24-113 of the Subdivision Regulations. Staff has evaluated the applicant's variation request and being unable to find conformance with all of the required findings recommends disapproval.

SETTING

The subject property is located on Tax Map 45, Grid F-4, in Planning Area 70, and is zoned Light Industrial (I-1) and Heavy Industrial (I-2). The site, Lots 31 and 32, is bounded to the south by Martin Luther King Jr. Highway (MD 704), an arterial facility. Lot 31 is bounded to the west by a credit union/bank on Lot 30 which has sole access to Willowdale Road and not MD 704. To the east is Lot 32, which is currently vacant, with proposed development plans demonstrating direct vehicular access to Business Parkway to the east and not MD 704.

FINDINGS AND REASONS FOR STAFF RECOMMENDATION

1. **Development Data Summary**—The following information relates to the subject final plat of subdivision application.

	EXISTING	PROPOSED
Zone	I-1/I-2	I-1/I-2
Use(s)	N/A	N/A
Acreage	12.11	12.11
Lots	2	2
Outlots	0	0
Parcels	0	0
Dwelling Units	0	0
Public Safety Mitigation	No	No
Variance	No	No
Variation	No	Yes
		Section 24-121(a)(3)

The requested variation from Section 24-121(a)(3) of the Subdivision Regulations was accepted on September 9, 2014, as discussed further and was heard on September 26, 2014 at the Subdivision and Development Review Committee (SDRC) meeting as required by Section 24-113(b) of the Subdivision Regulations.

2. **Preliminary Plan of Subdivision 4-86041**—Preliminary Plan 4-86041 was approved on May 22, 1986 by the Planning Board subject to three conditions, none of which are applicable to the review of this application. At the time of the review and approval of PPS 4-86014, Martin Luther King Jr. Highway (MD 704) was classified as an arterial roadway and the Subdivision Regulations contained (1983 Ed) the restriction which currently exists today regarding access to an arterial or higher classification roadway (Section 24-121). Finding 4 of the PPS resolution of approval (PGCPB No. 86-171) states that, "The subdivision, as modified, meets the legal requirements of Subtitle 24 of the Prince George's County Code and of Article 28, Annotated

Code of Maryland.” The PPS file contained no request for a variation to Section 24-121, and the resolution of approval did not include the grant of a variation for direct access to MD 704.

3. **Transportation**—The Transportation Planning Section analyzed the applicants request in which the applicant notes the fact that there are currently nine other properties in close proximity to the subject property that have direct access to Martin Luther King Jr. Highway (MD 704). Staff has reviewed this information and found that several properties were developed prior to the requirement for alternative access, and several properties were originally designed through the preliminary plan of subdivision process to have direct access to MD 704.

The applicant indicates that an ‘A’ level of service (LOS) would exist at the site (Lot 31) access to MD 704, which may in fact be correct, however, the grant of the variation is not predicated on obtaining a specific LOS. The access issue is based on a long term planning effort in the creation of a hierarchical street system that can support future growth.

4. **Maryland State Highway Administration (SHA)**—The variation request was sent to SHA. Staff is in receipt of two memorandums dated October 3, 2014 and November 26, 2014 (Foster to Conner), SHA provided the following comments in their memorandum of October 3, 2014:

“Regional Intermodal Planning Division Comments:

- “a. The segment of Martin Luther King Jr. Highway) on which the applicant proposes direct access has a federal functional classification of minor arterial and is classified as an arterial in the approved 2009 *Prince George’s County Approved Countywide Master Plan of Transportation*. The applicant’s proposed direct access to MD 704 for the subject property is incompatible with these functional classifications and is incompatible with the speeds and traffic volumes associated with them.
- “b. In addition to traffic congestion, safety considerations need to be considered. Any new additional access creates a conflict point along MD 704 reducing the safety of the roadway.
- “c. The part of the site that has the steepest slopes is immediately adjacent to MD 704. Most of the site is within six vertical feet of Willowdale Drive. Therefore, less grading would be needed to front the development along Willowdale Road, as opposed to fronting on MD 704.
- “d. Overall, the materials that were provided by the applicant don’t provide enough compelling evidence to demonstrate that the restriction of direct access to MD 704 for the proposed development poses an extraordinary hardship on the applicant, owner, or tenant.”

“Access Management Division (AMD) Comments:

- “a. In the statement of justification, there is reference made to an Attachment A, preliminary traffic analysis, but no traffic analysis has been provided. Please clarify.
- “b. Martin Luther King Jr. Highway (MD 704) is listed as State Secondary,

Urban, Other Principal Arterial with a speed limit of 40 miles per hour. Access on arterial routes is subordinate to the need to ensure mobility for through traffic. The abutting roads, Willowdale Road and Business Parkway, are both county roads. Please direct access points onto these roads.

- “c. Please research and provide the SHA right-of-way plat for the section of MD 704 in the vicinity of the proposed development. The plat provided is not a state plat.”

SHA provided the following comments in their memorandum of November 26, 2014:

“Based upon the review, the SHA previously deferred access to Willowdale Road. While we have no objection to removing the denial note from the record plat, we believe that reasonable access to the property is possible from Willowdale Road. The MD 704 roadway is a high volume six-lane arterial highway. For safety reasons, it is reasonable to limit the number and points of access on these types of roadways. This is important and achievable when alternative access exists to accommodate an anticipated development’s traffic. While the SHA continues to support access to Willowdale Road without access to MD 704 to reduce access conflict points, SHA can agree to review a traffic impact study and concept plan to understand the access options, traffic impacts, and what type of access, if any, to MD 704 might be acceptable. The property layout should include access to Willowdale Road and prohibit the opportunity for additional traffic adjacent development from reaching MD 704 through this property. A final decision can be made after reviewing this information when submitted by the developer.”

The applicant has indicated that the memorandum from SHA dated November 26, 2014, represents SHA not objecting to direct access to MD 704. Staff finds that the memorandum indicates several things; that SHA would prefer access to Willowdale Road; that if access were to be granted to MD 704, it would also have to include access to Willowdale which the applicant has indicate could not be accommodated, and that the applicant has a right to file a request with SHA for direct access to MD 704.

The concurrence of the operating agency is not the threshold question in the review of a variation request as set forth in Section 24-113 of the Subdivision Regulations. If SHA were to agree to access Section 24-113(a)(3) staff does not believe that the findings regarding uniqueness (Section 24-113(a)(2)), practical difficulties (Section 24-113(a)(4)), and that the applicants proposal will serve to a greater extent this standard has been demonstrated.

5. **Variation**—Section 24-121(a)(3) of the Subdivision Regulations establishes design guidelines for the creation of new lots that may front on arterial roadways. This section requires that these lots be designed to front on either an interior street or service road. This design guideline requires that an applicant develop alternatives to direct access onto an arterial roadway, *emphasis added*:

Section 24-121. Planning and design requirements.

- (a) **The Planning Board shall require that proposed subdivisions conform to the following:**

- (3) **When lots are proposed on land adjacent to an existing or planned roadway**

of arterial or higher classification, they *shall* be designed to front on either an interior street or a service road.

The subject property was designed through the underlying PPS-486041, to have frontage on Willowdale Road, a 70-foot-wide industrial road as opposed to direct access onto Martin Luther King Jr. Highway (MD 704), an arterial roadway, for which the applicant has requested a variation to the requirements of Section 24-121(a)(3) to allow for direct access to MD 704 for Lot 31.

Section 24-113 of the Subdivision Regulations sets forth the required findings for approval of variation requests.

- (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:**

Approval of the applicant's request may have the effect of nullifying the intent and purpose of the Subdivision Regulations, which is to provide consolidated points of access along arterial roadways and ensure a hierarchical street system. The subdivision was designed for those lots fronting on both MD 704 and Willowdale Road to provide access onto Willowdale Road, an interior street providing access via Forbes Boulevard which intersects with MD 704, approximately 790 feet west of Lot 31.

The site topography is currently at grade with Willowdale Road and slopes downward to MD 704 with the steepest drop in grade directly adjacent to MD 704. The justification provided by the applicant indicates that poor soils exist on Lot 31, which would need to be excavated and then backfilled with structural soils to raise the grade of the site back up to access Willowdale Road. The justification provides that the hardship exists in the added expense of backfilling the site.

A soils report was provided by the applicant, but is inconclusive as to where poor soils may exist and exactly how much soil would need to be removed. The evaluations and recommendations portion on page 5 of the soils report states, "Based on the test borings, it appears that the existing fill represented by the borings can remain in place and be used to support footings and floor slabs." The exact location of the soil borings is unknown as the boring location map was missing from the appendix of the soils report. In addition, the soils report is from 2007 and was done in relation to proposed development on Lot 32 and not Lot 31. A permit plan filed in 2008 for Lot 32 shows a proposed building with a floor elevation of 150 feet which is consistent with the existing site grades and the grades referenced in the soils report, but is off-site to the subject property (Lot 31). Exhibits showing the configuration of Lots 31 and 32 (Staff Exhibits A1 and A2) in relation to the permit plan from 2008 (Staff Exhibit A3) have been provided in the back-up of this staff report, when the area of the site was known as Lots 16 and 29.

Staff does not find that the applicant's alternative serves the purpose of Section 24-121(a)(3) when an alternative does in fact exist to direct access to MD 704. Staff also does not have conclusive evidence that a practical difficulty would exist to grade the site and bring in fill if so required. These actions are a normal course of the development process.

(1) The granting of the variation will not be detrimental to the public safety, health, or welfare, or injurious to other property;

The subject property has frontage on the north side of MD 704, an arterial right-of-way, and on the south side of Willowdale Road. The site is currently undeveloped, but the applicant's statement of justification indicates the future development of the site with a 3,500-square-foot restaurant. The statement of justification also indicates that a preliminary traffic study was prepared and exhibits acceptable levels of operation if a variation were to be granted for direct access to MD 704. The proposal includes the potential for increased use of an existing median break in MD 704 for access to the site, whereas two signalized intersections are located approximately 390 feet east and 790 feet west of the subject site, at Business Parkway and Forbes Boulevard, respectively. This application was referred to the Transportation Planning Section and the Maryland State Highway Administration (SHA) for further review. In the SHA referral dated October 3, 2014, it is indicated that "any new additional access creates a conflict point along MD 704 reducing the safety of the roadway."

The applicant points out that multiple properties in the vicinity of the subject site enjoy direct access to MD 704, as shown in exhibits attached to the statement of justification. However, several of these properties had PPS and were developed prior to the 1983 Edition of the Subdivision Regulations and were not subject to the requirements now contained in Section 24-121(a)(3). Additionally, the only frontage on a public street is MD 704 for many of the sites pointed out in the exhibit. Associated PPS for many of these properties contained plans showing the direct access points as they have been constructed, but the subject site does not have a PPS that established direct access to MD 704 (Staff Exhibit B2) for the subject lot area. The record demonstrates that at the time of review and approval of PPS 4-86041, a variation was not filed or considered in that approval.

(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 applicant's statement of justification indicates that the existing topography is unique to the subject site in that it falls 18 feet from Willowdale Road to MD 704, unlike other lots along Willowdale Road which have topography that falls parallel with Willowdale Road. Staff does not agree with the applicant that the topography or configuration is unique to Lot 31.

The existing conditions plan submitted by the applicant shows the majority of Lot 31 as moderately sloping, at approximately two feet per 50 linear feet, or four percent, from Willowdale Road with steeper slopes adjacent to MD 704 at approximately 16 percent. A ten-foot change in grade occurs with the 60-foot

width directly adjacent to MD 704, whereas the other eight-foot change in grade occurs over the remainder of the lot depth, approximately 250 linear feet.

Additionally, the size and shape of the lot is consistent with the adjacent properties in this subdivision and not found to be unique. Lot 30, located directly west of the subject lot, is distinctly similar to the shape and size of the subject property and contained similar topography when it was developed with a credit union building in 2004 with sole access to Willowdale Road and not MD 704, having an overall preexisting grade which dropped from 162 feet at Willowdale Road to 144 feet at MD 704.

The applicant's statement of justification also indicates poor soils and the location of Lot 31 as unique conditions to the subject site. Sufficient evidence to support a conclusion that poor soils exist on the subject site has not been provided as discussed above. In general, the soils report filed by the applicant to support this contention has been reviewed by the Environmental Planning Section and found not to be conclusive. The applicant has indicated that additional information may be provided prior to or at the hearing on the case.

The statement of justification describes the location of Lot 31 at the end of the cul-de-sac of Willowdale Road as being the furthest lot removed from the intersection of Forbes Boulevard and MD 704, which would be used to access the property, and further explains that the circuitous route will significantly reduce the value of the property and its usability for commercial or retail purposes, although the property is zoned industrial. Staff finds that the site's location and access thereto is not dissimilar to the surrounding lots within Washington Business Park. Specifically, a large commercial office and industrial building exists at the northern portion of the Willowdale Road cul-de-sac. The use proposed is dissimilar to the surrounding properties in that Washington Business Park which is composed of primarily commercial and industrial offices.

If the variation were granted, the applicant would have to grade out the lot to lower the building pad for access to MD 704. This would result in a roughly 18-foot-tall retaining wall along Willowdale Road as demonstrated in applicant's Exhibit 6. The development of this site with access to MD 704 would be 18 feet lower than the grade at Willowdale Road which would preclude direct access to Willowdale Road if the site were to be used for another purpose.

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

The variation to Section 24-121(a)(3) is unique to the Subdivision Regulations and under the sole authority of the Planning Board. If the Planning Board were to approve the variation, the applicant would also be required to obtain the consent of SHA, and vice versa. If SHA were to grant access, the applicant would be required to also obtain the Planning Board's approval.

This final plat and variation for access onto MD 704 was referred to SHA. SHA in two referrals; one dated October 3, 2014 (Foster to Conner) in which they stated in part:

“The applicant’s proposed direct access to MD 704 for the subject property is incompatible with these functional classifications [arterial] and is incompatible with the speeds and traffic volumes associated with them.”

- (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 site is provided frontage on and access via Willowdale Road and is not dissimilar to adjacent properties regarding the size, shape, and topography. Moreover, the existing conditions on the plan submitted by the applicant indicate a steeper drop in the existing grade to access MD 704, approximately ten feet, whereas the frontage along Willowdale Road is relatively flat. The SHA found in their referral dated October 3, 2014 (Foster to Conner):

“The part of the site that has the steepest slopes is immediately adjacent to MD 704. Most of the site is within six vertical feet of Willowdale Road. Therefore, less grading would be needed to front the development along Willowdale Road, as opposed to fronting MD 704.”

The applicant indicates that direct access to MD 704 is essential to the viability of a retail pad site, such as the proposed restaurant, and that patrons would not intuitively know how to access the site. However, staff finds the site to be highly visible from MD 704 and the access from Willowdale Road to be consistent with adjacent properties, such as the bank on Lot 30, which sole access is via Willowdale Road.

- (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 (Lot 31) is zoned I-2; therefore, this provision does not apply.

As discussed throughout this report, staff does not find that the site is unique to the surrounding properties, or that the purposes of this Subtitle will be served to a greater extent by the applicants proposal and recommends the denial of the variation from Section 24-121(a)(3) of the Subdivision Regulations. The applicant has indicated that soils on the property distinguish it from the surrounding properties and result in a hardship (24-121(a)(4)) for development. At the writing of this technical staff report, sufficient information has not been provided by the applicant to support that position.

RECOMMENDATION

DISAPPROVAL OF VARIATION TO SECTION 24-121(a)(3).