



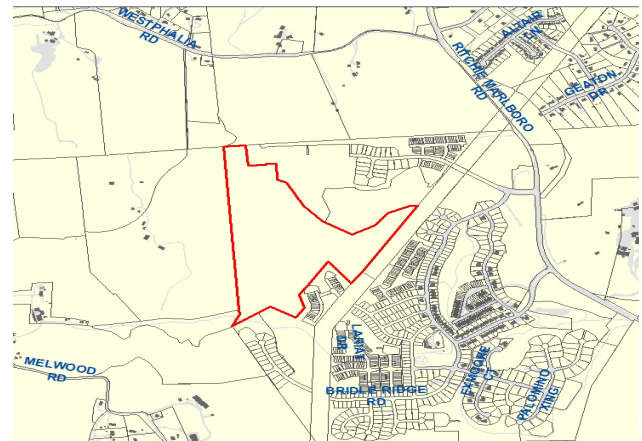
The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

Note: Staff reports can be accessed at <http://mncppc.iqm2.com/Citizens/Default.aspx>

Final Plats of Subdivision 5-19134 and 5-19135 Smith Home Farm, Section 4, Plats 6 and 7

REQUEST	STAFF RECOMMENDATION
Final Plats of Subdivision	APPROVAL
Variation from Section 24-128(b)(7)(A)	APPROVAL

Location: Approximately 3,000 feet east of the intersection of Westphalia Road & MD 4 (Pennsylvania Avenue).	
Gross Acreage:	6.49
Zone:	R-M/M-I-O
Gross Floor Area:	N/A
Lots:	68
Parcels:	13
Planning Area:	78
Council District:	06
Election District:	15
Municipality:	N/A
200-Scale Base Map:	205SE09
Applicant/Address: SHF Project Owner, LLC 1999 Avenue of the Stars, Ste. 2850 Los Angeles, CA 90067	
Staff Reviewer: Thomas Sievers Phone Number: 301-952-3994 Email: Thomas.Sievers@ppd.mncppc.org	



Planning Board Date:	05/28/2020
Planning Board Action Limit:	06/17/2020
Mandatory Action Timeframe	30 days
Staff Report Date:	05/18/2020
Date Accepted:	05/18/2020
Informational Mailing:	N/A
Acceptance Mailing:	N/A
Sign Posting Deadline:	N/A

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/.
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: Final Plats of Subdivision 5-19134 and 5-19135
Variation from Section 24-128(b)(7)(A)
Smith Home Farm, Section 4, Plats 6 and 7

OVERVIEW

The subject property is approximately 3,000 feet east of the intersection of Westphalia Road and MD 4 (Pennsylvania Avenue). The site is currently being improved under a multi-phased development scheme for a subdivision known as Parkside (formerly Smith Home Farm), in accordance with Preliminary Plan of Subdivision (PPS) 4-05080, which was approved by the Prince George's County Planning Board on March 6, 2006 (PGCPB Resolution No. 06-64), and was a total of 758.99 acres. Specific Design Plan SDP-1601-02 was approved by the Planning Board on April 25, 2019 (PGCPB Resolution No. 19-51), for Section 4 (96.49 acres) of Parkside/Smith Home Farm. The subject final plats total 6.49 acres within Section 4 of the Smith Home Farm subdivision and are located in the Residential-Medium (R-M) and Military Installation Overlay (M-I-O) Zones. The final plats of subdivision included in this application contain a total of 13 parcels and 68 lots. Section 4 is located in the north-central portion of the larger Smith Home Farm subdivision, which was approved for a mixed retirement development containing single-family detached and attached dwelling units.

These final plats of subdivision are in conformance with PPS 4-05080. However, the applicant is requesting the Planning Board's approval of a variation from Section 24-128(b)(7)(A) of the Prince George's County Subdivision Regulations, to allow 14 townhouse lots (Lots 29-37 and 58-62, Block J) in the R-M Zone to be served by alleys and that do not have frontage on a public right-of-way, as discussed further.

Staff recommends **approval** of the final plats and variation based on the findings contained in this technical staff report.

SETTING

The property is located on Tax Map 90, Grids E-1 and E-2, in Planning Area 78. The subject property is bounded to the north by vacant land in the Open Space Zone and single-family detached dwellings in the Rural Residential Zone; to the south by Section 3 of the Smith Home Farm subdivision and the Westphalia Central Park (as dedicated previously by the Applicant) in the R-M Zone; to the east by Section 7 of the Smith Home Farm subdivision in the Local Activity Center and R-M Zones, and to the west by Section 2 of the Smith Home Farm subdivision in the R-M Zone.

FINDINGS AND REASONS FOR STAFF RECOMMENDATION

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

	EXISTING	PROPOSED
Zone(s)	R-M/M-I-O	R-M/M-I-O
Use(s)	Residential	Residential
Acreage	6.49 acres	6.49 acres
Lots	0	68
Outlots	0	0
Parcels	1	13
Variance	No	No
Variation	No	Yes 24-128(b)(7)(A)

The requested variation from Section 24-128(b)(7)(A) was received on January 6, 2020, and heard on January 24, 2020 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.

2. **Variation**—The applicant filed a variation request from Section 24-128(b)(7)(A) to permit 14 single-family attached lots to be served by alleys which do not have frontage on a public right-of-way. The variation request, dated December 20, 2019, was submitted on January 6, 2020. The variation is necessary to support the lotting pattern, which was analyzed and approved with the PPS and SDP for the site. The variation has now been filed to meet the technical submittal requirements, and the findings for approval of the variation are outlined below.

Variation from Section 24-128(b)(7)(A)—Section 24-128(b)(7)(A) requires the following:

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

(7) **In Comprehensive Design and Mixed-Use Zones:**

- (A) **For land in the V-L, V-M, R-L, R-S, R-M, R-U, M-U-I, L-A-C, M-A-C, M-X-C, M-U-TC, and M-X-T Zones, the Planning Board may approve a subdivision (and all attendant plans of development) with private roads to serve attached single-family dwellings, two-family dwellings, and three-family dwellings, but not single-family detached or multifamily dwellings, in accordance with the requirements of Subsections (e) and (f) of Section 27-433 of the Zoning Ordinance, except as hereinafter provided. In all of the above zones, and in the R-R Zone when developed as a cluster subdivision, the Planning Board may**

approve a subdivision with alleys to serve any permitted use, provided the lot has frontage on and pedestrian access to a public right-of-way. The District Council may disapprove the inclusion of alleys during the consideration of the detailed site plan for a cluster subdivision. For the purposes of this Section, an “alley” shall mean a road providing vehicular access to the rear or side of abutting lots, and which is not intended for general traffic circulation.

- (i) The pavement width of private roads may be reduced to not less than a minimum of twenty-two (22) feet when it is determined that the provision of the minimum width is consistent with a safe, efficient, hierarchical street system for a development.**
- (ii) The pavement width of private alleys shall be not less than eighteen (18) feet when it is determined that the provision of the minimum width is consistent with a safe, efficient, vehicular access to individual lots. Since alleys only provide vehicular access to lots with frontage on a public street, alleys shall not be required to be improved with street trees or curb and gutter, unless a drainage problem has been identified by the Department of Permitting, Inspections, and Enforcement or the Department of Public Works and Transportation.**

The Applicant's request indicates that, due to the irregular shape of Section 4, coupled with the location of a required master planned roadway and trail system, sensitive environmental features and areas of steep slopes (that in some cases result in the need for retaining walls up to 14-feet in height), the Applicant cannot design all townhouse lots with alleys to have frontage on a public street, per Section 24-128(b)(7)(A).

During the review of SDP-1601-02, additional visitor parking was requested, and that it be distributed evenly throughout Section 4. At the public hearing on April 25, 2019, the Planning Board approved a parking exhibit that demonstrated an additional 54 parking spaces in Section 4 that are over and above the minimum parking required. Significant changes to the lotting pattern were required to accommodate the additional parking, particularly in Block J where the subject variations are requested. The additional number of visitor parking spaces required by SDP-1601-02, along with parcels that are set aside for required stormwater management and private recreational facilities, further limit areas where lots and roadways can be shown. The approved Natural Resources Inventory, NRI-006-05-03, demonstrates that streams, wetlands, 100-year floodplains, and areas of steep slopes exist on the property, further constraining the developable area within Section 4. The lotting pattern in Section 4 has been designed to minimize impacts to these sensitive environmental features to the greatest extent possible.

These features in aggregate limit the ability for the desired townhouse lots to have frontage on a public street in all scenarios. As a result, the Applicant has efficiently laid out the proposed townhouse lots in a manner that allows for sufficient and safe access via a

network of alleys (minimum 18 feet wide), private streets (minimum 26 feet wide), and public streets.

Section 24-113 sets forth the required findings for approval of a variation request as follows:

- (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:**

The granting of the instant variation request is consistent with the relevant purposes of the subdivision regulations and will not harm the Public's interest, as explained herein. Moreover, denial of the instant variation request will certainly create practical difficulties for the Applicant in its pursuit to develop the site in the manner contemplated with prior approvals. The Applicant's request notes that Maryland courts have long distinguished variations (or variances) based on "area" versus "use". *McLean v. Soley*, 270 Md. 208, 215, 310 A.2d 783, 787 (1973); see also, *Zengerle v. Board of County Commissioners for Frederick County*, 262 Md. 1, 276 A.2d 646 (1971). The Court of Special Appeals described the differences between the two types of requests in the following manner:

An "[A]rea variance" (a variance from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings) and not a "use variance" (a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses). *Anderson v. Board of Appeals*, 22 Md. App. 28, 37-38, 322 A.2d 220, 225-26.

This distinction is significant as the type of variation (i.e. "area" or "use") dictates the extent an applicant has to demonstrate practical difficulty or undue/extraordinary hardship resulting from the strict application of the relevant ordinance. The Maryland Court of Appeals held in *Richard Roeser Prof'l Builder v. Anne Arundel County*, 368 Md. 294 (2002) that most jurisdictions, including Maryland, have adopted the position that when reviewing an "area variance", the lesser standard of "practical difficulty" should be used, and when "use variances" are sought, the more strict "undue hardship" standard should be utilized.

In the instant matter, the Applicant is requesting an "area" variation from the requirements in Section 24-128 (b)(7)(A), requiring that townhomes and two-family dwellings served by alleys have frontage on a public street. The "practical difficulty" in this case results from the site constraints within Parkside, which prohibit the lotting pattern for 14 of the approved 127 townhouse units in Section 4 from being served by alleys, while maintaining frontage on a public street. These site constraints include areas of extreme topographical changes, the presence of various sensitive environmental features, a master planned trail system and the master planned alignment of Rock Spring Road (C-627). In addition to the above

reasons, the approved Type II Tree Conservation Plan, TCPH-014-2016- 02, requires 6.07 acres of on-site woodland preservation and 16.44 acres of on-site afforestation within Section 4.

All of the aforementioned site constraints limit the areas where lots and streets/alleys can be located. The hardship/practical difficulties related to the aforementioned site constraints would be largely eliminated if the Applicant could utilize alleys to access the rear of 14 townhouse units. If the instant variation request is not allowed, it is not possible for the Applicant to create an efficient subdivision layout with the subject townhouses utilizing alleys and having frontage on a public street.

(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 the instant variation request will not be detrimental to public safety, health or welfare or be injurious to other property. Each of the subject lots will have frontage on a private street with a minimum pavement width of 26 feet (the size equivalent to a public secondary road), which meets the minimum fire access requirements, and be accessed by alleys (serving the rear of each unit) with a minimum pavement width of 18 feet.

(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 property has several conditions which are unique and are not applicable generally to other abutting properties. Limitations stem from the irregular shape of Section 4, coupled with the location of a required master planned roadway and trail system, sensitive environmental features and areas of steep slopes (that in some cases, result in the need for retaining walls up to 14-feet in height). The Planning Board's request for additional parking within Section 4 (per SDP-1601/02), and their subsequent approval of a parking exhibit that provides 54 parking spaces over and above the minimum required, is unique to the property and generally not applicable to other properties. Due to these circumstances, the Applicant cannot design all townhouse lots with alleys to have frontage on a public street per Section 24-128(b)(7)(A).

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

Granting the variation will not be in violation of any law, ordinance, or regulation. To the contrary, the granting of the instant variation request would allow the project to create the compact residential density contemplated in the approved Comprehensive Design Plan, CDP-0501-01, without negatively impacting environmental setbacks required by other County ordinances and/or regulations.

- (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;**

Because of the combination of factors stated above, the Applicant would experience hardship/practical difficulties if the instant variation request is not granted. Again, the “practical difficulty” in this case stems from the irregular shape of Section 4 coupled with the location of a required master planned roadway, master plan trail system, sensitive environmental features, areas of steep slopes and the requirement for additional visitor parking that is well over the minimum required. These features in aggregate limit the ability for the aforementioned 14 townhouse lots served by alleys to have frontage on a public street. As a result, the Applicant has efficiently laid out the proposed subdivision in a manner that allows for sufficient and safe access via a network of alleys (minimum 18 feet wide), private streets (minimum 26 feet wide) and public streets. If this variation were denied, the Applicant would suffer the practical difficulty of not being able to achieve the developed planned and found acceptable for this section pursuant to prior approvals.

- (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 R-M; therefore, this provision does not apply.

Staff finds the site is unique to the surrounding properties and the variation is supported by the required findings. The approval of the variation will not have the effect of nullifying the intent and purpose of the Subdivision Regulations, which, in part, is to encourage creative residential subdivision design that accomplishes the purpose of the Subdivision Regulations in a more efficient manner. Therefore, staff recommends **approval** of the Variation to Section 24-128(b)(7)(A), to permit 14 single-family detached lots (Lots 29-37 and 58-62, Block J) to be served by an alley and that do not have frontage on a public right-of-way.

3. **Referral and Comments from other Entities**—The requested variation was reviewed by the Environmental Planning Section, the Urban Design Section, and the Transportation Planning Section of the Prince George’s County Planning Department and was also referred to the Prince George’s County Fire Department. None of the agencies referred objected to the approval of this application.

RECOMMENDATION

- Approval of Final Plats of Subdivision 5-19134 and 5-119135
- Approval of a Variation from Section 24-128(b)(7)(A)