

R E S O L U T I O N

WHEREAS, Annapolis Road JOF AAI II LLC – JDF Management, LLC is the owner of a 1.09-acre parcel of land known as Parcel A of the Grayling Subdivision, said property being in the 2nd Election District of Prince George’s County, Maryland, and being zoned Mixed Use-Infill (M-U-I) and Development District Overlay (D-D-O); and

WHEREAS, on December 10, 2021, Annapolis Road JOF AAI II LLC – JDF Management, LLC filed an application for approval of a Final Plat of Subdivision for one parcel; and

WHEREAS, the application for approval of the aforesaid Final Plat of Subdivision, also known as Final Plat 5-21082 for Grayling, Parcel A 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 December 16, 2021, for its review and action in accordance with the Land Use Article of the Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George’s County Code; and

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

WHEREAS, on December 16, 2021, 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 5-21082, including a Variation from Section 24-122(a) of the Subdivision Regulations to modify the width and location of the public utility easement, pursuant to the conditions of Final Plat of Resubdivision 5-19004.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George’s County Planning Board are as follows:

1. The subdivision, as modified with conditions, meets the legal requirements of 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 A of the Grayling Subdivision, as recorded in Plat Book 254-90 among the Prince George’s County Land Records, and is located within the municipal limits of Landover Hills on the southbound side of MD 450 (Annapolis Road) at its intersection with 68th Place. Parcel A is zoned Mixed Use-Infill (M-U-I) and is within the Development District Overlay (D-D-O) Zone, subject to the 2010 *Approved Central Annapolis Road Sector Plan and Sectional Map Amendment*. The subject property is 1.09 acres and is improved with a 2,350-square-foot day care facility.

Parcel A is subject to the conditions of Final Plat of Resubdivision, 5-19004, approved by the Prince George’s County Planning Board on July 30, 2020 (PGCPB Resolution No. 2020-122), which was required to raze the existing day care facility and construct approximately 131,400 square feet of industrial development and 1,006 square feet of general office space. The approval of 5-19004 also included approval of a variation request from Section 24-121(a)(3) of the Prince George’s County Subdivision Regulations to allow direct access to MD 450, which is an arterial roadway. The approval and conditions associated with 5-19004 will remain in effect on the subject property, in addition to the approvals granted with this final plat of subdivision and variation. Parcel A is also subject to Detailed Site Plan DSP-19001, approved by the Planning Board on February 13, 2020 (PGCPB Resolution No. 2020-11) to raze the existing day care facility and construct an approximately 133,000-square-foot consolidated storage building including 824 square feet of retail/office space and 1,006 square feet of incubator office space.

This final plat of subdivision is in conformance with PGCPB Resolution No. 2020-122. However, the applicant has requested the Planning Board’s approval of this plat of correction, in order to revise the existing platted public utility easement (PUE), which conflicts with an existing Washington Suburban Sanitary Commission (WSSC) right-of-way. A variation from Section 24-122(a) of the Subdivision Regulations was requested to modify the location and width of the standard 10-foot-wide PUE requirement on the western boundary of Parcel A along MD 450, as discussed further below.

3. **Setting**—The subject property is located within the municipal limits of Landover Hills, on Tax Map 51 in Grids B2 and C2, and in Planning Area 69. To the west of the subject property is MD 450, with properties zoned One-Family Detached Residential (R-55) and M-U-I, all within the D-D-O Zone containing a fire station and commercial development, respectively, beyond; to the south, the subject property abuts a shopping center in the M-U-I and D-D-O Zones and a multifamily development in the Multifamily Medium Density Residential (R-18) Zone; to the east, the subject property abuts a multifamily development in the R-18 Zone; to the north, the subject property abuts commercial development in the M-U-I and D-D-O Zones.
4. **Development Data Summary**—The following information relates to the subject final plat of subdivision application.

	EXISTING	APPROVED
Zone(s)	M-U-I & D-D-O	M-U-I & D-D-O
Use(s)	Commercial	Industrial
Acreage	1.09 acres	1.09 acres
Lots	0	0
Outlots	0	0
Parcels	1	1
Variance	No	No
Variation	Yes, Section 24-121(a)(3)	Yes, Section 24-122(a)

The requested variation from Section 24-122(a) was received on August 11, 2021, and heard on September 3, 2021, at the Subdivision and Development Review Committee meeting, as required by Section 24-113(b) of the Subdivision Regulations, as a companion request to the subject final plat of subdivision.

2. **Variation**—The applicant filed a variation request from Section 24-122(a) modify the location and width of the standard 10-foot-wide PUE requirement on the western boundary of Parcel A along MD 450 to accommodate an existing WSSC easement. The variation request was dated August 10, 2021, and received on August 11, 2021. The 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. The subject property's western boundary abuts the public right-of-way of MD 450. At the time of the original plat of subdivision for Parcel A, a PUE was not required along MD 450. When Parcel A was resubdivided with 5-19004 and subsequently replatted in the plat recorded in Plat Book ME 254-90, a standard 10-foot-wide PUE was established along the property's frontage on MD 450, in accordance with today's subdivision requirements. The new PUE was established to accommodate future dry utility lines. This PUE overlaps the existing WSSC easement along the property's frontage of MD 450. Following additional review by WSSC, it was determined that the PUE, as established on the resubdivision plat, could not overlap the existing WSSC easement. To accommodate this conflict, the applicant is requesting this plat of correction with a variation to modify the standard location and width of the PUE by providing a variable width PUE (4 to 11 feet wide) that is set back at an angle between 0 and 20 feet from the right-of-way of MD 450 to accommodate the existing WSSC easement. Currently, the subject property is developed with a day care facility, but is proposed to be redeveloped with industrial and commercial development, pursuant to 5-19004 and DSP-19004.

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 zoning of the subject property), which are addressed by the applicant's variation request dated August 10, 2021, 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;

Not providing the required PUE in its standard location on Parcel A along MD 450 will not be detrimental to public safety, health, or welfare, or injurious to other properties. Wet utilities are currently accessed within the MD 450 right-of-way and the existing WSSC easement abutting MD 450 along the subject site's frontage. Dry utilities are currently accessed within the right-of-way of MD 450 for the existing day care facility on Parcel A as well, given no PUE was previously existing. The subject property and all surrounding properties contain existing development and access utilities via these avenues. The proposed PUE is for the placement of any future dry utilities, which are customarily separate from wet utilities located in the right-of-way. Therefore, the Planning Board finds that granting the variation to modify the location and width of the PUE on Parcel A along MD 450 will not disrupt the continuous nature of utilities, will provide for the future planning of utilities to be separated from wet utilities, and will not be detrimental to the public safety, health, or welfare, or injurious to other 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 applicant's variation request lists the presence of existing utility lines within the existing WSSC easement and steep slopes and forested conditions in the rear of the subject property as conditions not generally applicable to other properties. The existing wet utility lines within the WSSC easement is a condition that is generally applicable to other properties. However, the location of the existing WSSC easement is a condition not generally applicable to other properties. Typically, the PUE would be the closest easement to the right-of-way to ensure that dry utilities are provided in a separate easement from wet utilities, which are typically within the right-of-way. In this instance, the wet utility (WSSC) easement is on the subject property. When Parcel A was originally platted in

1960, on the plat recorded in Plat Book WWW 38-16, no PUE was established along MD 450, as it was not a requirement of development at that time. Development on Parcel A accesses wet utilities through a WSSC easement abutting MD 450 on the property, and dry utilities within the right-of-way of MD 450. When Parcel A was replatted in 2020 in Plat Book ME 254-90, a 10-foot-wide PUE was platted in accordance with today's development requirements in its standard location and overlaps the existing WSSC easement. Following additional correspondence with WSSC (included in the applicant's variation request as Exhibit A), it was determined that the PUE would not be permitted to overlap with the existing WSSC easement. Therefore, the space along Parcel A abutting MD 450 that would typically hold the PUE is not available, due to the presence of the existing WSSC easement. In addition to the location of the existing WSSC easement, the steep slopes and forested conditions in the rear of the subject property push the development envelope towards the front of the lot, which creates a need for the variable width of the PUE, which is a condition not generally applicable to other properties. The Planning Board finds that the applicant's request to modify the location and width of the PUE requirement along MD 450 is warranted, given the steep slopes and forested conditions in the rear of the subject property and the location of the existing WSSC easement along the property's frontage, as together these are conditions not generally found on other properties.

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

The Planning Board finds that granting this variation will not be in violation of any law, ordinance, or regulation. The variation from Section 24-122(a) is unique to the Subdivision Regulations and under the sole authority of the Planning Board.

(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 applicant's variation request states that due to the existing steep slopes and forested areas in the rear of the subject property and existing utility lines within the existing WSSC easement along MD 450, development of the PUE in its standard location, as required would result in a hardship on the owner. The steep slopes and forested conditions in the rear of the subject property push the development envelope towards the front of the lot, which creates a particular physical and topographical condition and necessitates the need for the variable width of the PUE. In addition, the location of the existing WSSC easement is a particular physical condition that creates the need for a modification of the PUE's location. Typically, PUEs are the closest easement to the public right-of-way.

When Parcel A was originally platted in 1960, in the plat recorded in Plat Book WWW 38-16, a PUE was not established, as this was not a requirement for development at that time. Development on Parcel A accessed wet utilities through a WSSC easement abutting MD 450 on the property, and dry utilities through the right-of-way of MD 450. When Parcel A was replatted in 2020 in Plat Book ME 254-90, a 10-foot-wide PUE was established in its standard location, in accordance with today's development requirements and overlaps the existing WSSC easement. Correspondence provided by the applicant in Exhibit A of the applicant's variation request indicates that the required PUE would not be permitted to overlap with the existing WSSC easement. The PUE on Parcel A is provided to plan for future placement of new or relocated utilities and to separate wet and dry utilities. As a result, the Planning Board finds that implementing the standard PUE requirement along MD 450 would result in a hardship to the owner, as distinguished from a mere inconvenience if the strict letter of these regulations is carried out.

The Planning Boards finds that each of the criteria for variation approval have been met, and approves the modified location and width of the required PUE as shown on the subject plat.

- 3. Referral and Comments from other Entities**—The requested variation was referred to the Potomac Electric Power Company, WSSC, Washington Gas, Baltimore Gas and Electric Company, Comcast, Verizon, and AT&T. No responses from the utility companies were received.

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.


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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Geraldo, seconded by Commissioner Bailey, with Commissioners Geraldo, Bailey, Doerner, Washington and Hewlett at its regular meeting held on Thursday, December 16, 2021, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 6th day of January 2022.

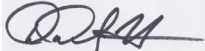
Elizabeth M. Hewlett
Chairman



By Jessica Jones
Planning Board Administrator

EMH:JJ:KD:nz

APPROVED AS TO LEGAL SUFFICIENCY



David S. Warner
M-NCPPC Legal Department
Date: December 23, 2021