

RESOLUTION

WHEREAS, Nazario Family, LLC is the owner of a 1.42-acre parcel of land known as Lot 21, Block 3, recorded on March 18, 2014 (Plat MMB 240-21), and Lot 11, Block 3, of the Oak Crest Subdivision recorded in October 1930 (Plat LIB A-108), said property being in the 10th Election District of Prince George's County, Maryland, and being zoned Commercial Shopping Center (C-S-C) and One-Family Detached Residential (R-55); and

WHEREAS, on July 31, 2014, Rifikin Weiner Livingston Levitan & Silver, LLC filed an application for approval of a Final Plat of Subdivision for 2 lots; and

WHEREAS, the application for approval of the aforesaid Final Plat of Subdivision, also known as Final Plat of Subdivision 5-14093 for Oak Crest, Lots 22 & 23, 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 September 4, 2014, 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 with conditions; and

WHEREAS, on September 4, 2014, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on 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 5-14093, Oak Crest, Lots 22 & 23, including a Variation from Section 24-121(a)(3) and a shared access easement pursuant to Section 24-128(b)(9) for 2 lots with the following conditions:

1. Prior to recordation of the final plat of subdivision:
  - a. The shared access easement agreement shall be recorded in Prince George's County Land Records, and the liber and folio reflected on the approved final plat.
  - b. The resolution number of this application shall be reflected on the final plat in Note 5.
2. Prior to the recommendation of approval by The Maryland-National Capital Park and Planning Commission (M-NCPPC) for the first building permit for either Lot 22 or 23 (whichever occurs first), the construction of the shared driveway shall be a part of the limit of the permit in order to provide adequate access to the site.

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 known as Lot 21, Block 3, recorded on March 18, 2014 (Plat MMB 240-21), and Lot 11, Block 3, of the Oak Crest Subdivision recorded in October 1930 (Plat LIB A-108), both in the Prince George's County Land Records. The property is located on Tax Map 6 in Grid B-4, and is approximately 1.42 acres. A restaurant and parking lot were formerly located on Lot 21. The restaurant has been razed and Lots 21 (1.25 acres) and 11 (0.17 acre) are currently unimproved. A lot line adjustment is proposed between Lot 11 and Lot 21, Block 3, resulting in the creation of Lots 22 and 23, Block 3. The subject application is a final plat of subdivision for the lot line adjustment and has been submitted concurrently with Detailed Site Plan DSP-14016. The DSP is required by condition of Zoning Map Amendment A-9908-C and proposes to construct 5,500 square feet of gross floor area for an urgent care facility on Lot 22.

Prior to recordation of Plat MMB 240-21 for Lot 21, Plat PM 230-40 was platted pursuant to Section 24-111(c)(4) of the Subdivision Regulations for a portion of this site. According to this section, a site is exempt from the requirement of filing a preliminary plan of subdivision (PPS) if the development of more 5,000 square feet of gross floor area, which constitutes at least ten percent of the total area of a site, has been constructed pursuant to a building permit issued on or before December 31, 1991. Therefore, the development of more than 5,000 square feet proposed with the pending DSP-14016 within the portion of the site that was the subject of Plat PM 230-40 will not require a new PPS. However, the geographic area of land that was previously identified as Lot 11 that is being incorporated into Lot 22, Block 3, is not exempt from filing a PPS for the development of more than 5,000 square feet. A note has been provided on the plat to indicate that development of more than 5,000 square feet on the easterly 50 feet of Lot 23 (old Lot 11) will require a new PPS and the remainder of Lots 23 and 22 may be developed in accordance with Section 24-111(c)(4) of the Subdivision Regulations.

Pursuant to Section 24-111(a), 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 in accordance with Section 24-108(a)(3) for the adjustment of common boundary lines for which a minor final plat for approval by the Planning Director may typically be filed. However, the applicant is requesting the Planning Board's approval of a variation from Section 24-121(a)(3) of the Subdivision Regulations, as discussed further, and the approval of a shared access easement to serve Lots 22 and 23 in accordance with 24-128(b)(9) of the Subdivision Regulations.

The site has frontage on Baltimore Avenue (US 1), a master plan arterial right-of-way. Section 24-121(a)(3) 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 and

interior street or a service road." Lot 22 does not have frontage on any other public right-of-way. Lot 23 has approximately 139 feet of frontage on Magnolia Street to the south, however, pursuant to Conditions 1(a) and (b) of Zoning Map Amendment A-9908-C, the use and/or redevelopment of the site is to be strictly oriented to US 1 and no access to the site is to be provided from the improved portion of Magnolia Street. The proposed design does not include an interior street or service road; therefore, a variation from Section 24-121(a)(3) is approved with this application.

A 22-foot-wide shared pedestrian and vehicular access easement is provided for access to Lots 22 and 23 from Baltimore Avenue (US 1) which required approval by the Planning Board pursuant to Section 24-128(b)(9) of the Subdivision Regulations through a subdivision application. The Maryland State Highway Administration (SHA) stated that the easement must be 25 feet wide where it connects to the US 1 right-of-way which is exceeded on the proposed plat with a width of 29.32 feet at the right-of-way. The plat also reflects that access is denied along all adjacent rights-of-way including Magnolia Street, excepting the 29.32-foot-wide shared pedestrian and vehicular access location along US 1. The single access location for the two lots will provide a consolidated and safe ingress/egress to the proposed lots.

3. **Setting**—The subject property is located on Tax Map 6, Grid B-4, in Planning Area 62, and is zoned Commercial Shopping Center (C-S-C) and One-Family Detached Residential (R-55). The site is bounded to the north by a motorcycle dealership and other industrial uses in the C-S-C and Light Industrial (I-1) zones, respectively. To the southeast are residentially developed lots in the I-1 Zone, to the south are vacant lots in the R-55 Zone, to the southeast is the partially developed portion of Magnolia Street, to the abutting south is a restaurant in the C-S-C Zone, and to the west is Baltimore Avenue (US 1).
4. **Development Data Summary**—The following information relates to the subject final plat of subdivision application and the proposed development.

	EXISTING	APPROVED
Zone	C-S-C/R-55	C-S-C (1.25 acres) R-55 (0.17 acre)
Use(s)	Restaurant	Urgent Care
Acreage	1.47	1.47
Lots	2	2
Outlots	0	0
Parcels	0	0
Dwelling Units	0	0
Public Safety Mitigation	No	No
Variance	No	No
Variation	No	Yes (24-121(a)(3))

The variation from Section 24-121(a)(3) of the Subdivision Regulations was accepted on July 31, 2014, and was heard on August 15, 2014 at the Subdivision and Development Review Committee (SDRC) meeting as required by Section 24-113(b) of the Subdivision Regulations.

5. **Variation**—Section 24-121(a)(3) of the Subdivision Regulations establishes design guidelines for lots that front on arterial roadways. This section requires that these lots be developed to provide direct vehicular access to either a service road or an interior driveway when feasible. This design guideline encourages an applicant to develop alternatives to direct access onto an arterial roadway.

The subject property has frontage on and proposes direct vehicular access via Baltimore Avenue (US 1), an arterial roadway, for which the applicant has requested a variation to the requirements of Section 24-121(a)(3).

Section 24-113 of the Subdivision Regulations sets forth the required findings for approval of variation requests. The Planning Board approves the variation to allow access to a proposed arterial in this case and makes the following findings:

- (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 does not have the effect of nullifying the intent and purpose of the Subdivision Regulations. In fact, strict compliance with the requirements of Section 24-121(a)(3) could result in practical difficulties to the applicant that could result in the applicant not being able to develop this property.

- (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 lies on the east side of US 1, an arterial right-of-way as identified in the 2010 *Approved Subregion 1 Master Plan and Sectional Map Amendment*. The site was formerly developed with a large restaurant. Two access drives directly onto US 1 along the property's 175-foot frontage provided access to large parking lots north and south of the former building.

The proposal is to construct a single commercial entrance to serve a medical office (urgent care) use on Lot 22 and a future commercial development on Lot 23. The

location of the access drive in the approximate center of the property's frontage was chosen to optimize sight distance in both directions and provide one safe point of ingress/egress for the two proposed commercial lots. The properties along US 1 immediately north and south of the subject site are developed with commercial businesses, each having their own access not contiguous to the subject site, and will therefore not be negatively impacted by the granting of the requested variation.

**(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;**

A regular grid of side streets intersecting the arterial roadway, US 1, at 350-foot intervals characterizes the road network in the immediate vicinity of the site. A number of the commercial properties fronting on US 1 utilize these side streets as a means of primary or secondary access. Magnolia Street (that lies immediately contiguous to and south of Lot 23) was never constructed to intersect with US 1, unlike all of the other side streets. Approximately 300 feet of Magnolia Street, on the east side of US 1, existed only as an unimproved "paper" street.

Recently, the owner petitioned and the county agreed to abandon that "paper" portion of Magnolia Street. The abandonment, along with Zoning Map Amendment A-9908-C which required that no access to the site shall be provided from the improved portion of Magnolia Street, eliminates any other vehicular access from a public street other than US 1 to the property. The only possible means of accessing the site from a public right-of-way is to provide an entrance or entrances directly onto US 1.

The lack of any alternative access from a public right-of-way is a condition that makes the subject property unique, whereas the majority of properties fronting on US 1 in the vicinity of the subject site do have access from a network of side streets off of US 1.

**(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 is not regulated by any other law, ordinance, or regulation. Access to US 1 is under the authority of SHA, and the proposed site plan, including this variation for access onto US 1, was referred to SHA. SHA indicated no objection to the proposed plan. Therefore, the granting of the variation will not violate any other code requirement.

- (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;**

Zoning Map Amendment A-9908-C required that the subject site be denied access via the only connecting service road, Magnolia Street, to the southeast. The subject site is bounded to the north and south by developed commercial properties, and residentially zoned lots are directly east of the subject site, leaving US 1 to the west as the only option for direct vehicular access. The particular hardship of denying the requested variation would be that, due to the physical surroundings, the owner would not be able to develop the subject site with any permitted use in the C-S-C Zone.

- (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 C-S-C and R-55; therefore, this provision does not apply.

The variation is required as a result of the lot line adjustment proposed by the applicant. This lot line adjustment will result in two lots fronting on Baltimore Avenue (US 1) instead of one lot. This would result in an increase in the number of commercial access driveways onto an arterial roadway (US 1). The Planning Board approves the variation for direct access onto US 1 subject to the consolidation of access for Lots 22 and 23, Block B, as reflected on the Final Plat (5-14093). In order to consolidate the access, the Planning Board is authorizing the use of a vehicular access easement pursuant to Section 24-128(b)(9) of the Subdivision Regulations to avoid a potentially unsafe traffic situation. The new subdivision plat entitled "Lot 22 and Lot 23, Block 3, Oak Crest" notes that a shared access pursuant to Section 24-128(b)(9) is approved by the Planning Board and will reflect that the final plat is subject requirements of the resolution of approval of this application which includes the Variation to Section 24-121(a)(3) and applicable conditions.

6. **Detailed Site Plan DSP-14016**—Detailed Site Plan DSP-14016 is being processed concurrently with the subject final plat and was referred to SHA. In a memorandum dated July 21, 2014, SHA indicated no objection to proposed DSP-14016, which included the proposed access onto US 1, subject to SHA's regulatory construction requirements.

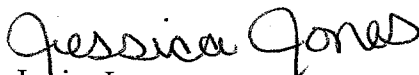
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with Circuit Court for Prince George's County, Maryland within thirty (30) days following the date of notice of the adoption of this Resolution.

\* \* \* \* \*

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Bailey, with Commissioners Washington, Bailey, Shoaff and Hewlett voting in favor of the motion, and with Commissioner Geraldo recused at its regular meeting held on Thursday, September 4, 2014, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 25th day of September 2014.

Patricia Colihan Barney  
Executive Director

By   
Jessica Jones  
Planning Board Administrator

PCB:JJ:SC:arj

APPROVED AS TO LEGAL SUFFICIENCY.

  
M-NCPPC Legal Department

Date 9/10/14