THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
TTY: (301) 952-4366
www.mncppc.org/pgco

PGCPB No. 15-08

File No. 5-14099

RESOLUTION

WHEREAS, Perseus Washington Business Park Investment LLC. is the owner of a 12.11-acre parcel of land known as Lots 31 and 32, Block B, recorded on March 13, 2014 (Plat MMB 240-18), of Washington Business Park, recorded in Plat MMB 240-18, said property being in the 20th Election District of Prince George's County, Maryland, and being zoned Light Industrial (I-1) and Heavy Industrial (I-2); and

WHEREAS, on September 9, 2014, Law Offices of Shipley & Horne, P.A. filed an application for approval of a Final Plat of Subdivision for 2 lots and a variation from Section 24-121(a)(3); and

WHEREAS, the application for approval of the aforesaid Final Plat of Subdivision, also known as Final Plat of Subdivision 5-14099 for Washington Business Park, Lots 31 and 32, Block B, 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 January 29, 2015, 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 January 29, 2015, 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 5-14099, Washington Business Park, Lots 31 and 32, Block B, including a variation from Section 24-121(a)(3) for direct access to an arterial (MD 704) for Lot 31.

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

1. **Background**—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.

   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.

2. **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. To the east is Lot 32, which is currently vacant, with proposed development plans demonstrating direct vehicular access to Business Parkway to the east.

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

	EXISTING	APPROVED
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, 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.

4. **Preliminary Plan of Subdivision 4-86041**—The site is subject to Preliminary Plan of Subdivision 4-86041 (PGCPB No. 86-171) which 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.

5. **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. At the hearing of January 29, 2015, the applicant provided evidence that several properties with direct access to MD 704 also have direct access to a secondary street.

6. **Maryland State Highway Administration (SHA)**—Two memorandums dated October 3, 2014 and November 26, 2014 (Foster to Conner), were provided. The October 3, 2014 memorandum provided the following comments:

"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."

At the hearing on January 29, 2015, the applicant provided testimony that at the time of drafting its October 3, 2014 memorandum, SHA had not reviewed the applicant's traffic study included with its statement of justification. Said traffic analysis prepared by the applicant had concluded, in part, that the applicant's proposed access to MD 704 would operate a level of service "A". Mr. Antonetti provided testimony at the January 29, 2015 hearing that after receiving the SHA memorandum of October 3, 2014, the applicant communicated the results of the applicant's traffic study to SHA regarding the potential traffic safety impact of the proposed access point to MD 704. Subsequently, 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."

7. **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:

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 and Martin Luther King Jr. Highway (MD 704), an arterial roadway. 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 does not have the effect of nullifying the intent and purpose of the Subdivision Regulations.

The site topography is currently at grade with Willowdale Road and slopes downward to MD 704 and west towards Forbes Boulevard.

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

The applicant will be required to file an access permit with SHA, who will review the permit to ensure that direct access to MD 704 will not be detrimental to the public safety, health, or welfare, or injurious to other property. Provided SHA grants the needed access permit, the instant variation request should not be detrimental to the public safety, health, or welfare, or injurious to other property.

(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 Planning Board finds 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. In addition, Lot 31 is at a high point, a topographical condition not shared by the surrounding properties.

(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 does not compel SHA to issue an access permit. The applicant will still be required to obtain an access permit from SHA in accordance with their regulations. Notwithstanding, the variation does not violate any other particular law, ordinance, or regulation.

(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 not dissimilar to adjacent properties regarding the size, shape, however the topography is unique to Lot 31. Not only is Lot 31 constrained by a steep grade along MD 704, Lot 31 is at the highest elevation of any other lot fronting Willowdale Road, making it unique and resulting in practical difficulties in the development of the site. Specifically, the applicant will have to perform significant site work (including bringing on off-site controlled structural fill to Lot 31) to create a relatively flat site at grade with the existing 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.

Based on the preceding finding the Planning Board approves the variation from Section 24-121(a)(3) of the Subdivision Regulations for Lot 31 only.

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, Geraldo and Hewlett voting in favor of the motion, and with Commissioner Shoaff absent at its regular meeting held on Thursday, January 29, 2015, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 19th day of February 2015.

Patricia Colihan Barney
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY
M-NCPPC Legal Department
Date 2/3/15

By Jessica Jones
Planning Board Administrator

PCB:JJ:WC:arj