



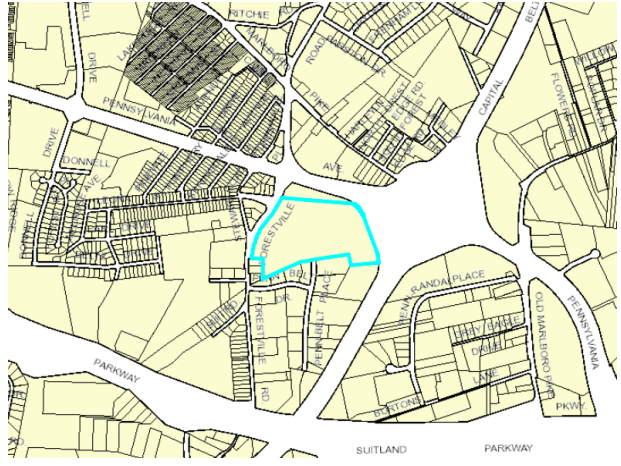
The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

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

Preliminary Plan of Subdivision Reconsideration Hearing Jemal's Post

4-06145

REQUEST		STAFF RECOMMENDATION	
Reconsideration Hearing		APPROVAL with conditions	

Location: On the east side of Forestville Road, in the southwest quadrant of the intersection of Pennsylvania Avenue and the Capital Beltway.			
Gross Acreage:	33.35		
Zone:	I-1/M-I-O		
Gross Floor Area:	321,069 sq. ft.		
Lots:	7		
Parcels:	1		
Planning Area:	75A		
Council District:	06		
Election District:	06		
Municipality:	N/A		
200-Scale Base Map:	205SE07		
Applicant/Address: 3700 Forestville Road, LLC 1800 Wazee Street, Suite 500 Denver, CO 80202		Planning Board Date:	07/08/2021
Staff Reviewer: Mridula Gupta Phone Number: 301-952-3504 Email: Mridula.Gupta@ppd.mncppc.org		Planning Board Action Limit:	N/A
		Memorandum Date:	06/17/2021
		Date Received:	03/15/2021
		Previous Parties of Record: (Applicant)	03/15/2021
		Previous Parties of Record: (M-NCPPC)	03/25/2021 06/22/2021

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.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

June 17, 2021

MEMORANDUM

TO: The Prince George's County Planning Board

VIA: Sherri Conner, Supervisor, Subdivision Section
Development Review Division

FROM: Mridula Gupta, Planner Coordinator, Subdivision Section
Development Review Division

SUBJECT: **Preliminary Plan of Subdivision 4-06145**
Reconsideration Hearing
Jemal's Post

By letter dated March 15, 2021, Thomas H. Haller, representing 3700 Forestville Road, LLC, requested a waiver of the Prince George's County Planning Board's Rules of Procedure (Section 12(a)), which requires that a reconsideration request be submitted no less than 14 calendar days after the date of notice of the final decision (Section 10(a)). In this case, the resolution of approval (PGCPB Resolution No. 07-96(A)) was adopted by the Planning Board on May 24, 2007 and mailed out on May 29, 2007.

On April 8, 2021, the Planning Board granted a waiver of the Planning Board's Rules of Procedure to admit a reconsideration request submitted more than 14 days after the adoption of the resolution. The Planning Board also granted the applicant's request for a reconsideration, in accordance with Section 10(e) of the Rules of Procedure. Section 10(e) states that a reconsideration may only be granted if, in furtherance of substantial public interest, the Board finds that an error in reaching the original decision was caused by fraud, surprise, mistake, inadvertence, or other good cause. The Planning Board granted the request for reconsideration based on inadvertence associated with reaching the original decision, and in furtherance of substantial public interest.

The applicant's specific request is for reconsideration of Condition 15 of the resolution, which pertains to the requirement related to off-site stream mitigation, and reads as follows:

15. **Prior to the approval of the detailed site plan, a conceptual stream restoration plan shall be submitted to M-NCPPC. The plan shall provide a scope of work for restoration of a site or sites on public property within the main stem of**

Henson Creek to be approved by the Planning Board or its designee. The scope of work shall be based on a completed stream corridor assessment, either prepared by the applicant, or by the Department of Environmental Resources. The plan shall show mitigation of a section of stream at least equivalent to the impacts on and adjacent to the subject property. A detailed stream restoration plan shall be submitted and approved by the Planning Board or designee and the Department of Public Works and Transportation or other appropriate agency and the work shall be bonded prior to the issuance of the first permit. The plan shall be implementation of the Plan shall commence prior to the issuance of the second building permit on the overall subject property. In no event shall the non-issuance of a stream restoration permit or other approval preclude the issuance of the first building permit on-site provided a bond is posted and the plan approved.

According to the applicant's request, the existence of floodplain on-site was discovered during the process of preparing engineered plans for permitting. The total primary management area (PMA) on-site has thus increased from 127,704 square feet currently shown on the approved Type I tree conservation plan (TCPI) to 339,985 square feet. The approved preliminary plan of subdivision (PPS) and TCPI did not evaluate or approve impacts to the 100-year floodplain. In addition, the applicant proposes to modify the development plans for the subject property to minimize the impacts to PMA, and limit piping of the existing stream to only one short section. As a result, the applicant states that off-site stream mitigation will no longer be required, and therefore Condition 15 is no longer necessary. The applicant is requesting that the above condition be deleted, the new floodplain and reduced stream impacts be evaluated, and the approved PPS and TCPI be amended to reflect the revised impacts to PMA.

PPS 4-06145, known as Jemal's Post, is an industrial/commercial subdivision, which was approved by the Planning Board in 2007, for seven lots and one parcel, with 15 conditions. The property is located on the east side of Forestville Road, in the southwest quadrant of the intersection of Pennsylvania Avenue and I-495/I-95 (Capital Beltway).

A Variation from Section 24-130 of the Prince George's County Subdivision Regulations was approved with PPS 4-06145, for impacts to the stream and stream buffer associated with the proposed development. In accordance with Section 24-113 of the Subdivision Regulations, the applicant is now requesting, as part of this reconsideration, a variation from Section 24-129(b) of the Subdivision Regulations, to allow for impacts to the recently mapped floodplain on the subject property. A supplemental statement of justification for variations to Sections 24-129(b) and 24-130(b)(5) was submitted by the applicant on May 7, 2021 and was heard at the Subdivision and Development Review Committee meeting on May 28, 2021, as required in accordance with Section 24-113. Environmental Finding 5, included in PGCPB Resolution No. 07-96(A), has been updated below to reflect the reconsideration and amended variation requests.

Staff has reviewed the reconsideration request and supports the request and deletion of Condition 15. As expanded further in the Environmental Planning Section memorandum, dated June 11, 2021, and incorporated by reference herein, the overall reduction of PMA impacts is supported, pursuant to the findings and approval of the variation in the 2007 reconsideration, and the removal of Condition 15 is supported, due to the extensive reduction in proposed stream bed impacts. The revised PPS, TCPI, PMA impact plates, and reconsideration submitted by the applicant minimize the effects of development on land, streams, and wetlands and protect the public against

loss of life or property due to the 100-year flood, as required under Section 24-129 of the Subdivision Regulations.

In order to ensure the reconsideration covers the scope of the applicant's current request and justifying analysis, staff recommends that Condition 15 be deleted as requested by the applicant, and new Conditions 15, 16, and 17 be added, along with amendments to the associated Finding 5, as provided in the recommendation below. If the Planning Board approves the reconsideration, staff will prepare an amended resolution to reflect the amended finding and conditions, which will be placed on a future Planning Board agenda for adoption.

RECOMMENDATION

APPROVAL of a reconsideration of Preliminary Plan of Subdivision 4-06145 (PGCPB Resolution No. 07-96(A)), including Variations to Sections 24-129(b) and 24-130, to **amend Finding 5; to delete Condition 15; and add new Conditions 15, 16, and 17**, as follows (red text with strikethrough indicates language to be deleted, and red text with underline indicates new language to be added):

Amendment 1—Finding 5 (page 7)

Under Finding 5, Environmental, of PGCPB Resolution No. 07-96(A), the entire finding is shown with amendments in **red**, as follows:

5. **Environmental**—A review of the available information indicates that streams, wetlands, 100-year floodplain, severe slopes, and areas of steep slopes with highly erodible soils are found to occur on this property. The site is vacant and predominantly wooded. ~~There is no 100-year floodplain that is associated with the site.~~ The predominant soil types found to occur on this site according to the Prince George's County Soil Survey are Adelphia, Croom, Christiana Matapeake and Beltsville. These soil types have moderate limitations with respect to steep slopes, impeded drainage, slow permeability and perched water table but will not affect the site layout. According to available information, Marlboro clay does not occur on this property. According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program, there are no rare, threatened, or endangered species found to occur in the vicinity of this property. There are no designated scenic or historic roads in the vicinity of this application. The subject property is located south of Pennsylvania Avenue (MD 4), an arterial, and along the entrance ramp to the Capital Beltway (I-95), a freeway, both noise generators and generally regulated for noise. The site is also located in the AICUZ study area of Andrews Air Force Base within the 70-80dBA (Ldn) noise contour. This property is located in the Henson Creek watershed of the Potomac River basin and in the Developed Tier as reflected in the 2002 General Plan.

Summary of 2021 Reconsideration

By letter dated March 15, 2021, Thomas H. Haller, representing 3700 Forestville Road, LLC, requested a waiver of the Prince George's County Planning Board's Rules of Procedure (Section 12(a)), which requires that a reconsideration request be submitted no less than 14 calendar days after the date of notice of the final decision (Section 10(a)). In this case, the resolution of approval (PGCPB Resolution No. 07-96(A)) was adopted by the Planning Board on May 24, 2007 and mailed out on May 29, 2007. On April 8, 2021, the Planning Board granted a waiver of the Planning Board's Rules of Procedure to admit a

reconsideration request submitted more than 14 days after the adoption of the resolution. The Planning Board also granted the applicant's request for a reconsideration, in accordance with Section 10(e) of the Rules of Procedure. The Planning Board granted the request for reconsideration based on good cause, in furtherance of substantial public interest. The applicant's specific request was for reconsideration of Condition 15 of the resolution, which pertains to requirements related to off-site stream mitigation.

At the time of the initial preliminary plan of subdivision (PPS) approval, the available information determined that no floodplain existed on the site and the application was approved without any 100-year floodplain limits approved by the Prince George's County Department of Public Works and Transportation. With the first reconsideration of the PPS, significant impacts to the stream valley were approved and a condition (Condition 15) was generated to address off-site mitigation for those approved impacts to regulated environmental features.

The proposed site design has changed significantly with this reconsideration request, and the extensive stream valley impacts that were previously approved will be significantly reduced. Based on the significant reduction of impacts, mitigation and stream restoration plans are no longer required off-site. As a result, Condition 15 is no longer needed.

The applicant provided, in support of the reconsideration request, a revised Natural Resources Inventory (NRI-168-06-01), PPS, and a Type I tree conservation plan (TCPI). Also submitted was an updated statement of justification (SOJ) to request a variation to Section 24-129(b) and Section 24-130(b)(5) of the Prince George's County Subdivision Regulations to address the minor impacts to regulated environmental features that remain necessary. Pursuant to Section 24-119(d)(2) of the Subdivision Regulations, the requested variations were accepted on May 7, 2021 and were heard at the Subdivision and Development Review Committee meeting on May 28, 2021, as required by Section 24-113(b) of the Subdivision Regulations. The analysis of the updated variation request is presented further below in this finding under the Summary of the Variation Requests.

Woodland Conservation (2021 Reconsideration)

This Light Industrial-zoned property is subject to the provisions of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance because it has previously approved TCPs. TCPI-011-07-01 was submitted with the PPS reconsideration application.

Based on the TCPI submitted with this application, the site's gross tract area is 33.35 acres, containing 4.11 acres of floodplain and 0.36 acre of dedicated land, for a net tract area of 28.88 acres. The net tract area contains 22.88 acres of woodlands and 4.11 acres of wooded floodplain for a woodland conservation threshold of 4.33 acres (15 percent). The woodland conservation worksheet proposes the removal of 23.08 acres of woodland on the net tract area, 0.55 acre of woodland within the floodplain, and 1.16 acres of woodland off-site, resulting in a woodland conservation requirement of 10.65 acres. According to the TCPI worksheet, the requirement is proposed to be met with 5.80 acres of woodland preservation on-site, 0.64 acre of reforestation on-site, and 4.21 acres of off-site woodland conservation credits.

Currently, the TCPI shows proposed infrastructure such as building location, interior road layout, parking areas, water and sewer lines, stormwater management (SWM) structures, outfall locations, woodland preservation areas, and reforestation areas.

No technical revisions are required to the TCPI, as submitted with the reconsideration; however, it should be noted that the -01 revision to the TCP is associated with this reconsideration and must be certified as part of the PPS signature approval. This requirement has been conditioned with the reconsideration approval.

Suitland District Heights and Vicinity Master Plan Conformance

The subject property is located within Analysis Area 3 (Employment Area) of the Suitland District Heights and Vicinity Master Plan. There are no specific environmental recommendations or design standards that require review for conformance. The environmental requirements for woodland preservation, stormwater management and noise are addressed in the Environmental Review section below.

Countywide Green Infrastructure Plan

The site is not within the designated network of the Countywide Green Infrastructure Plan.

Environmental Review

An approved Natural Resources Inventory, NRI/168/06, dated February 15, 2007, was submitted with the application. The preliminary plan and the TCP show all the required information correctly. The streams, isolated wetlands and steep slopes have been correctly located on the plans and verified to be correct as reflected on the NRI. The site is traversed by a stream which separates it into two halves, east and west. The stream is piped on both ends off the subject property which are substantially developed. The site is predominantly wooded and contains two wetlands in close proximity to the stream. The conservation of woodlands on-site is highly desirable in areas along the Capital Beltway and Pennsylvania Avenue to provide some buffering from the roadways; however, due to the proximity of the subject site to two major roadways, this industrially-zoned site should be efficiently developed.

The site contains significant environmental features that are required to be protected by Section 24-130 of the Subdivision Regulations. All disturbances not essential to the development of the site as a whole are prohibited within stream and wetland buffers. Essential development includes such features as stormwater pond outfalls, public utility lines, road crossings, and so forth, which are mandated for public health and safety.

The *[revised] TCPI as submitted shows major permanent impacts to the stream and stream buffer in conjunction with the development. The impacts and grading include three stream crossings and the elimination of two wetlands. *A revised TCPI was submitted as part of the reconsideration, which addresses the piping of the stream.

The Subdivision Ordinance requires the preservation of streams and wetlands and their associated buffers in their entirety, unless the Planning Board approves a variation and can make the required findings of Section 24-113. Variation requests for proposed impacts were submitted with the review package and show impacts to waters of the US and its associated stream buffer, and elimination of the two wetland areas.

Variation requests are generally supported for impacts that are essential to developments, such as road crossings to isolated portions of a parcel or impacts for the construction and installation of necessary public utilities, if the impacts are minimized. The plan as submitted shows proposed impacts for two stream crossings and for the construction of a cul-de-sac. In addition, impacts are proposed to two wetlands for the construction of parking.

The cul-de-sac will be required by the County Code at the end of Penn Belt Place if this roadway is to be used as one of the entrances. The only other impact that is necessary for the proposed development is one of the two stream crossings proposed. Because Impact B is shown at an existing crossing this is the place where the stream should be crossed. It should also be noted that the storm drainage system shown on the Tree Conservation Plan and the justification exhibits are different from those shown on the approved Stormwater Management Concept Plan. This discrepancy should be resolved prior to signature approval of the preliminary plan.

~~*[A previous submission showed the entire stream to be piped because the stream is piped on both ends. It is not clear whether or not this alternative would be a better fit for the subject property because insufficient time was provided for evaluation of this alternative. If the applicant seeks to implement this alternative in the future, a revised preliminary plan with a Variation request and a Letter of Justification would be required.]~~

***[Review] Summary of the Variation Requests**

The 2021 reconsideration includes a request for variations from Section 24-129(b) and Section 24-130(b)(5) of the Subdivision Regulations (2007), which are requested to allow for revised impacts to environmental features. The revised PPS and TCPI submitted with this reconsideration show the revised environmental features, including floodplain, and overall reduced impact areas. A variation is not required from Section 24-130(b)(5), however, because the property is located in the Henson Creek watershed of the Potomac River basin and, prior to adoption of Prince George's County Council Bill CB-26-2010 on September 1, 2010, only properties partially or totally within the Patuxent River Watershed were required to demonstrate adequate protection to assure that the primary management area (PMA) preservation area is preserved. For properties located outside the Patuxent River Watershed and the Chesapeake Bay Critical Areas Overlay Zones, only adequate buffers were required for perennial streams and wetlands to protect the PMA, under Sections 24-130(b)(6), 24-130(b)(7), and 24-130(b)(8). The project is not subject to the environmental regulations contained in Subtitles 24, 25, and 27 of the Prince George's County Code that came into effect on September 1, 2010 and February 1, 2012, because the PPS was not approved under these regulations. The current reconsideration request does not affect the grandfathering status of the project. Findings previously made for approval of Variation to Section 24-130 are still applicable, but the findings are updated to reflect the reduction of total PMA impacts, which no longer require off-site stream restoration.

Section 24-129(b) addresses the floodplain, which was not included in the original application because the available information at that time did not determine floodplain existed. The floodplain location shall be correctly shown on the PPS and final plat of subdivision.

This section of the Code states:

Section 24-129. - One hundred (100) year floodplain.

- (b) In the case of a proposed subdivision which includes a one hundred (100) year floodplain area along a stream, unless such area is to become a public park or recreation area maintained by a designated responsible public authority, the area shall be denoted upon the final plat as a floodplain easement. Such easement shall include provisions for ingress and egress, where practicable. The floodplain easement area may be used, if necessary, for utility lines and/or storm drainage facilities, open-type fencing, or passive recreation, provided that no structures are built that would interfere with the flood conveyance capacity of such easement area.**

The original PPS and TCPI did not show a floodplain boundary. The only regulated environmental features that were shown were streams, stream buffer, wetlands, and wetland buffers. With the reconsideration approved in October 2007, a variation was approved to allow impacts to disturb entire on-site regulated environmental features and to pipe the stream system for a total regulated environmental features disturbance area of 127,704 square feet or 2.93 acres. Almost all of the site was proposed to be disturbed with woodland clearing and regulated environmental features impacts on the amended PPS.

The current application has the approved Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) floodplain boundary and the reevaluated stream and wetland areas shown on the PPS, TCPI, and recently approved NRI. The current overall PMA is 336,985 square feet or 7.74 acres, and the requested impacts will disturb 66,597 square feet or 1.52 acres. This is a reduction of 61,107 square feet or 1.40 acres from the original PMA impact, which now includes floodplain.

The applicant submitted an SOJ to support the impacts to regulated environmental features resulting from the revised layout. The proposed impacts are considered necessary to the orderly development of the subject property. These impacts cannot be avoided because they are required by other provisions of the County and State codes. In contrast to the prior approvals, this revised plan shows the preservation, restoration, and enhancement of the remaining PMA.

IMPACT 1-This impact is for the construction of the cul-de-sac entrance road of Penn Belt Place. The design of the cul-de-sac at this location was required by DPIE. There will be a total of 38,230 square feet of PMA impacts, which consist of 19,874 square feet of stream

buffers, 27,024 square feet of floodplain, 175 linear feet of streams, 1,439 square feet of wetlands, and 6,152 square feet of wetland buffer impacts, requested as Impact 1.

IMPACT 2–The previous plan showed the entire stream impacted and as part of the former Impact 2. The current application proposes a wall constructed to protect the environmental features and to prevent stream impacts. As part of this proposed wall construction, the total impacts to the PMA will be 4,769 square feet, which consists of 3,360 square feet of stream buffer and 2,870 square feet of floodplain.

IMPACT 3–This impact is for a SWM outfall (Outfall 1). There will be a total of 1,659 square feet of PMA impact, which consists of 1,376 square feet of stream buffer and 283 square feet of floodplain.

IMPACT 4–This impact is for a sewer connection across the on-site stream. The sewer impacts will disturb 479 square feet of PMA, which consists of 479 square feet of stream buffer.

IMPACT 5–Road Crossing 1 is needed to access the northeast portion of the site. The stream crossing impacts requested are for a total of 11,707 square feet of PMA, consisting of 11,707 square feet of stream buffer that includes 9,003 square feet of floodplain, and 105 linear feet of stream bed impacts.

IMPACT 6–This impact is requested to square off the proposed parking lot and to tie into existing contours. After construction, the graded area will be replanted. The impacts associated with this parking and grading area will disturb a total of 7,081 square feet of PMA, consisting of 7,066 square feet of stream buffer, 22 square feet of floodplain, and 14 square feet of wetland buffer.

IMPACT 7–Two SWM outfalls (Outfalls 2 and 3) are needed. The total requested impacts for the outfalls will disturb 971 square feet of PMA, which consists of 971 square feet of stream buffer.

IMPACT 8–This impact area is similar to Impact 6 and is associated with a parking area that is squared off and tied into existing contours. This requested impact will disturb 1,701 square feet of PMA consisting of 1,701 square feet of stream buffer.

The applicant requests eight PMA impact areas for the proposed development. These impacts total 66,597 square feet of PMA, 46,534 square feet of stream buffer, 39,202 square feet of floodplain, 280 linear feet of stream bed, 1,439 square feet of wetlands, and 6,166 square feet of wetland buffer.

The proposed development will require minor off-site PMA impacts. These impacts total 2,842 square feet of stream buffer, 3,163 square feet of floodplain, 23 linear feet of stream bed, and 27 square feet of wetland buffer.

*A revised variation request, stamped as received by the Environmental Planning Section on September 19, 2007, illustrates impacts to the entire on-site stream system and its associated stream buffer, as well as, impacts to the two adjacent wetland areas. The submitted exhibits do not show the proposed grading or desired development. The only infrastructure shown on the exhibits is a storm drain pipe.

*The submitted variation requests includes a total of two impacts. Impact A (located at Penn Belt Place) totals 100,970 square feet and results in the filling and grading of the entire stream and its associated buffer. According to the text, the proposed impact is to pipe the entire stream for the construction of a cul-de-sac and completion of a stormdrain system to provide adequate access to the land on the east side of the stream, and water and sewer connections. The preliminary plan application was approved for two access points, one associated with an existing road crossing, and one on the central south portion of the site where Penn Belt Place intersects. The TCPI now proposes to show the entire area to be paved for additional parking areas.

*Impacts B and C total 24,223 square feet and are located in the north section of the property on the east side of the on-site stream. The impacts are for the permanent fill of the adjacent wetland and wetland buffers for the construction of parking areas.

*The variation request did not discuss any provisions for controlling and treating the increased run-off that would result from the proposed impacts, or reducing the physical downstream impacts on an already severely degraded stream.

*Section VI (b) of the applicant's letter (page 7) proposes a payment of \$310,880 in lieu of providing on-site mitigation in conjunction with a revised approved stormwater management concept plan. The applicant proffers that this money should be used for the mitigation of the stream impacts. It should be noted that these are two distinctly different issues.

The fee-in-lieu is paid because the plan proposes no on-site water quality features. The fee-in-lieu monies are to be used to mitigate the impacts of not providing water quality controls on-site.

*If the stream is piped, mitigation will be required as part of the applicant's permit review from the Corps. The mitigation for piping the stream should be provided in the Henson Creek watershed, so that there is a rational nexus between the impact and the remedy. The length of the stream to receive mitigation as compensation for piping the stream as part of this development should be no shorter than the length of stream impacted, which is approximately 750 feet (in length). In order to ensure that maintenance problems are not created by the piping of the stream on-site, the portion of the stream north of the site should be piped to connect with the outfall under MD 4 (an additional 140 feet of piping). This will ensure a closed system that will not be undermined by small portions of open ditches or cause "patches" of areas where maintenance is an issue.

*When a stream system is evaluated as a whole, and there are opportunities for stream restoration that might provide greater benefits in one area than the effect of impacts in another, it may be appropriate to allow impacts to regulated features that might otherwise be preserved in place. As such, the Planning Board has the option to find that the impacts to pipe the entire stream and impact the wetlands are appropriate given the mitigation to be provided within the watershed.

Impact Area "A" ([Penn Belt Place Impact]) *Stream Area

*[This variation request is for the construction of a cul-de-sac and the installation of a storm drainage system. This includes permanent impacts of 2,599 square feet to the stream for

construction of the cul-de-sac and the installation of 160 linear feet of storm drain pipe, and 14,526 square feet of disturbance to the expanded stream buffer. Staff supports impact area "A" because the site could not be developed without the improvements to the public roadway and required stormwater management piping.]

*The proposed permanent impacts to the stream and stream buffer in conjunction with the development of Jemal's Post site are associated with the piping of the on-site stream that bisects the property from the north to the south. These include permanent disturbance of 10,689 square feet ± to Waters of the US and 90,281 square feet ±, to its associated stream buffer.

*Permanent disturbance is due to the construction of the cul-de-sac and storm drain completion for the system on Penn Belt Place, for providing adequate access to the land on the east of the stream, and required water and sewer connections and utilities. The Waters of the US are not in a natural state to the north or to the south of the subject property.

*The applicant proposes to pipe the stream through Property. To the south, the stream is piped from the property line under Penn Belt Place and beyond. To the north, the stream is open through the State Police Barracks site, but is piped under Pennsylvania Avenue and exists in a concrete channel around dense commercial and industrial development to the north.

Impact Area "B" *Isolated Wetland and Buffer Area B

*[This variation request is for the crossing of the stream to provide vehicular access to proposed Lot 3. Because this impact was not calculated separately as required, the total amounts of the impact cannot be provided. Impact area "B" is located at an existing stream crossing. As such this is the appropriate place to cross the stream. This impact is supported.]

*Impacts to Wetland and Wetland buffers for construction of the parking compound to serve the proposed development include a permanent disturbance of Wetlands totaling 8,189 square feet and a permanent disturbance of Wetland Buffer totaling 8,234 square feet.

*Impact Area "C" Isolated Wetland and Buffer Area "C"

[This impact is for another crossing of the stream. There are already two entrances to proposed Lot 3, one at Penn Belt Place and another proposed as Impact B. This would be a third access point and as such, is not necessary. Because this impact was not calculated separately as required, the total amounts of the impact cannot be provided. Impact Area "C" is not supported because it is not necessary for the development of proposed Lot 3].

*Impacts to Wetland and Wetland buffers for construction of the parking compound to serve the proposed development include a permanent disturbance of Wetlands totaling 1,454 square feet and a permanent disturbance of Wetland Buffer totaling 6,346 square feet.

*[Impact Area "D"]

[This variation request is for impacts to a wetland and wetland buffers for the construction of parking to serve the proposed development; it includes the disturbance of 8,189 square feet of wetlands and 8,435 square feet of wetland buffer areas. Impact "D" is not supported because it is not necessary for the reasonable use of proposed Lot 3. The parking area can be designed to avoid this impact.]

**[Impact Areas "E-1" and "E-2"]*

*[This variation request is for impacts to the expanded buffer for future sanitary sewer connections. Impact areas E-1 and E-2 are supported because they are essential to the development.]

**[Impact Area "F"]*

*[This variation request is for impacts to a wetland and wetland buffers for the construction of parking to serve the proposed development; it includes the permanent disturbance of 1,454 square feet of wetlands and 6,346 square feet of wetland buffer. Impact "F" is not supported because it is not necessary for the reasonable use of proposed Lot 3. The parking area can be designed to avoid this impact.]

****[Summary] Review of Proposed Impacts***

Staff supports the variation requests from Section 24-129(b) and Section 24-130 for impact areas 1 through 8 A, B, * [E-1] and [E-2] C and recommends that the Planning Board approve these requests. [The remaining impacts are considered by staff to be not essential for the reasonable development of proposed Lot 3 and as such are not supported.]

The following is an analysis of the required findings of Section 24-113 with regard to the variation requests A, B, * [E-1] and [E-2] C:

(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 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 injurious to other property;

~~*[The variations are required to address the regulations associated with the construction of the cul-de-sac, reasonable access for safety, storm drainage and the connection to the sanitary sewer system. All of these activities are required to meet the requirements for public safety and health and are not injurious to other properties.]~~

*The granting of this variation request will not be detrimental to the public safety, health and welfare. Currently, Penn Belt Place dead-ends at the Property, allowing no room for

turn around traffic, including trucks and emergency vehicles. The applicant proposes to extend Penn Belt Place to the north end of the Property, ending in a cul-de-sac. Provision of a cul-de-sac in this location will provide adequate turn-around room for these vehicles; enabling them to turn safely, without the need to back up on a trafficked road. In addition, providing access from Penn Belt Place will allow truck traffic to be separate from passenger car traffic. Keeping trucks and cars separate is a major benefit of the proposed design. While there will be some crossover traffic, it is expected that most trucks, including delivery trucks and customers who are contractors, will access the Property from Penn Belt Place, while most residential customers will use access from Forestville Drive. Allowing adequate access enhances public safety by providing additional opportunities to help separate truck and passenger vehicle traffic.

In addition to providing adequate traffic flow and access, partially piping the stream will allow for the provision of required water and sewer connections and utilities to the uses on the Property. They are required improvements and as such will not pose a threat to public safety, health or welfare. In fact, the provision of these connections and utilities is a public necessity.

With regard to the impact to the wetlands and wetland buffers, these areas are near where the stream will be piped; therefore, maintaining the wetlands and buffers near it will have little environmental benefit. Eliminating this wetland will have no impact on public safety, health or welfare.

(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 conditions of the property are unique with respect to the existing stream that bisects the property and limits the access to a substantial portion of the developable portions of the property. The location of the stream and associated wetlands provide unique challenges to the design of the development.]~~

*The stream impacted by this variation is piped to the south, starting at the Property. The piped stream is actually under Penn Belt Place. Additionally, the isolated wetland serves little purpose. The Water Quality Report notes that water leaving the Property is the same quality as that entering the site just north of this isolated wetland. This is unique in the area; no other properties have a similar situation.

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

~~*[All the proposed impacts are necessary to address a provision of the County Code. Because the applicant will have to obtain permits from other local, state and federal agencies as required by their regulations, the approval of this variation request would not constitute a violation of other applicable laws.]~~

*State, Federal and County permits will be required before any work done to the stream, wetlands, and their buffers. No other applicable law, ordinance or regulation is violated by this approval. The applicant is aware, however, that if these approvals are not granted, the stream can not be piped and the wetlands disturbed.

- (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 location of the stream isolates a large portion of the developable area of the subject property. Without the proposed impacts that portion of the property could not be developed for any reasonable use for which it is zoned.]~~

*At a minimum, the Department of Public Works and Transportation (DPW&T) will require a cul-de-sac be located on the property at the existing terminus of Penn Belt Place. Because this cul-de-sac is necessary to provide turn around capabilities, denying it would disallow development of a portion of the property, creating a practical hardship to the owner, as opposed to a mere inconvenience. Extending the street into the Property and providing the cul-de-sac at the north end of the Property will allow for better circulation.

*With regard to the rest of this impact **needed for access and parking**, if **partial piping of the stream** is not approved, a particular hardship to the owner would result. The property is virtually bisected by the stream. This creates a natural division of the land, which in turn drives the potential uses. The portion of the Property to the east of the stream is a large lot, suitable for a large user, creating the need for large parking facilities and multiple points of access. The proposed use requires both adequate access and parking. Access is a safety and circulation issue. The type of use, a large home improvement store, requires multiple access points to allow for the opportunity to separate large truck access from passenger car access. **Partially piping Piping** the stream allows the flexibility to provide multiple access points. If these multiple points of access and the parking were not permitted, the owner could not move forward with the proposed use. This presents an economic hardship to the owner as well as a practical difficulty. When weighed against the relatively small potential harm of the environmental impacts, denying the access and parking would presents a hardship and a practical difficulty.

*With regard to the impact to the wetlands and wetland buffers, the property as noted is virtually bisected by the stream. This creates a natural division of the land, which in turn drives the potential uses. The portion of the Property to the east of the stream is a large lot, suitable for a large user, creating the need for large parking facilities. This Property is in the Developed Tier and is in a very urban setting, with industrial, public and commercial uses surrounding it. Denying this variation to disturb a small wetland in this setting would place this property at a distinct disadvantage in the area, creating a hardship on the owner, rather than a mere inconvenience.

~~*[Prior to signature approval of the preliminary plan, the preliminary plan and the TCPI should be revised to eliminate impacts C, D and F. At the time of final plat, a conservation easement should be described by bearings and distances. The conservation easement should contain the expanded stream buffer, except for the areas of approved impacts, and should be reviewed by the Environmental Planning Section prior to approval of the final plat. A note should be placed on the plat noting the conservation easements.]~~

Based on the preceding findings, the regulated environmental features on the subject property have been preserved and/or restored to the fullest extent possible. The proposed

impacts are considered necessary to the orderly development of the subject property, and cannot be avoided because they are required by other provisions of the County and State codes. Staff recommends approval of the requested variations from Section 24-129(b) and Section 24-130 for impacts to PMA.

The property is subject to the provisions of the Prince George's County Woodland Conservation Ordinance because the site is greater than 40,000 square feet in area and contains more than 10,000 square feet of woodland. A Type I Tree Conservation Plan, TCPI/011/07, has been submitted. The woodland conservation threshold for the site is 5.00 acres based on a net tract area of 33.35 acres. An additional 10.42 acres of woodland conservation are required due to the removal of woodlands, for a total woodland conservation requirement of 15.42 acres. The plan proposes to meet the entire woodland conservation requirement with 15.42 acres of off-site mitigation on another property.

The site plan as submitted shows extensive grading with no woodland preservation on-site proposed. A notation on the TCPI reflects woodland conservation on-site in the amount of 2.03 acres that is not shown on the plan or the worksheet. Another notation has the amount of cleared woodlands as 24.65 acres, which is incorrect (woodland cleared is shown to be 26.68 acres). This number will need to be adjusted when the plans are revised to show the actual amount of disturbance for the single stream crossing. There are other minor revisions required for the plan to be in compliance with the Woodland Conservation Ordinance. Prior to signature approval of the preliminary plan, the Type I Tree Conservation Plan should be revised. Development of this subdivision should be in compliance with an approved Type I Tree Conservation Plan (TCPI/11/07). Notes detailing the restrictions of the Tree Conservation Plans should be placed on the Final Plat of Subdivision.

Copies of the approved stormwater management concept letter and associated plan were submitted with this application. The approved stormwater management concept plan submitted with this application shows a different lot layout from the preliminary plan and the TCPI. The concept plan also shows the expanded buffer incorrectly and labels it "PMA." The TCPI does not show the proposed underground facilities that are to be used as the method to meet stormwater management requirements on this site. A revised Stormwater Management Concept Plan is needed that reflects the proposed lot configuration as shown on both the preliminary plan and the TCPI and associated concept.

Prior to signature approval of the preliminary plan, the TCPI and as necessary the preliminary plan, should be revised to reflect the currently approved stormwater management plan or a revised concept plan shall be obtained and that approval should be shown on the TCPI and as necessary the preliminary plan.

Noise impacts have been identified on this site, which should be addressed because of the high levels and because this will be an employment center. Based on the most recent AICUZ Study for Andrews Air Force Base released in 1998, it was noted that this property is located within the 70-80 dBA (Ldn) noise contour. A noise level reduction of 28 decibels at the minimum should be incorporated into the shells of buildings, in order to maintain an interior noise level of 52 dBA (Ldn) for employment uses. Furthermore, this site is in close proximity to I-95, a freeway and a major noise generator which adds to the need for interior noise mitigation. Certification by a professional engineer with competency in acoustical analysis should be placed on the building permits prior to their approval stating that the

building shells of structures have been designed to reduce interior noise levels to 52 dBA (Ldn) or less.

Water and Sewer Categories

The water and sewer service categories are W-3 and S-3 according to water and sewer maps obtained from the Department of Environmental Resources dated June 2003 and the property will, therefore, be served by public systems.

Amendment 2 (page 6)

Delete the condition of approval as follows:

~~*15. Prior to the approval of the detailed site plan, a conceptual stream restoration plan shall be submitted to M-NCPPC. The plan shall provide a scope of work for restoration of a site or sites on public property within the main stem of Henson Creek to be approved by the Planning Board or its designee. The scope of work shall be based on a completed stream corridor assessment, either prepared by the applicant, or by the Department of Environmental Resources. The plan shall show mitigation of a section of stream at least equivalent to the impacts on and adjacent to the subject property. A detailed stream restoration plan shall be submitted and approved by the Planning Board or designee and the Department of Public Works and Transportation or other appropriate agency and the work shall be bonded prior to the issuance of the first permit. The plan shall be implementation of the Plan shall commence prior to the issuance of the second building permit on the overall subject property. In no event shall the non-issuance of a stream restoration permit or other approval preclude the issuance of the first building permit on-site provided a bond is posted and the plan approved.~~

Amendment 3

Add conditions of approval, as follows:

- 15. Prior to acceptance of the detailed site plan, the preliminary plan of subdivision, which was revised to reflect the floodplain and impacts to the primary management area, in accordance with the reconsideration approved by the Prince George's County Planning Board on July 8, 2021, shall be signature approved with revisions, as follows:**
 - a. Provide the gross tract areas, in addition to the net tract areas, for proposed lots.**
 - b. Provide the preliminary plan of subdivision and Type 1 tree conservation plan at the same scale.**
- 16. Prior to acceptance of the detailed site plan, the Type I Tree Conservation Plan (TCPI-011-07-01), which was revised to reflect the floodplain and impacts to the primary management area, in accordance with the reconsideration approved by the Prince George's County Planning Board on July 8, 2021, shall be signature approved with revisions to the TCPI, as follows:**
 - a. Have the revised plan signed and dated by the qualified professional**

who prepared the plan.

17. At time of final plat, a conservation easement shall be described by bearings and distances. The conservation easement shall contain the delineated primary management area except for any approved impacts and shall be reviewed by the Environmental Planning Section, prior to approval of the final plat. The following note shall be placed on the plat:

"Conservation easements described on this plat are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed."