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## Preliminary Plan 4-06145 RECONSIDERATION

Application	General Data
<b>Project Name:</b> <b>JEMAL'S POST</b>  <b>Location:</b> East on Forestville Road, south of Pennsylvania Avenue and west of the Capital Beltway.  <b>Applicant/Address:</b> Jemal's Post, LLC 702H Street, N.W. Washington, D.C. 20001  <b>Property Owner:</b> Jemal's Post, LLC.	Date Accepted: 02/22/07
	Planning Board Action Limit: N/A
	Plan Acreage: 33.35
	Zone: I-1
	Lots: 7
	Parcels: 1
	Planning Area: 75A
	Tier: Developed
	Council District: 06
	Election District: 06
	Municipality: N/A
	200-Scale Base Map: 205SE07

Purpose of Application	Notice Dates
<b>RECONSIDERATION HEARING:</b> The preliminary plan was APPROVED by the Planning Board on May 3, 2007. The resolution of approval (07-96) was adopted on May 24, 2007. By letter dated June 12, 2007, the applicant requested a reconsideration of the preliminary plan for review of Conditions 1-3, 5, 7 and 10. On July 12, 2007, the Planning Board granted this request.	Adjoining Property Owners Previous Parties of Record Registered Associations: 09/20/07 (CB-58-2003)
	Sign(s) Posted on Site and Notice of Hearing Mailed: N/A

Staff Recommendation		Staff Reviewer: Ivy R. Thompson	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
			X

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

SUBJECT: Preliminary Plan of Subdivision 4-06145  
Jemal's Post Lots 1-7

OVERVIEW

In a letter dated June 12, 2007, the applicant requested a reconsideration of the preliminary plan for review of Conditions 1, 2, 3, 5, 7 and 10. On July 12, 2007, the Planning Board granted the request. The reconsideration requested an examination of the Findings and Conditions associated with the Tree Conservation Plan, TCPI/011/07; variation requests for environmental impacts C, D, and F; and the stormwater management plan. The analysis contained in this report focuses mainly on reviews conducted by the Environmental Planning Section of the Countywide Planning Division.

The original approved plan subdivided the property into seven lots and one parcel for an industrial /retail use building totaling 321,069 square feet. The written approval is embodied in Prince George's County Planning Board Resolution Number 07-96 and is subject to 16 conditions. The subject property consists of 33.35 acres of land in the I-1 Zone. The subject property has frontage on Forestville Road, Penn-Belt Place and Pennsylvania Avenue; access to the subject site is via Forestville Road and a cul-de-sac extension of Penn-Belt Place.

This property is located in the Henson Creek watershed of the Potomac River Basin in the Developed Tier as reflected in the 2002 General Plan. The site contains significant environmental features that are required to be protected by Section 24-130 of the Subdivision Regulations. All environmental disturbances not essential to the development of the site as a whole are prohibited within stream and wetland buffers. Essential development includes features such as stormwater pond outfalls, public utility lines, and road crossings, which are mandated for public health and safety.

The subject site is traversed by a stream, which separates it into two halves, east and west. The stream is piped on the south end of the subject property and is substantially developed. The site is predominantly wooded and contains two wetlands in close proximity to the stream. At issue is the piping of this stream and whether the impacts to the stream, wetlands, and wetland buffers are germane to the development. 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 adjacent wetlands for the construction of the parking lot.

Staff supports the impacts for the construction of a cul-de-sac and the installation of a storm drainage system (Impact Area A). The cul-de-sac at the end of Penn-Belt Place is required by the County Code since this roadway is to be used as one of the entrances. The only other impact that staff deems necessary for the proposed development is one of the two stream crossings at Lot 3 (Impact Area B) because it is an existing crossing and it is an appropriate place to cross the stream. Staff also supports impacts to the expanded buffer for future sanitary sewer connections (Impact Areas E-1 and E-2) because they are essential to the development.

Staff did not support three other impacts. One, for another crossing of the stream (Impact Area C) and two impacts (Impact Areas D and F) to a wetland and wetland buffers for the construction of parking as related to the use of Lot 3. Each of these impacts was deemed unnecessary by staff for the proposed developments. Analysis of impacts C, D and F are discussed in greater detail in the Environmental Finding of the staff report.

Staff concurs with the Planning Board's original approval because the impacts were minimized to preserve the stream as much as possible. However, the applicant has proffered off-site stream mitigation if the variations are approved and the stream is allowed to be piped. Should the Planning Board decide to approve the request by the applicant, modifications to, additions to and deletion of some of the conditions in the original approval would be necessary. If, however, the Planning Board decides to uphold the original approval none of these conditions require deletion or modification because of this reconsideration.

## SETTING

The subject property is located east on Forestville Road, south of Pennsylvania Avenue and west of the Capital Beltway. The Maryland State Police Department District Station is adjacent to the site at its northern boundary. At its southern boundary the subject site is adjacent to commercial sites that are also zoned I-1. West of the subject site across Forestville Road are single family residences zoned R-80 and commercial properties zoned C-S-C.

## FINDINGS AND REASONS FOR STAFF RECOMMENDATION

1. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

Zone Use(s)	EXISTING I-1 Wooded/Undeveloped	PROPOSED I-1 Industrial / Commercial (321,069 square feet)
Acreage	33.35	33.35
Lots	0	7
Outparcel	0	0
Parcels	1	1
Public Safety Mitigation Fee		No

2. **Environmental**—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 features include stormwater pond outfalls, public utility lines, road crossings, and so forth, which are mandated for public health and safety.

The Subdivision Regulations require the preservation of streams and wetlands and their associated buffers in their entirety, unless the Planning Board approves a variation that meets the required findings of Section 24-113 of the Subdivision Regulations. The Planning Board previously approved the preliminary plan application with conditions to eliminate impacts for construction, with the exception of the cul-de-sac and the stream crossing, which is necessary to access the developable portion of the site. The related condition reads as follows:

- “1. **Prior to signature approval of the preliminary plan, the preliminary plan and the TCPI shall be revised to eliminate impacts C, D and F.**”

Impact C was associated with a secondary stream crossing on the north portion of the site, and Impacts D and F were impacts to the adjacent wetlands for parking areas.

On July 12, 2007, the Planning Board approved a request for reconsideration of this condition because further analysis of impacts was deemed appropriate.

On July 11, 2007, Rey deGuzman of the Department of Public Works and Transportation (DPW&T) stated: "DPW&T *prefers* that the swale across the Jemal's Post property be piped. We recognized that this is contrary to the position of [U.S. Army Corps of Engineers] US Corps and [Maryland Department of the Environment ] MDE. However, if we left the stream in its natural state and have this partially piped, the County cannot guarantee that we will be able to keep the maintenance of the pipe outfalls and the swale sections. Thanks." [emphasis added]

On July 12, 2007, Rey deGuzman of the Department of Public Works and Transportation (DPW&T) stated in an e-mail: "I did not mean to allow the system to fail but to the point where it will become undesirable to look at. The County *aesthetically* we will not be able to keep it clean all the times. Since this is a commercial development and where the swale is located right in the center of the property, non-maintenance of the un-piped section of the swale will not be healthy and pleasing. **We may ask the applicant to maintain this swale, but technically we may not be able to force them to do this if they refuse.** I do not believe that a wooded swale in the middle of a commercial development is desirable and will enhance stormwater quality more than the proposed stormwater management system that will be provided on site. We may "require" this swale to be piped but at the end of the day it is still subject to MDE and Corps of Engineers permitting. Thanks." [emphasis added]

DPW&T's position regarding the preservation or piping of the stream has to do with the aesthetics of the stream and future maintenance. It should be noted that the stormwater concept for this site (that shows piping the stream) proposes no water quality treatment on-site, which is unfortunate given the very poor water quality in the stream system. Instead of meeting the water quality requirements on-site, a fee-in-lieu of \$310,880 is proposed by the applicant via their attorney.

On August 14, 2007, an interagency meeting that included representatives from the Environmental Planning Section, Prince Georges County Department of Public Works and Transportation (DPW&T), U.S. Army Corps of Engineers (the Corps), and the Maryland Department of the Environment (MDE) took place. The purpose of the meeting was to receive feedback from all agencies in response to the applicant's proposal to pipe the entire stream. Representatives from both MDE and the Corps provided neither positive nor negative responses to the proposal. The two agencies have changed their processes and no longer provide comments on individual projects until the local authority has made a decision and a full application for impacts has been submitted (due to a recent court case).

Between September 16 and September 26, 2007, staff from the Environmental Planning Section visited the subject property and the surrounding properties and conducted additional research. The stream has been channeled, but not piped to the north of the subject property. It (the stream) is piped under MD 4 which is required for all road crossings of streams. The drainage area is not more than 50-acres or a 100-year floodplain would be present on the subject property. Below the site the stream has been piped under Penn-Belt Place since the early 1990s, which is prior to the existence of the current regulations regarding stream preservation. The stream system below the Penn-Belt Place outfall is in poor condition and in need of restoration.

Staff also contacted the Department of Environmental Resources to determine if information was available regarding the condition of Henson Creek (the subject stream). In a publication titled "Biological Assessment of the Streams and Watersheds of Prince George's County, Spring Index Period-2000" the condition of Henson Creek is characterized as follows: "The overall biological condition of this watershed was "very poor" with "partially supporting" physical habitat. This indicates potential water quality impairment and further investigation as to possible sources, such as stormwater runoff, is recommended." A stream corridor assessment of Henson Creek is scheduled to begin in late 2007. This assessment will identify specific areas of the stream system that are in need of repair.

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 information package submitted by the applicant's attorney dated September 27, 2007, provides an example statement from a representative of the [Prince George's County] Office of Fire Prevention. The representative stated that the preliminary plan as approved would not provide adequate circulation for vehicles and that one of the other designs would work better. The letter goes on to say that "...the Office of Fire Prevention [representative] stated unequivocally that the truck access and circulation originally proposed by the applicant through proposed Impact Areas C & D was *preferable*..." [emphasis added].

The September 27, 2007 letter suggests that MDE, the Corps and DPW&T are all supportive of (or at least not going to deny) the piping of the stream. The evidence presented by the applicant's attorney does not support this conclusion. In addition, the response from the Office of Fire Prevention expressed a preference, not a requirement. The site has two access points, as illustrated on the preliminary plan approved by Planning Board, the truck and vehicular traffic has been separated. Therefore, the requirements for adequate circulation have been met.

The submitted variation request 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 runoff 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.

The Environmental Planning Section continues to concur with the Planning Board's previous approval on May 5, 2007. However, the applicant has proffered to provide stream mitigation to address the proposed impacts and this too should be considered by the Planning Board.

#### **RECOMMENDATION:**

- A. If the Planning Board concurs with their original action, staff recommends no change to the Planning Board's original approval of the findings and conditions for 4-06145 and TCPI/011/07.

-OR-

- B. If the Planning Board believes that it is of a greater benefit to permit off-site stream mitigation in exchange for on-site stream piping and wetland removal, staff recommends that the Planning Board adopt all of the findings and conditions contained in the original action (PGCPB No. 07-01) as now modified or supplemented by the findings of this report and APPROVE 4-06145 and TCPI/011/07 with the following new conditions:
1. Eliminate Condition 1 and 2.
  2. Modify Condition # 3 by eliminating e.
  3. Prior to signature approval of the preliminary plan, the Type I Tree Conservation Plan shall be revised as follows:
    - a. Revise the plan and the legend to include symbols for: stream centerline, stream buffer, wetlands, wetland buffer, expanded buffer and any other symbols used on the plan.
    - b. Remove tree protection devices from the legend.
    - c. Provide detailed sheets at a scale of 1"=50' in addition to the overall cover sheet.

- d. Revise the plan and the legend to show one continuous limit of disturbance with the same symbol in the legend and on the plan.
  - e. Add the Standard TCPI Notes and insert the appropriate plan numbers as required.
  - f. Have the revised plan signed and dated by the qualified professional who prepared the plan.
- C. No change to Conditions 5, 7 and 10.
- D. Add a new Condition 17.
  - 17. Prior to approval of the detailed site plan, a conceptual stream restoration plan shall be submitted. 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 and the work shall be bonded prior to the issuance of the first permit. The plan shall be implemented prior to the issuance of the second building permit on the overall subject property.
- E. Add a new Condition 18.
  - 18. Prior to signature approval of the preliminary plan, the stormwater management concept plan shall be revised as needed to reflect the Planning Board's approval.