



Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

Preliminary Plan 4-06067

Application	General Data
Project Name: JAYCEES PROPERTY Location: East side of Branch Avenue (MD 5) between Deer Pond Lane and Perrie Lane. Applicant/Address: P. Sean Caldwell Trammel Crow Residential 6110 Executive Blvd., Suite 315 Rockville, MD 20852	Date Accepted: 09/05/06
	Planning Board Action Limit: 02/08/07
	Plan Acreage: 22.84
	Zone: R-80
	Lots: 57
	Parcels: 4
	Planning Area: 76B
	Tier: Developed
	Council District: 09
	Municipality: N/A
	200-Scale Base Map: 208SE05

Purpose of Application	Notice Dates
RESIDENTIAL SUBDIVISION	Adjoining Property Owners Previous Parties of Record Registered Associations: (CB-58-2003) 06/06/06
	Sign(s) Posted on Site and Notice of Hearing Mailed: 01/02/07

Staff Recommendation		Staff Reviewer: Tom Lockard	
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, 4-06067
Jaycee's Property, Block A Lots 1-17, Block B, Lots 1-40, Parcels A and B

OVERVIEW

The subject property is located on Tax Map 98, Grid A-2, and is known as Parcels 174 and 36. The property is zoned R-80 and consists of approximately 22.84 acres. The applicant is proposing to subdivide the property into 57 lots and 2 parcels for the development of detached single-family dwellings in accordance with the conventional standards of the R-80 Zone. All 57 of the proposed lots meet or exceed the minimum net lot area of 9,500 square feet as required in the R-80 Zone.

Access to the property will be provided via extensions of Deer Pond Lane (from the north) and Perrie Lane (from the south). The site has more than 700 feet of frontage along Branch Avenue (MD 5), a master planned freeway with restricted access.

The preliminary plan submitted shows two parcels on the property proposed for conveyance to a homeowner's association (HOA). Parcel "A" consists of approximately 1.24 acres along Branch Avenue and is for private recreation, open space, a noise barrier and a stormwater management pond. Parcel B is along the east side of the site and would contain a stormwater management pond.

SETTING

The property is located on the east side of Branch Avenue (MD 5) between Deer Pond Lane and Perrie Lane. It is undeveloped and partially wooded. To the east and south of the subject property are detached single-family dwellings in the R-R Zone. To the west and north are two large stormwater management ponds within the right-of-way for Branch Avenue.

FINDINGS AND REASONS FOR STAFF RECOMMENDATION

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

	EXISTING	PROPOSED
Zone	R-80	R-80
Use(s)	Undeveloped	Single-Family Dwellings
Acreage	22.84	22.84
Lots	0	57
Outlots	0	0
Parcels	2	0
Dwelling Units:		
Detached	0	57
Public Safety Mitigation Fee		No

2. **Environmental**—The site contains an area of buffer associated with an adjacent stream. Based on 2000 air photos the site is approximately 10 percent wooded. The soil types found to occur on the subject property according to the Prince George’s County Soil Survey are Beltsville, Chillum, Galestown, Matawan, and Sassafras. Based on GIS information obtained from the Maryland Department of Natural Resources, Natural Heritage Program staff, rare, threatened and endangered species do not occur in the vicinity of the site. There are no designated scenic or historic roads adjacent to the site. MD 5 is a nearby source of traffic-generated noise. This property is located in the Tinkers Creek and Henson Creek Watersheds of the Potomac River Basin, and in the Rural Tier as reflected in the 2002 *Prince George’s County Approved General Plan*. The site is not located within the designated network of the *Countywide Green Infrastructure Plan*.

Natural Resources Inventory

Approved Natural Resources Inventory NRI/043/06 was submitted with the application. The site is adjacent to a stream and the associated 50-foot stream buffer extends onto the site along the northwest boundary. The forest stand delineation (FSD) indicates two forest stands totaling 1.52 acres. The information on the NRI is correctly shown on the preliminary plan and the Type I tree conservation plan (TCPI).

Environmental Impacts.

The site contains significant environmental features that are required to be protected by Section 24-130 of the Subdivision Regulations. Staff generally will not support impacts to sensitive environmental features that are not associated with essential development activities. Essential development includes such features as public utility lines (including sewer and stormwater outfalls), necessary street crossings, and so forth, which are mandated for public health and safety. Non-essential activities are those, such as grading for lots, stormwater management ponds, parking areas, and so forth, which do not relate directly to public health, safety or welfare. Impacts to sensitive environmental features on this site require variations to the Subdivision Regulations.

The site is adjacent to an existing stream located northwest of the property. The associated stream buffer extends onto the property. The revised TCPI shows the adjacent lots to be redesigned so that the entire portion of the stream buffer is on a proposed homeowners association (HOA) parcel with no impacts. Because no other disturbances are proposed, a variation request for impacts to regulated features is not required.

Woodland Conservation

This property is subject to the provisions of the Prince George’s County Woodland Conservation And Tree Preservation Ordinance because the gross tract area of the property is greater than 40,000 square feet, and there are more than 10,000 square feet of existing woodland.

The woodland conservation threshold has been correctly calculated at 4.57 acres, or 20 percent of the net tract. Because the amount of existing woodland is lower than the threshold, the existing woodland of 1.52 acres becomes the woodland conservation threshold for this site. This calculation is correctly reflected on the TCPI worksheet. The total requirement based on the proposed clearing has been correctly calculated at 4.76 acres. The TCPI proposes to meet the 4.76-acre requirement by providing 0.38 acres of on-site preservation, 0.19 acres of on-site

afforestation, and 4.19 acres of off-site mitigation. The woodland preservation and afforestation areas as shown on the plan will provide a vegetated buffer, which is necessary for the stream that is adjacent to the site.

Noise

MD 5 is a nearby source of traffic-generated noise and is designated as a freeway. Section 24 121(a)(4) requires that residential lots adjacent to existing or planned roadways of freeway classification or higher be platted to a minimum depth of three hundred feet and that adequate protection and screening from traffic nuisances be provided by earthen berms, plant materials, fencing, and/or the establishment of a building restriction line. For residential uses, outdoor activity areas must have noise levels of 65 dBA Ldn or less to be in conformance with Maryland standards. The outdoor activity areas on the impacted lots are the areas within 40 feet of the rears of the affected houses. The interiors of all structures must have noise levels of 45 dBA Ldn or less to be in conformance with state standards. The applicant is seeking a variation from the 300-foot lot depth requirement, as discussed in Finding 13 of this report.

The noise model used by the Environmental Planning Section (EPS) predicts that the 65 dBA Ldn ground level noise contour is approximately 610 feet from the centerline of MD 5. A Phase I and II noise study has been submitted. The study submitted by the applicant predicts the 65 dBA Ldn upper level noise contour to be approximately 750 feet from the centerline of MD 5. The study recommends that a berm and/or vertical wall be used to protect the rear outdoor activity areas from the noise impacts, and that adequate building modifications are implemented to reduce noise within the interior of the buildings.

Exhibit 2 of the study shows the recommended noise barrier to be located along the property boundary within an HOA dedicated parcel (Parcel A) adjacent to MD 5. The height of the recommended barrier is 11 to 14 feet. The barrier as shown along the northwest section of the property appears to be within the stream buffer, which would result in unnecessary impacts to that regulated area. The barrier should be designed to be just outside of the stream buffer in order to avoid impacts and to also shield the proposed outdoor activity area on Parcel A from traffic-generated noise; an adequate grading area of 10 feet on both sides of the wall must be provided, with no impacts to the stream buffer.

Soils

According to the Prince George's County Soil Survey the principal soils on this site are in the Beltsville, Chillum, Galestown, Matawan, and Sassafra series. This information is provided for the applicant's benefit. A soils report may be required by the Prince George's County Department of Environmental Resources during the permit process review.

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.

3. **Community Planning**—The property is located in Planning Area 76B within the limits of the 2006 *Approved Henson Creek-South Potomac Master Plan and Sectional Map Amendment*. The master plan recommends a residential, low-density land use at a density up to 5.7 dwelling units per acre. This application is proposing a low-suburban residential land use and is, therefore, consistent with the land use recommendation within the 2006 *Approved Master Plan for Bowie and Vicinity and Sectional Map Amendment for Planning Areas 71A, 71B, 74A, and 74B*.

The 2002 General Plan locates the subject property within the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low to moderate density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable. This application is proposing a low-suburban residential community and is, therefore, consistent with the 2002 General Plan Development Pattern policies for the Developing Tier.

4. **Parks and Recreation**—In accordance with Section 24-135(b) of the Prince George’s County Subdivision Regulations the Park Planning and Development Division of the Department of Parks and Recreation recommends to the Planning Board that the applicant provide private recreational facilities suitable for active and passive recreation for this subdivision in accordance with the standards outlined in the *Park and Recreation Facilities Guidelines*.
5. **Trails**—There are no master plan trails issues identified in the Henson Creek-South Potomac Master Plan and SMA that impact the subject site. Existing Deer Pond Lane and Perrie Lane are both open section with no sidewalks.
6. **Transportation**—The transportation staff determined that a traffic study detailing weekday analyses was needed. In response, the applicant submitted a traffic study dated January 2006. The findings and recommendations outlined below are based upon a review of these materials and analyses conducted by the staff of the Transportation Planning Section, consistent with the *Guidelines for the Analysis of the Traffic Impact of Development Proposals*.

Growth Policy - Service Level Standards

The subject property is in the Developed Tier, as defined in the General Plan for Prince George’s County. As such, the subject property is evaluated according to the following standards:

Links and signalized intersections: Level-of-service (LOS) E, with signalized intersections operating at a critical lane volume (CLV) of 1,600 or better is required in the Developing Tier.

Unsignalized intersections: The Highway Capacity Manual procedure for unsignalized intersections is not a true test of adequacy but rather an indicator that further operational studies need to be conducted. Vehicle delay in any movement exceeding 50.0 seconds is deemed to be an unacceptable operating condition at unsignalized intersections. In response to such a finding, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal (or other less costly warranted traffic controls) if deemed warranted by the appropriate operating agency.

Staff Analysis of Traffic Impacts

The intersection of the MD 5 ramps and MD 337, along with the ramp junction of Deer Pond Lane with northbound MD 5, were included in the traffic study as the critical intersections for the subject property. The following are noted:

- The intersection of MD 5 ramps and MD 337 was analyzed as two separate intersections. Nonetheless, it is clearly shown in the traffic study that the intersection is controlled by a single signal, and it should have been analyzed as a single intersection.
- At the time of scoping, it was presumed that the intersection of Deer Pond Lane with the ramps to/from northbound MD 5 would be studied as an unsignalized intersection. Given that the intersection is now a two-legged “T” intersection with the access from the subject property becoming the third leg of the intersection, it is believed that there is sufficient data in the traffic study to include this analysis as an unsignalized intersection.

The existing conditions at the study intersections are summarized below:

EXISTING TRAFFIC CONDITIONS			
Intersection	Critical Lane Volume (AM & PM & Saturday)		Level of Service (LOS, AM & PM & Sat.)
MD 5 Ramps and MD 337 (Allentown Road)	1,113	1,274	B C
MD 5 NB Ramps and Deer Pond Lane	14.7*	10.8*	-- --
MD 5 NB Diverge to Deer Pond Lane	--**	--**	C B
MD 5 NB Merge from Deer Pond Lane	--**	--**	C B
<p>*In analyzing unsignalized intersections, average vehicle delay for various movements through the intersection is measured in seconds of vehicle delay. The numbers shown indicate the greatest average delay for any movement within the intersection. According to the Guidelines, delay exceeding 50.0 seconds indicates inadequate traffic operations. Values shown as “+999” suggest that the parameters are beyond the normal range of the procedure, and should be interpreted as a severe inadequacy.</p> <p>** Analysis of ramp junctions is based upon a computation of traffic density at the point of merge or diverge, and this statistic is equated within <i>The Highway Capacity Manual</i> with a level of service. The table above reports the level of service only.</p>			

There are no funded projects within the study area in either the Capital Improvement Program (Prince George’s County) or the Consolidated Transportation Program (Maryland Department of Transportation). This project would consist of widening MD 223 and installing signalization at the intersection. No approved but unbuilt developments that would directly affect the critical intersections were identified. Annual through traffic growth of 2.0 percent per year was added to account for development and traffic growth in the general area. With background growth added, the following results are obtained:

BACKGROUND TRAFFIC CONDITIONS				
Intersection	Critical Lane Volume (AM & PM & Saturday)		Level of Service (LOS, AM & PM & Sat.)	
	MD 5 Ramps and MD 337 (Allentown Road)	1,181	1,353	C
MD 5 NB Ramps and Deer Pond Lane	14.7*	10.8*	--	--
MD 5 NB Diverge to Deer Pond Lane	--**	--**	C	B
MD 5 NB Merge from Deer Pond Lane	--**	--**	C	B

*In analyzing unsignalized intersections, average vehicle delay for various movements through the intersection is measured in seconds of vehicle delay. The numbers shown indicate the greatest average delay for any movement within the intersection. According to the Guidelines, delay exceeding 50.0 seconds indicates inadequate traffic operations. Values shown as "+999" suggest that the parameters are beyond the normal range of the procedure, and should be interpreted as a severe inadequacy.

** Analysis of ramp junctions is based upon a computation of traffic density at the point of merge or diverge, and this statistic is equated within *The Highway Capacity Manual* with a level of service. The table above reports the level of service only.

The site is proposed for development as a residential subdivision. The site is proposed to be developed with 57 single-family detached residences. The site trip generation would be 56 AM peak hour trips (11 in, 45 out) and 68 PM peak hour trips (44 in, 24 out). With the trip distribution and assignment as assumed in the traffic study, the following results are obtained under total traffic:

TOTAL TRAFFIC CONDITIONS				
Intersection	Critical Lane Volume (AM & PM & Saturday)		Level of Service (LOS, AM & PM & Sat.)	
	MD 5 Ramps and MD 337 (Allentown Road)	1,192	1,359	C
MD 5 NB Ramps and Deer Pond Lane	19.5*	12.2*	--	--
MD 5 NB Diverge to Deer Pond Lane	--**	--**	C	B
MD 5 NB Merge from Deer Pond Lane	--**	--**	C	B

*In analyzing unsignalized intersections, average vehicle delay for various movements through the intersection is measured in seconds of vehicle delay. The numbers shown indicate the greatest average delay for any movement within the intersection. According to the Guidelines, delay exceeding 50.0 seconds indicates inadequate traffic operations. Values shown as "+999" suggest that the parameters are beyond the normal range of the procedure, and should be interpreted as a severe inadequacy.

** Analysis of ramp junctions is based upon a computation of traffic density at the point of merge or diverge, and this statistic is equated within *The Highway Capacity Manual* with a level of service. The table above reports the level of service only.

Given that all study area intersections operate acceptably, no off-site transportation conditions will be recommended.

MD 5 is a master plan freeway facility. The current existing right-of-way is determined to be sufficient for the implementation of master plan recommendations; therefore, no additional dedication along MD 5 is required of this plan.

The initial submitted plan showed Deer Pond Lane as a 50-foot right-of-way street; however, it exists within State Highway Administration (SHA) right-of-way as a primary street of variable width adjacent to this site. Also, the initial plan showed Street A between the north property line and Street B was shown within a 50-foot right-of-way, and it was believed that this section needed to be upgraded to a 60-foot street. Both changes are reflected on the current plan.

Transportation Staff Conclusions

Based on the preceding findings, the Transportation Planning Section concludes that adequate transportation facilities would exist to serve the proposed subdivision as required under Section 24-124 of the Prince George’s County Code if the application is approved.

- 7. **Schools**—The Historic Preservation and Public Facilities Planning Section has reviewed this preliminary plan for impact on school facilities in accordance with Section 24-122.02 of the Subdivision Regulations and CB-30-2003 and CR-23-2003 and concluded the following.

Impact on Affected Public School Clusters

Affected School Clusters	Elementary School Cluster 6	Middle School Cluster 3	High School Cluster 3
Dwelling Units	59 sfd	59 sfd	59 sfd
Pupil Yield Factor	0.24	0.06	0.12
Subdivision Enrollment	14.16	3.54	7.08
Actual Enrollment	3,946	5,489	9,164
Completion Enrollment	121	64	127
Cumulative Enrollment	16.80	108.12	216.24
Total Enrollment	4,097.96	5,664.66	9,514.32
State Rated Capacity	4,033	6,114	7,792
Percent Capacity	101.61%	92.65%	122.10%

Source: Prince George’s County Planning Department, M-NCPPC, December 2005

These figures are correct on the day the referral was written. They are subject to change under the provisions of CB-30-2003 and CR-23-2003. Other projects that are approved prior to the public hearing on this project will cause changes to these figures. The numbers shown in the resolution will be the ones that apply to this project.

County Council Bill CB-31-2003 establishes a school facilities surcharge in the amount of: \$7,000 per dwelling if a building is located between I-495 and the District of Columbia, \$7,000 per dwelling if the building is included within a basic plan or conceptual site plan that abuts an existing or planned mass transit rail station site operated by the Washington Metropolitan Area Transit Authority, or \$12,000 per dwelling for all other buildings. Council bill CB-31-2003

allows for these surcharges to be adjusted for inflation and the current amounts are \$7,671 and \$13,151 to be paid at the time of issuance of each building permit.

The school surcharge may be used for the construction of additional or expanded school facilities, renovations to existing school buildings, or other systemic changes.

The Historic Preservation and Public Facilities Planning Section finds that this project meets the adequate public facilities policies for school facilities contained in Section 24-122.02, CB-30-2003, CB-31-2003, and CR-23-2003.

8. **Fire and Rescue**—The Historic Preservation and Public Facilities Planning Section has reviewed this subdivision plan for fire and rescue services in accordance with Section 24-122.01(d) and Section 24-122.01(e)(1)(B)-(E) of the Subdivision Ordinance.

The Prince George’s County Planning Department has determined that this preliminary plan is within the required seven-minute response time for the first due fire station Morningside, Company 27, using the “Seven-Minute Travel Times and Fire Station Locations Map” provided by the Prince George’s County Fire Department.

Pursuant to CR-69-2006, the Prince George’s County Council and the County Executive suspended the provisions of Section 24-122.01(e)(1)(A, B) regarding sworn police and fire and rescue personnel staffing levels.

The Fire Chief has reported that the department has adequate equipment to meet the standards stated in CB-56-2005.

9. **Police Facilities**—The subject property is located in Police District IV. The response standard is 10 minutes for emergency calls and 25 minutes for nonemergency calls. The times are based on a rolling average for the preceeding 12 months. The preliminary plan application was accepted for processing by the Planning Department on September 5, 2006.

Reporting Cycle	Date	Emergency Calls	Nonemergency
Acceptance Date	01/05/05-08/05/06	10.00	22.00
Cycle 1			
Cycle 2			
Cycle 3			

The response time standard of 10 minutes for emergency calls and 25 minutes for nonemergency calls was met on August 5, 2006.

The Police Chief has reported that the department has adequate equipment to meet the standards stated in CB-56-2005.

Pursuant to CR-69-2006, the Prince George’s County Council and the County Executive suspended the provisions of Section 24-122.01(e)(1)(A, B) regarding sworn police and fire and rescue personnel staffing levels.

10. **Health Department**—The Environmental Engineering Program has reviewed the preliminary plan of subdivision and has no comments to offer.

11. **Stormwater Management**—The Department of Environmental Resources (DER), Development Services Division, has determined that on-site stormwater management is required. Stormwater Management Concept Plan 34646-2006-00 has been approved with conditions to ensure that development of this site does not result in on-site or downstream flooding. Development must be in accordance with this approved plan.
12. **Historic**—There is a moderate probability that archeological sites can be located within the subject property. Phase I archeological investigations are recommended for the subject property for the following reasons:
 - A. Two structures labeled “Charles Soper” and “C.S. Middleton” (no longer standing) are shown on the 1861 Martenet map as being located just to the west and southeast of the subject property. A house shown to the west of the subject property in 1938 aerial photographs may be the Charles Soper house. The subject property, at that time containing an agricultural field, appears to be associated with that house.
 - B. Old Bells Meadows Methodist Church and Cemetery (PGID 76B-017) are located approximately 1,700 feet southeast of the subject property.
 - C. Henson Creek lies about 2,900 feet northwest of the subject property. Although the surrounding area is highly developed, this tract appears from 1938 to 2005 aerials to have remained undeveloped.

Recommendations

- A. In accordance with Subtitle 24-104, Section 24-121 (18), and 24-135.01, the subject property should be the subject of a Phase I archeological investigation to identify any archeological sites that may be significant to the understanding of the history of human settlement in Prince George’s County, including the possible existence of slave quarters and graves, as well as archeological evidence of the presence of Native American peoples. Potential archeological sites must be considered in the review of development applications, and potential means for preservation of these resources should be considered.
- B. In accordance with the approved Planning Board *Guidelines for Archeological Review* (May 2005), a qualified archaeologist must conduct all investigations and follow *The Standards and Guidelines for Archeological Investigations in Maryland* (Schaffer and Cole, 1994) and the Prince George’s County Planning Board *Guidelines for Archeological Review* (May 2005), and report preparation shall follow MHT guidelines and the *American Antiquity* or *Society of Historical Archaeology* style guide.
- C. Archeological excavations shall be spaced along a regular 15-meter or 50-foot grid and excavations should be clearly identified on a map to be submitted as part of the report. These investigations must be presented in a draft report following the same guidelines. Following approval of the draft report, four copies of the final report must be submitted to M-NCPPC Historic Preservation staff. Evidence of M-NCPPC concurrence with the final Phase I report and recommendations is required prior to signature approval.
- D. The Phase I archaeological field investigations should also include a pedestrian survey to locate attributes such as surface depressions, fieldstones, and vegetation common in burial/cemetery environs.

Upon receipt of the report by the Planning Department, if it is determined that potentially significant archeological resources exist in the project area, prior to signature approval of the preliminary plan of subdivision, the applicant should provide a plan for:

- i.) Evaluating the resource at the Phase II level, or
- ii.) Avoiding and preserving the resource in place.

13. **Variation Request: Section 24-121(a)(4)**— Section 24-121(a)(4) of the Subdivision Regulations requires the preliminary plan show a 300-foot lot depth adjacent to roadways of freeway or higher classification. Proposed Lots 1-17 of Block A do not meet this requirement along Branch Avenue (MD 5). The regulation elaborates that adequate protection and screening from traffic nuisances shall be provided by earthen berms, plant materials, fencing and/or the establishment of a building restriction line, when appropriate.

Lots 1-17 of Block A are shown as having a 150-foot lot depth from the ROW along Branch Avenue. However, due to a large stormwater management pond located in the section of right-of-way between the existing paving and the property line, the effective lot depth from the edge of paving varies between 250 and 380 feet. Branch Avenue is currently built out to expressway standards in this area with access limited to interchanges.

Section 24-113(a) of the Subdivision Regulations sets forth the required findings for approval of variation requests. Section 24-113(a) reads:

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 request would not be detrimental to public safety, health or welfare and does not injure other property;**
- (2) **The conditions on which the variations are based are unique to the property for which the variation is sought and are not applicable generally to other properties;**

Comment: The 300-foot lot depth requirement is necessary to buffer buildings on lots from traffic noise. When Branch Avenue was rebuilt as an expressway, an additional section of right-of-way (ROW) between the rebuilt lanes and the subject property was designed to contain a stormwater pond to handle stormwater runoff. Allowing the area of otherwise unused ROW to be considered as *de facto* lot depth will not be detrimental or injurious to the public or other property owners. This widened area of ROW does not affect other similarly situated properties along MD 5 to the extent found on this site.

- (3) **The variation does not constitute a violation of any other applicable law,**

ordinance or regulation; and

Comment: Because the applicant is mitigating noise impacts from MD 5 through additional means beyond the 300-foot lot depth and 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.

- (4) Because of the peculiar 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.**

Comment: The denial of this impact would result in a particular hardship in that it would result in the unnecessary loss of at least 17 of the 57 proposed lots. The anomaly to the right-of-way serves no purpose, yet its existence constricts the applicant's ability to develop his property.

RECOMMENDATION

APPROVAL, subject to the following conditions:

1. At time of final plat, a conservation easement shall be described by bearings and distances. The conservation easement shall contain the entire on-site stream buffer and be reviewed by the Environmental Planning Section prior to certification. 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."
2. The following note shall be placed on the final plat of subdivision:

"This development is subject to restrictions shown on the approved Type I Tree Conservation Plan (TCPI/7/06), or as modified by the Type II tree conservation plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved tree conservation plan and will make the owner subject to mitigation under the Woodland Conservation and Tree Preservation Ordinance. This property is subject to the notification provisions of CB-60-2005. Copies of all approved tree conservation plans for the subject property are available in the offices of The Maryland-National Capital Park and Planning Commission, Prince George's County Planning Department."
3. Prior to signature approval of the preliminary plan, the TCPI and preliminary plan shall be revised to show a noise barrier along the southern boundary of the site parallel to MD 5. The noise barrier shall be placed on an HOA parcel, extend along the entire western boundary of the site, but be located outside the on-site stream buffer on Parcel A on the northwest portion of the site. A minimum of 10 feet of cleared area shall be provided on both sides of the noise barrier.
4. Prior to the approval of building permits, a certification by a professional engineer with competency in acoustical analysis shall be placed on the building permits stating that building

shells of structures within prescribed noise corridors have been designed to reduce interior noise levels to 45 dBA Ldn or less.

5. Prior to approval of permits, a Type II tree conservation plan shall be approved.
6. Development of this site shall be in conformance with the Stormwater Management Concept Plan 34646-2006-00 and any subsequent revisions.
7. Phase I (Identification) archeological investigations shall be undertaken on the subject property to determine if any cultural resources related to Native-American or African-American peoples are present. The potential for significant prehistoric archeological resources is moderate. Evidence of M-NCPPC concurrence with the final Phase I report and recommendations is required prior to signature approval.
 - a. Upon receipt of the report by the Planning Department, if it is determined that potentially significant archeological resources exist in the project area, prior to Planning Board approval of the final plat, the applicant shall provide a plan for:
 - i.) Evaluating the resource at the Phase II level, or
 - ii.) Avoiding and preserving the resource in place.
 - b. If a Phase II and/or Phase III archeological evaluation or mitigation is necessary, the applicant shall provide a final report detailing the Phase II and/or Phase III investigations and ensure that all artifacts are curated in a proper manner, prior to approval of any grading permits.
8. Prior to issuance of building permits, the applicant, his heirs, successors and/or assignees shall demonstrate that a homeowners association has been established and that the common areas have been conveyed to the homeowners association.
9. Prior to issuance of building permits, the applicant, his heirs, successors and/or assignees shall convey to the homeowners association the open space land (Parcels A and B). Land to be conveyed shall be subject the following:
 - a. Conveyance shall take place prior to the issuance of building permits.
 - b. A copy of unrecorded, special warranty deed for the property to be conveyed shall be submitted to the Subdivision Section of the Development Review Division (DRD), Upper Marlboro, along with the final plat.
 - c. All waste matter of any kind shall be removed from the property, prior to conveyance, and all disturbed areas shall have a full stand of grass or other vegetation upon completion of any phase, section or the entire project.
 - d. The conveyed land shall not suffer the disposition of construction materials, soil filling, discarded plant materials, refuse or similar waste matter.
 - e. Any disturbance of land to be conveyed to a homeowners association shall be in accordance with an approved detailed site plan or shall require the written consent of DRD. This shall include, but not be limited to, the location of sediment control

measures, tree removal, temporary or permanent stormwater management facilities, utility placement, and stormdrain outfalls. If such proposals are approved, a written agreement and financial guarantee shall be required to warrant restoration, repair or improvements, required by the approval process.

- f. Stormdrain outfalls shall be designed to avoid adverse impacts on land to be conveyed to a homeowners association. The location and design of drainage outfalls that adversely impact property to be conveyed shall be reviewed and approved by DRD prior to the issuance of grading or building permits.
 - g. Temporary or permanent use of land to be conveyed to a homeowners association for stormwater management shall be approved by DRD.
 - h. The Planning Board or its designee shall be satisfied that there are adequate provisions to ensure that retention and future maintenance of the property to be conveyed.
10. The applicant, his heirs, successors and/or assignees shall submit three original recreational facilities agreements (RFAs) to DRD for approval prior to the submission of final plats, for construction of recreational facilities on homeowners land. Upon approval by DRD, the RFA shall be recorded among the county land records.
11. The applicant, his heirs, successors and/or assignees shall submit a performance bond, letter of credit, or other suitable financial guarantee for the construction of recreational facilities on homeowners land prior to the issuance of building permits.
12. Prior to the approval of the final plat, a limited detailed site plan shall be approved by the Planning Board or its designee for the construction of private on-site recreational facilities on Parcel A, establishing appropriate bonding amounts and determining triggers for construction, in accordance with the *Parks and Recreation Facilities Guidelines*.

STAFF RECOMMENDS APPROVAL OF TYPE I TREE CONSERVATION PLAN TCPI/7/06 AND THE REQUESTED VARIATION TO SECTION 24-121(a)(5).