

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>.*

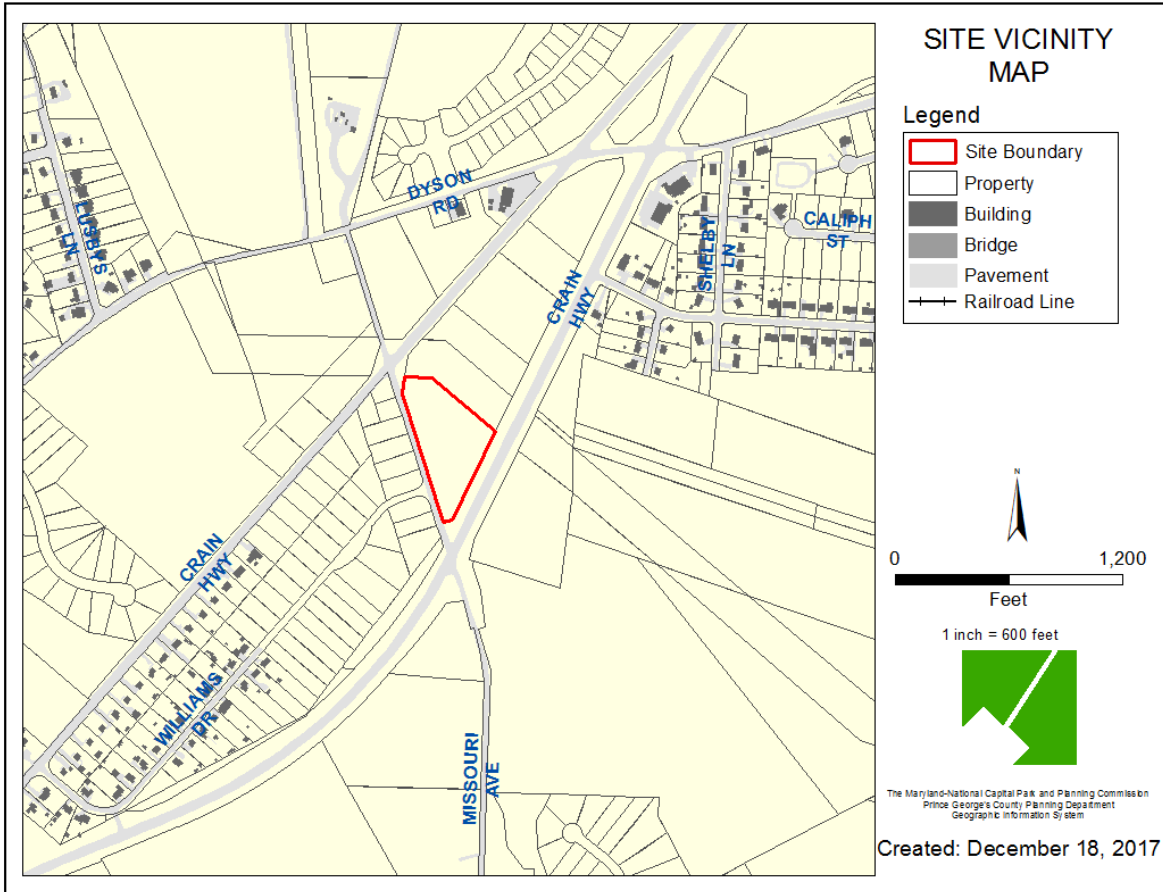
# Zoning Map Amendment

# A-10049

Application	General Data	
<b>Project Name:</b> Khan Property  <b>Location:</b> Northwest quadrant of the intersection of northbound US 301 (Robert Crain Highway) and Missouri Avenue.  <b>Applicant/Address:</b> Khan Properties, LLC 9500 Claychin Court Burke, VA 22015  <b>Property Owner:</b> Same as applicant	Planning Board Hearing Date:	12/13/18
	Staff Report Date:	11/20/18
	Date Accepted:	10/16/18
	Planning Board Action Limit:	N/A
	Plan Acreage:	4.592
	Zone:	R-R
	Gross Floor Area:	N/A
	Lots:	N/A
	Parcels:	N/A
	Planning Area:	85A
	Council District:	09
	Election District	11
	Municipality:	N/A
200-Scale Base Map:	217SE08	

Purpose of Application	Notice Dates	
Request to rezone the property from the Residential (R-R) Zone to the Commercial Miscellaneous (C-M) Zone.	Informational Mailing	01/05/18
	Acceptance Mailing:	10/12/18
	Sign Posting Deadline:	N/A

Staff Recommendation		Staff Reviewer: Ras Tafari Cannady II Phone Number: 301-952-3411 E-mail: Ras.Cannady@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	



MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

**TECHNICAL STAFF REPORT:**

TO: The Prince George's County Planning Board  
The Prince George's County District Council

VIA: Sherri Conner, Acting Supervisor, Subdivision and Zoning Section  
Development Review Division

FROM: Ras Tafari Cannady II, Senior Planner, Subdivision and Zoning Section  
Development Review Division

SUBJECT: **Zoning Map Amendment Application No. A-10049  
Khan Property**

REQUEST: **Rezone property from the Residential (R-R) Zone to the Commercial Miscellaneous  
(C-M) Zone.**

RECOMMENDATION: **DISAPPROVAL**

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NOTE:

The Planning Board has scheduled this application to be reviewed on the agenda date of December 13, 2018. If the Planning Board decides to hear the application, it will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and addressed to the Prince George's County Office of the Zoning Hearing Examiner, County Administration Building, Room 2184, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Questions about becoming a person of record should be directed to the Zoning Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

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## FINDINGS

1. **Location and Field Inspection:** The subject property, consists of 4.592 acres and is located on the west side of northbound US 301 (Robert Crain Highway), north of its intersection with Missouri Avenue. The site is comprised of part of Tax Parcel 203, recorded among the Prince George's County Land of Records in Liber 40147 at folio 42. Parcel 203 was originally comprised of a 7.968-acre tract of land, recorded among the Prince George's County Land of Records in Liber 3801 at folio 477. On October 8, 1974, the Potomac Electric Power Company (PEPCO) was conveyed 2.786 acres of land, known as Parcel 293, recorded among the Prince George's County Land of Records in Liber 4422 at folio 143. In 1974, PEPCO obtained permission to construct the transmission lines pursuant to SE-2856. This conveyance created a legal division of land, bisecting Parcel 203 into 4.592 acres to the south of Parcel 293, specifically regarded to as the subject property, and 0.591 acres to the north of Parcel 293. The subject property, zoned Rural Residential Development (R-R), has approximately 500 linear feet of frontage along northbound US 301, and approximately 575 linear feet of frontage along Missouri Avenue. The site is unimproved, with dense woodland throughout the entirety of the site.

The site is adjacent to two master plan roadways. Missouri Avenue is listed in the 2013 *Approved Subregion 5 Master Plan and Sectional Map Amendment* (Subregion 5 Master Plan and SMA), as a primary road with a proposed right-of-way of 60 feet and two lanes. US 301 is a master plan freeway facility with a proposed right-of-way of 300 to 450 feet and six to eight lanes. The master plan width of US 301 extends approximately 130 feet onto the western portion of the subject site. Any future development application for the subject property may require the dedication of the US 301 master plan right-of-way.

2. **History:** The site was designated within the Regional District as General Commercial, Existing (C-2) property, with the surrounding area being zoned C-2. In 1977, staff proposed the rezoning of the property from C-2 to C-M to allow the non-retail commercial development of the median strip as designated by the April 1978 Sectional Map Amendment for the Brandywine, Mattawoman, Pleasant Springs, and Cedarville Communities of Subregion V, Comprehensive Rezoning Proposal for Planning Areas 85A and 85B.

The Prince George's County District Council, however, rezoned the property from C-2 to R-R by Amendment 2 on September 5, 1978, County Council Resolution (CR-106-1978 (DR-2)), in an ordinance concerning The Brandywine-Mattawoman-Pleasant Springs-Cedarville Sectional Map Amendment, adopting a Sectional Map Amendment for Planning Areas 85A and 85B of Subregion V, being a comprehensive rezoning of the Brandywine, Mattawoman, Pleasant Springs, and Cedarville Communities in southern Prince George's County.

The 1993 *Approved Subregion V Master Plan and Sectional Map Amendment for Planning Areas 81A, 81B, 83, 84, 85A, and 85B* (Subregion V Master Plan and SMA) retained the subject property in the R-R Zone.

In 2007, a re-study of the 1993 Subregion V Master Plan was conducted with citizen input and staff analysis through multiple planning workshops. This later led to the adoption and approval of the 2009 *Subregion 5 Master Plan and Sectional Map Amendment* (Subregion 5 Master Plan and SMA) (CR-61-2009), which was the subject of a special appeal filed in Circuit Court. The petitioners argued that there was an error in the analysis, because multiple property owners who had sought zoning intensifications as part of the 2009 Subregion 5 Master Plan and SMA had failed to file affidavits as required by the Annotated Code of Maryland, disclosing whether they

had made contributions to County Council members or to the County Executive. Ultimately, the Circuit Court reversed the 2009 Subregion 5 Master Plan and SMA (*Accokeek, Mattawoman, Piscataway Creeks Community Council, et al. v. County Council of Prince George's County, Maryland, sitting as the District Council*, CAL 09-31402).

After the reversal, the District Council remanded the Subregion 5 Master Plan to the Prince George's County Planning Board. The Planning Board re-adopted the Subregion 5 Master Plan and transmitted it to the District Council, which approved both the Subregion 5 Master Plan and SMA. The action of the District Council approving the Subregion 5 Master Plan and re-enacting the SMA was set forth by County Council Resolutions CR-80-2013 and CR-81-2013. The District Council's actions were appealed to the Circuit Court, which affirmed the District Council's action.

Further appeals to the Maryland Court of Special Appeals resulted in a reversal of the District Council's action, and a remand to the Circuit Court with instructions to further remand the case to the District Council for action not inconsistent with the holding of the Court of Special Appeals. The Court of Special Appeals sought to take the Subregion 5 Master Plan back to a point immediately prior to its approval by the District Council in 2009. However, because of the limited scope of decision of the Court of Special Appeals, the Subregion 5 Master Plan remained intact.

Ultimately, the 2013 *Approved Subregion 6 Master Plan and Sectional Map Amendment* (CR-81-2013) retained the subject property in the R-R Zone and recommends Residential Low future land use on the subject property.

3. **General Plan and Master Plan Recommendations:**

**General Plan**

The 2014 *Plan Prince George's 2035 Approved General Plan* (Plan 2035) designates the subject property in the Established Community Growth Policy Area. The vision for the Established Communities is context-sensitive infill and low- to medium-density development. The General Plan recommends maintaining and enhancing existing public services (police and Fire/EMS), facilities (such as libraries, schools, parks, and open space), and infrastructure in these areas (such as sidewalks) to ensure that the needs of existing residents are met (page 20).

**Master Plan**

The 2013 *Approved Subregion 6 Master Plan and Sectional Map Amendment* (Subregion 6 Master Plan and SMA) (CR-80-2013), locates the subject site within the Brandywine Community and designates the site for future residential-low development, which is defined as single-family detached residential development that may have up to 3.5 dwelling units per acre (page 33).

4. **Request**

The applicant is requesting rezoning of the subject property from the R-R Zone to the C-M Zone.

5. **Neighborhood and Surrounding Uses**

The neighborhood is bounded to the north and west by Dyson Road, US 301 northbound to the south and east, and Brandywine Road to the south. The property is surrounded by the following uses:

- North—** The Potomac Electric Power Company (PEPCO) transmission line right-of-way is immediately north of the subject property with vacant C-M zoned land beyond.
- West—** Vacant R-R zoned land.
- South—** Northbound US 301 and vacant R-R zoned land.
- East—** Northbound US 301 and vacant R-R zoned land.

6. **Zoning Requirements:** Section 27-157(a)(1) of the Prince George’s County Zoning Ordinance provides that no zoning map amendment application shall be granted without the applicant proving that either:

**(A) There has been a substantial change in the character of the neighborhood; or**

In the applicant’s Statement of Justification submitted with this application, the applicant puts forth an argument of change to the character of the neighborhood as follows:

**Change 1:** The neighborhood as proposed by the applicant includes Dyson Road as an eastern boundary and Brandywine Road as a southern boundary. (Staff notes that Dyson Road forms the western boundary). A major roadway improvement is currently under construction at the intersection of Dyson Road and Brandywine Road. This improvement is known generally as the reconstruction of the Timothy Branch Intersection. Presently, this intersection operates as an at-grade crossing controlled by a traffic signal. Brandywine Road crosses both the north and southbound lanes of MD 5 (Branch Avenue) at grade. The roadway improvement, which is presently under construction will forever change transportation operations at this intersection.

Presently, the intersection operates at an unacceptable level of service with long backups at the traffic-controlled intersection of Brandywine Road and Dyson Road. The major improvement under construction will create a grade separated intersection and will incorporate the use of service lanes. Traffic approaching from either Dyson Road or Brandywine Road will now proceed northerly on a service land and cross MD 5 at a bridge. After crossing the bridge, cars will turn left on another service road and proceed in a southerly direction. This will allow cars to continue south or to turn right and proceed west on Brandywine Road. Land widenings also will facilitate operations at the new interchange. It is anticipated that this roadway improvement will not just correct traffic deficiencies which presently exist but will have a dramatic impact on land development in the area. This is a substantial change to the neighborhood and one which the applicant asserts supporting its rezoning application to change the property’s classification from R-R to C-M.

**Change 2:** On the northwest side of Dyson Road is a parcel of land comprising approximately 166.51 acres which is known as Renard Lakes. Presently, Renard Lakes is zoned R-S (Residential Suburban). In 1988, the Renard Lakes property was zoned I-1 (Light Industrial). At that time, a nonconforming surface mining operation, wet processing facility and concrete mixing plant was certified on the property as a legal nonconforming use (CNU-6071-88). These industrial businesses ceased operating on the Renard Lakes property in approximately 2000.

In 2006, the District Council approved a rezoning of the Renard Lakes property to its current R-S zoning classification, pursuant to the approval of Zoning Map Amendment (A-9970). Subsequent to the rezoning, the Renard Lakes property was the subject of an approved Comprehensive Design Plan (CDP-0503), an approved Preliminary Subdivision Plan (4-05048), and an approved Specific Design Plan (SDP-0505). All of these plans were approved in 2006. As approved, the R-S Zone authorized 315 single-family detached residential units and 78 single-family attached residential units. The Renard Lakes property never developed within its R-S zoning classification. More recently, the Renard Lakes property was once again sold. The current owner has filed a rezoning application seeking to restore the original I-1 zoning classification to the property (Zoning Map Amendment (A-10046)). Further, in March of 2017, the current owner of the Renard Lakes property re-established the surface mining operation on the property and is currently expanding that operation to the limits of the Renard Lakes property. The Renard Lakes property is once again being utilized for an industrial purpose. The applicant submits this too is a substantial change in the character of the neighborhood and is one which further supports a rezoning of the subject property from its current residential classification of R-R to C-M.

The following is staff's analysis of the neighborhood's distinct changes:

**Change 1:** The Applicant suggests that interchange improvements at MD 5 and MD 381, not directly affecting the subject property, should be considered a substantial change in the character of the neighborhood. The applicant states that it "is also anticipated that this major new interchange improvement will have a dramatic impact on land development in this area" as discussed in page 19 of the applicant's Statement of Justification. The interchange improvements are part of the construction of the Brandywine Spine Road (A-63). The applicant provides no evidence of actual impact from the construction of this project causing a "substantial change" to the character of the neighborhood.

It should also be noted that A-63 was identified in the 1993 *Approved Master Plan for Subregion V*. Development of a "comprehensive" master plan requires the Planning Board and District Council to take transportation improvements, and the impact thereof, into account when recommending or making land use policy and zoning changes. The subject property was retained in the R-R Zone by the District Council twice (in 1993 and 2009) with full knowledge that A-63 was to be constructed.

**Change 2:** Staff acknowledges the Applicant's argument that the Renard Lakes rezoning from a residential to an industrial zone appears to be a change in neighborhood character: Staff agrees with the applicant that 1) Renard Lakes is proximate to the subject property; 2) Renard Lakes is a large property; and 3) while the Master Plan and SMA contemplated residential land use and development on the Renard Lakes site, substantially different industrial development will be resumed.

However, the Renard Lakes site was historically used as a surface mining operation, an industrial land use. Reportedly, from 2000-2017, the operation was discontinued, during which time residential development was approved but not built. The property owner, in 2017, resumed surface mining operation. This fact

pattern does not demonstrate an actual change in the neighborhood; an industrial land use was discontinued for 17 years, during which the land was not redeveloped, and then the industrial land use resumed.

In addition, rural residential and undeveloped residentially-zoned land lie east and west of US 301 and the subject site; the subject property is part of a larger swath of land in this part of the County envisioned to be largely residential, bisected by US 301. Staff finds that, pursuant to Section 27-157(a)(1)(A) of the Zoning Ordinance, there is no evidence of a change in the character of the neighborhood to support the requested rezoning.

**(B) Either:**

**(i) There was a mistake in the original zoning for property which has never been the subject of an adopted Sectional Map Amendment, or**

The applicant does not put forth an argument of mistake in the original zoning for the property. The property has been the subject of several master plans and adopted SMAs since 1974.

**(ii) There was a mistake in the current Sectional Map Amendment.**

The applicant contends that retaining the subject property in the R-R Zone in the 2013 Subregion 5 Master Plan and SMA was a mistake by the District Council. Their contention is that the assumptions or premises relied upon by the District Council, at the time of the master plan and SMA approval, were invalid or have proven erroneous. The applicant points to two distinct mistakes:

**Mistake 1:** The District Council failed to accurately consider the impact of existing and potential setback and lot size requirements on the property, as a residential development.

**Mistake 2:** The District Council failed to accurately consider the adverse impacts on the property, as a residential development, of being adjacent to high voltage Pepco transmission lines.

**Mistake 3:** The District Council failed to accurately consider the fact that the property was previously zoned C-1 (Local Commercial, Existing), and that by placing the property in the R-R Zone, it became the only property in assemblage bounded by the north and southbound lands of US 301, Dyson Road and Missouri Avenue (other than the PEPCO property) not zoned C-M.

Staff finds the retention of the subject property in the R-R Zone was intended. There was no mistake made by the District Council in its approval of the 2013 Subregion 5 Master Plan and SMA. The following is staff's collective analysis of the mistakes stated by the applicant:

**Mistake:** The Applicant argues that a mistake was made in the District Council's initial placement of the subject property in the R-R Zone. The applicant concedes that the property was reclassified to the R-R Zone prior to the most recent (2013) SMA. The District Council may only



grant an application if a mistake exists in the “current Sectional Map Amendment” as provided in Section 27-157(a)(1)(B)(ii) of the Zoning Ordinance.

In the ‘mistake’ argument, the Applicant raises land use policies in the General Plan and the Master Plan that support non-residential zoning of land in the County and technical issues with setback requirements that could potentially impact residential development of the subject property. While these are all sound planning reasons to set aside land for non-residential land use and development, none of these considerations support the legal basis for an argument that the Council erred in retaining the residential zoning on this specific property. During the preparation and approval of the Master Plan and SMA, there was no discussion of alternate land use and development in this portion of the US 301 median; no new land use policies were approved in the Master Plan because, in the context of the overall plan for Subregion 5, none were necessary. Retention of the property in the R-R Zone is an affirmative action by the District Council consistent with the 2013 Master Plan’s recommendation of Residential-Low development. “There is a strong presumption of correctness of original zoning and comprehensive rezoning ... so that there must be strong evidence of mistake.” *Anne Arundel County v. Maryland Nat’l Bank*, 32 Md. App. 437 (1976).

While the property is adjacent to some Commercial-Miscellaneous (C-M)-zoned land to its north, it is surrounded on the east, west, and immediate south by low-density residential and undeveloped property zoned R-R. The property is not, as characterized by the Applicant, surrounded by commercially zoned land. An abutting commercial zone does not constitute a mistake in the comprehensive rezoning.

Therefore, it is not possible to conclude that a mistake was made in the SMA in retaining the R-R Zone for the subject property.

In order for a mistake to be a legally-justifiable basis for rezoning, there must have been a basic and actual mistake by the legislative body, in this case the District Council. Staff finds that, pursuant to Section 27-157(a)(1)(B) of the Zoning Ordinance, there was not a ‘mistake’ in the 2013 *Subregion 5 Master Plan and Sectional Map Amendment*.

7. **Compliance with Section 27-143(c)(1)(C):** The applicant’s Statement of Justification (SOJ) does not explicitly make an argument as to how the approval of the rezoning request from R-R to C-M will not be detrimental to the public health, safety, and welfare as required in accordance with Section 27-143(c)(1)(C) of the Zoning Ordinance. However, in the applicant’s SOJ, the applicant sets forth the argument as to why the current zoning isn’t appropriate for the subject property given the setback requirements, minimum lot sizes, transmission lines, and zoning of adjacent properties. However, these conditions all existed at the time of the adoption of the current SMA. The applicant sets the framework that if the property is subject to minimum lot depths in the already shallow parcel of land, the property may not be able to achieve any meaningful development in accordance with the requirements of the R-R Zone and the Subdivision Regulations. Staff does not anticipate that the rezoning of the subject property would be any more detrimental to the public health, safety, and welfare than other C-M zoned properties in the neighborhood.

8. **Referrals**

Referral memorandum comments directly related to the request to rezone the property were included in the body of this technical staff report. Referral memorandums were received by the following divisions, and all are included as back-up to this technical staff report:

Community Planning dated November 14,2018, Irminger to Cannady II

Transportation dated November 14, 2018, Thompson to Cannady II.

Environmental dated October 31, 2018, Schneider to Cannady II.

Department of Permitting, Inspections and Enforcement dated October 29. 2018, Giles to Cannady II

Southern Maryland Electric Cooperative dated October 19. 2018, Ulrich to Cannady II.

Special Projects dated October 24, 2018, Kowaluk to Cannady II.

Historic Preservation Section dated October 30, 2018, Stabler to Cannady II.

**CONCLUSION**

Pursuant to Section 27-157(a)(1)(B)(ii) of the Zoning Ordinance, the retention of the R-R Zone on the subject property was intended, and there was not a mistake in the 2013 *Approved Subregion 5 Master Plan and Sectional Map Amendment*, (CR-81-2013). The retention of the R-R Zone on the subject property was intended to shift future development at this location away from commercial, to bring it into conformance with the predominantly residential land use in this part of the Brandywine community. The District Council chose to retain the residential zoning due to the character of the surrounding neighborhood and future residential land use recommendations for the area. Finding neither substantial change to the character of the neighborhood, nor mistake in the comprehensive rezoning, staff recommends DISAPPROVAL of Zoning Map Amendment Application No. A-10049.