



*Note: Staff reports can be accessed at <http://mncppc.igmp2.com/Citizens/Default.aspx>.*

## Zoning Map Amendment

## A-10046

Application	General Data	
<b>Project Name:</b> Renard Lakes  <b>Location:</b> Northwest quadrant of the intersection of US 301 (Robert Crain Highway) and Dyson Road.  <b>Applicant/Address:</b> Renard Lakes Holdings, LLC 9102 Owens Drive Manassas, VA 20111-4801  <b>Property Owner:</b> Renard Lakes Holdings, LLC 9102 Owens Drive Manassas, VA 20111-4801	Planning Board Hearing Date:	02/22/18
	Staff Report Date:	02/07/18
	Date Accepted:	11/09/17
	Planning Board Action Limit:	N/A
	Plan Acreage:	167.84
	Zone:	R-S
	Gross Floor Area:	N/A
	Lots:	N/A
	Parcels:	25
	Planning Area:	85A
	Council District:	09
	Election District	11
	Municipality:	N/A
	200-Scale Base Map:	216SE08

Purpose of Application	Notice Dates	
Request to rezone property from the Residential Suburban (R-S) Zone to the Light Industrial (I-1) Zone.	Informational Mailing	09/12/17
	Acceptance Mailing:	10/26/17
	Sign Posting Deadline:	N/A

<b>Staff Recommendation</b>		<b>Staff Reviewer:</b> Ivy R. Thompson <b>Phone Number:</b> 301-952-4326 <b>E-mail:</b> Ivy.Thompson@ppd.mncppc.org	
<b>APPROVAL</b>	<b>APPROVAL WITH CONDITIONS</b>	<b>DISAPPROVAL</b>	<b>DISCUSSION</b>
		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: Ivy R. Thompson, Senior Planner, Subdivision and Zoning Section  
Development Review Division

SUBJECT: **Zoning Map Amendment Application No. A-10046  
Renard Lakes**

REQUEST: **Rezone property from the Residential Suburban (R-S) Zone to the Light Industrial (I-1) Zone.**

RECOMMENDATION: **DISAPPROVAL**

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NOTE:

The Planning Board has scheduled this application to be reviewed on the agenda date of February 22, 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, consisting of 167.84 acres, is located on the west side of US 301 (Robert Crain Highway), north of its intersection with Dyson Road. The site is comprised of Tax Parcel 25, recorded among the Prince George's County Land of Records in Liber 39192 at folio 359, and Parcels A–F, Lots 1–34, Block A, Lots 1–4, Block D, and Lots 1–7, Block B, recorded in plat books PM 219-42 through 47. Access to the property is proposed from Dyson Road. The property, zoned Residential Suburban Development (R-S), has approximately 1,200 linear feet of frontage along Dyson Road. Unimproved driveways originating from Dyson Road and US 301 provide access to the subject property. The proposed basic plan shows one vehicular access point connecting to Dyson Road and one emergency access to US 301. The subject property is currently permitted (Permit 1208-2017) for use as a surface mining operation, a wet processing facility, and a concrete batching facility. The subject site is comprised of wooded areas, open sand and gravel surface mining pits, and on-site storage of sand and gravel materials. Three man-made wash ponds are also located on the property. No existing residences, barns, or associated outbuildings exist on the site.
2. **History:** The site was designated by the 1974 Subregion V Master Plan as a “staged future development/suburban living area,” with recommended ultimate densities of up to 2.6 dwelling units (DUs) per acre. Through the 1978 Brandywine Sectional Map Amendment (SMA), in accordance with staged future development area SMA policies, the zoning was changed from Rural Residential (R-R) to Residential Agricultural (R-A). In 1992, the preliminary master plan again recommended low suburban living area densities of up to 2.6 DUs per acre for the subject property. A zoning change from R-A back to R-R was recommended by the 1992 proposed SMA.

During the June 1992 public hearings, the property owners, Alfred and Harry Smith, through counsel, requested the Light Industrial (I-1) Zone solely to validate the existing sand and gravel mining operation and asphalt and concrete manufacturing plants operating on-site as permitted uses, rather than continue as nonconforming uses. The Prince George's County Planning Board did not grant the Smiths' request to rezone the property to the I-1 Zone. Instead, the Planning Board adopted the 1992 master plan and endorsed the SMA, which recommended rezoning the property from the R-A Zone to the R-R Zone, designating the site as a low suburban living area at up to 2.6 DUs per acre.

At the behest of the owners, the Prince George's County District Council amended the master plan and SMA by proposing industrial zoning for the site (County Council Resolution CR-17-1992, Amendment 19). 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) rezoned the subject property from the R-A Zone to the I-1 Zone (CR-60-1993).

### Previous Approvals

On November 3, 1988, the Planning Board approved Certified Nonconforming Use (CNU-6071-88) for a sand and gravel wet processing plant, a surface mining operation, an asphalt mixing plant, and a concrete mixing plant (PGCPB Resolution No. 88-525) (Permit CNU-6071-88-U).

On November 3, 2005, the Planning Board reviewed the Zoning Map Amendment (ZMA), A-9970, a request to rezone the property from the I-1 Zone to the R-S Zone and recommended that the plan be approved, with conditions (PGCPB Resolution No. 05-229).

On February 13, 2006, the District Council approved ZMA A-9970 and the accompanying basic plan for the subject site (Zoning Ordinance No. 3-2006), subject to 14 conditions and 2 considerations, for a range of 251 to 405 dwelling units. The District Council issued its final conditional zoning approval on March 28, 2006, subject to the applicant accepting the conditions of approval in writing.

On March 9, 2006, the Planning Board adopted Comprehensive Design Plan CDP-0503, subject to 23 conditions, for a maximum of 408 dwelling units on the subject site. The District Council gave notice on April 27, 2006, that it elected not to review the CDP and, therefore, the Planning Board's decision of approval, with conditions, stands as final.

On February 23, 2006, the Planning Board approved Preliminary Plan of Subdivision (PPS) 4-05048 (PGCPB Resolution No. 06-33), for 404 lots and seven parcels, subject to 34 conditions.

On June 8, 2006, the Planning Board approved Specific Design Plan SDP-0505 (PGCPB Resolution No. 06-137), for 314 single-family detached dwelling units and 78 single-family attached dwelling units, subject to 22 conditions.

On October 26, 2006, the Planning Board approved final plats for five parcels and 45 single-family detached lots, recorded in Plat Books PM 219-42 through 47.

On January 25, 2017, Permit No. 1208-2017 was approved for a nonconforming surface mining operation, a wet processing facility, and a concrete mixing facility.

Sand and gravel mining is allowed via special exception in both the R-S and I-1 Zones. However, the surface mining operation on this site is a Certified Nonconforming Use (1988, CNU-6071-88), thus, it can continue to operate, even with lapses of more than 180 days, and can expand to the extent of the property boundaries without obtaining special exception approval.

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

#### **General Plan**

The 2014 *Plan Prince George's 2035 Approved General Plan* (Plan Prince George's 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." It 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 5 Master Plan and Sectional Map Amendment* (Subregion 5 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). Future recommended land use for the subject property was redesignated from the Employment-Industrial (1993 master plan) to Residential Low development notwithstanding that Employment-Industrial is identified as the existing land use on the entire 167.84-acre site (although only a portion of the site is presently used for mining). Changing the future land use to the Residential Low was intentional and did not overlook or ignore the existing industrial land use of the site. This change was intended to shift future development at this location away from industrial and to

bring it into conformance with the predominantly residential land use in this part of the Brandywine Community.

The Subregion V Master Plan and SMA places the property in the Brandywine Community. Piscataway Creek and the Potomac Electric Power Company (PEPCO) transmission line right-of-way to the north, US 301 to the east, and MD 5 (Branch Avenue) to the west define the triangular-shaped neighborhood.

4. **Request**

The applicant is requesting rezoning of the subject property from the R-S Zone, a comprehensive design zone, to the I-1 Zone, a Euclidean Zone.

5. **Neighborhood and Surrounding Uses**

The neighborhood is bounded to the north by Surratt's Road, US 301 to the east, Dyson Road to the south, and Lusby's Lane to the west. The property is surrounded by the following uses:

**North—** Potomac Electric Power Company (PEPCO) transmission line right-of-way and Reserved Open Space (R-O-S) zoned land owned by the Maryland Veterans Commission. The recommended future land use for these properties is institutional.

**East—** Developed and vacant properties in the I-1 Zone and US 301, beyond the industrial properties. The recommended future land use for the adjacent vacant I-1-zoned property (Parcel 16) is residential low and employment for the remaining adjacent I-1 parcels.

**South—** Dyson Road and commercial uses in the Commercial Miscellaneous (C-M) Zone along the south side of Dyson Road. The recommended future land use for the adjacent C-M zoned land is residential low.

**West—** Piscataway Creek Stream Valley Park owned by the Maryland-National Capital Park and Planning Commission (M-NCPPC), zoned R-O-S and R-R. The Prince George's County recycling drop-off facility is located on the ±3.7-acre southernmost R-R parcel on the north side of Missouri Avenue. The M-NCPPC police firearms range is located on the north central portion of the ±182.1-acre R-O-S-zoned parcel. The recommended future land use for the adjacent R-O-S M-NCPPC property is open space.

6. **Zoning Requirements:** Section 27-157(a)(1) of the Prince George's County Zoning Ordinance provides that no 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 Statement of Justification submitted with this application, the applicant does not put forth an argument of change to the character of the neighborhood. Staff finds there has been no substantial change to the neighborhood character since the last comprehensive zoning of the area.

**(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-S 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, did not accurately consider its own recommendations for bolstering economic development in the area, especially regarding mineral resource extraction and further, with regard to the positive economic development incentive, which development in the I-1 Zone would foster.

As evidence of mistake in the current 2013 Subregion 5 Master Plan and SMA, the applicant references the economic development goals of the master plan (page 146). The applicant concludes that, based on the master plan's forecasts for population growth, jobs-to-population ratios, and dwelling unit projections, it was a mistake that the 2015 Subregion 5 Master Plan and SMA did not rezone the subject property from the R-S Zone to the I-1 Zone.

The applicant also cites the 2010 *Prince George's County Industrial Land Needs and Employment Study* (Industrial Land Needs and Employment Study) to substantiate the opinion that this location should provide for future employment development, after mining ceases on the site, because it is: (1) located near a freeway; (2) close to the fast-growing Brandywine Center; and (3) can replace lost industrially-zoned land with potential new services and high-technology sector jobs.

**Mistake 2:** The District Council, by retaining the site in the R-S Zone, failed to fully and accurately consider the physical character of the property and the impact of the surrounding neighborhood, specifically the firing range, on the subject property as a residential development.

The applicant contends that the R-S Zone is inappropriate for the property because of the potential affect noise intrusion would have on the property, as cited in CDP-0503, which predicted that the M-NCPPC Police Firing Range would create a "nuisance effect" on future residential development (page 18). The applicant states that the M-NCPPC Police Firing Range presents a safety risk to any potential residential development on the subject property, and that the District Council failed to specifically consider the risk of stray bullets impacting the residential community, in general, but also the hikers/bikers who might wander off the trail near the firing range.

Staff finds the retention of the subject property in the R-S 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 analysis of the

applicant's two distinct mistakes:

**Mistake 1:** There is a strong presumption of validity accorded a comprehensive rezoning. The presumption is that, at the time of the adoption of the comprehensive rezoning, the District Council considered all the relevant facts and circumstances existing concerning the subject property.

At this location, the applicant is arguing for a type of development that would normally be derived from the orderly, deliberate comprehensive planning and zoning process. The master plan preparation process could have resulted in a future land use designation of "Employment-Industrial" that was implemented through an SMA zoning change from the R-S Zone to the I-1 Zone, but there was no testimony from this property owner during the process, and the outcome was exactly the opposite. Whereas the *prior* future land use designated for the subject property (1993 Subregion V Master Plan) was Employment-Industrial, the 2013 Subregion 5 Master Plan and SMA changed it to Residential-Low because (1) the subject property was currently zoned R-S; (2) there were existing development approvals (CDP, SDP and PPS) for residential development of the site; (3) residential zoning was consistent with the surrounding land uses; and (4) in furtherance of planning policy, future employment land use is to be planned in designated centers, not scattered throughout the County. Growth that supports the economic development goals of the master plan is planned for the Brandywine Community Center (a Plan Prince George's 2035 Local Center) and in the Clinton planning area, where recently an approved sector plan recommended revitalization in several focus areas south of the Branch Avenue Metro Station.

The master plan also cites the Industrial Land Needs and Employment Study which, contrary to the applicant's characterization, concluded that the County has an oversupply of industrially-zoned land. Page 146 of the master plan discusses industrially-zoned land in Subregion 5 stating, "Of the industrially zoned land, 1,324 acres, or 60 percent, was undeveloped, a significantly higher share than the countywide total of 45 percent." Furthermore, the master plan states, "Land once considered appropriate for employment—or industrial development along railroad rights-of-way and major highways—is now obsolete and inappropriate in many locations" (page 146). In this context, and with full consideration of the economic development goals of the master plan, the residential zoning was retained on the subject property.

Not only did the 2009 Preliminary Subregion 5 Master Plan and Proposed SMA recommend changing the future land use from Employment-Industrial to Residential-Low for the subject



property, it proposed to rezone the adjacent vacant (approximately) 34-acre site from I-1 to R-R. The proposed 2009 SMA discusses this rezoning proposal, as follows: “Rezoning this property from I-1 to R-R reinforces the existing residential development pattern and makes the zoning consistent with the surrounding residentially zoned properties. In addition, this property has remained undeveloped for a long period of time.” This zoning change was not approved in 2009 for the adjacent property “because the property owner testified in opposition to the change during the public comment period” (Exhibit 70, Speaker 44).

However, the fact remains that additional land at this location was considered for further transitioning from industrial to residential land use and zoning in the 2009 Preliminary Subregion 5 Master Plan and Proposed SMA. The 2009 public hearing record was transmitted to the District Council for consideration during the process of approving the 2013 Subregion 5 Master Plan and SMA. This is strong evidence suggesting that no mistake was made in the 2013 Subregion 5 Master Plan and SMA when the District Council retained the residential zoning of the subject property.

**Mistake 2:** Regarding the applicant’s second argument (i.e., that the District Council failed to recognize the inhospitable environment for residences that would be created), staff fails to find mistake in the comprehensive rezoning. The District Council chose to follow the recommendation of the master plan as part of ZMA A-9970, that rezoned the subject property from I-1 to R-S. The Planning Board determined that this rezoning to residential was in accordance with the 2002 General Plan’s goals and policies of the Developing Tier. At that time, the Developing Tier indicated areas where the County anticipated and encouraged new development in “contiguous and compatible growth patterns.” Specific goals of the Developing Tier, which supported the requested rezoning, were: (1) to maintain a pattern of low- to moderate-density land uses (except in centers and corridors); (2) to reinforce existing suburban residential neighborhoods; and (3) to preserve and enhance environmentally-sensitive areas.

In approving the PPS for the subject property in 2006, the Planning Board found that the Residential Planning Guidelines on page 86 of the 1993 master plan specifically encouraged the residential type of development proposed by the applicant. The Planning Board’s approval (PGCPB Resolution No. 06-33, PPS 4-05048, page 18) states “The density of 1.6 to 7.9 dwelling units per acre for single-family attached and detached units proposed for Renard Lakes is also in full accordance with ranges set forth on page 86 of the master plan. The approved basic plan (A-9970), also fulfilled a number of the objectives of the master

plan for living areas including the removal of incompatible uses (i.e., sand and gravel mining and an asphalt mixing plant) within living areas; preservation of natural and scenic assets as an integral part of residential areas to enhance the character, quality and livability of the Subregion; and to provide a wide range of housing opportunities and neighborhood choices which meet the needs of different age groups, family sizes, lifestyles, and incomes.” (page 8 of PGCPB Resolution No. 06-33).

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. The approval of the Subregion 5 Master Plan and SMA, which was adopted in 2013, is not the original action by the District Council to rezone the subject property to the current R-S Zone. The 2006 ZMA A-9970 was the original action for the R-S zoning, which fully considered the future land use recommendations for the area and the impact of adjacent properties as evidenced in the approving document and subsequent residential development applications.

7. **Conformance with the Purposes of the I-1 Zone:** The purposes of the I-1 Zone are contained in Section 27-469(a)(1) of the Zoning Ordinance and are as follows:

**(A) To attract a variety of labor-intensive light industrial uses;**

General Site development standards for the I-1 zoned properties are set forth in Sections 27-469 and 27-474 of the Zoning Ordinance, to ensure appropriate buffering, setbacks, and lot coverage for developing industrial properties.

**(B) To apply site development standards which will result in an attractive, conventional light industrial environment;**

A condition of approval would need to be added to require the applicant to file a detailed site plan (DSP) application to ensure compatibility with the surrounding residentially-zoned properties.

**(C) To create a distinct light industrial character, setting it apart from both the more intense Industrial Zones and the high-traffic-generating Commercial Zones; and**

The adjoining properties are zoned residential and industrial and are primarily undeveloped. The subject property is not in an area where more intense industrial zones are located nor within a high-traffic generating commercial area.

**(D) To provide for a land use mix which is designed to sustain a light industrial character.**

The sand and gravel mining operation have a sunset, as the natural resources currently being mined are finite. As a Certified Nonconforming Use (NCU-6071-88U), the operation can continue, even with lapses of more than 180 days, and can expand to the extent of the property boundaries without obtaining special exception approval, which is a general requirement in both the R-S and I-1 Zones. Therefore, the subject property, as a certified nonconforming use, currently provides for a land use mix that sustains a light industrial character.

If the proposed rezoning were approved, the subject property would generally conform to most of the above purposes. However, as a certified nonconforming use, the property is currently contributing to the economic development in the area, with regard to mineral resource extraction and providing jobs for area residents. The request of this application is for the rezoning of the subject property from the R-S Zone to I-1 Zone, and not redevelopment of the subject property. The applicant has proposed no improvements that will enhance the current economic development of the area. Rezoning the property to I-1 will erode the predominately medium- to low-density residential nature of the surrounding neighborhood and future land use recommendations. However, in view of the existing use of the property and adjacent uses, as well as the zoning, it is acknowledged that I-1 is not a completely inappropriate zone for this property.

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 January 3, 2018, Irminger to Thompson.

Transportation dated December 1, 2017, Masog to Thompson.

Trails dated November 30, 2017, Lewis-DeGrace to Thompson.

Environmental dated December 29, 2017, Burke to Thompson.

Public Facilities dated November 16, 2017, Mangalvedhe to Thompson.

Historic Preservation dated November 28, 2017, Krause to Thompson.

Urban Design dated December 1, 2017, Zhang to Thompson.

**CONCLUSION**

Pursuant to Section 27-157(a)(1)(B)(ii) of the Zoning Ordinance, the retention of the R-S Zone on the subject property was intended, and there was not a mistake in the 2013 Subregion 5 Master Plan and SMA, (CR-81-2013). The retention of the R-S Zone on the subject property was intended to shift future development at this location away from industrial, 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-10046.