

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 [www.mncppc.org/pgco/planning/plan.htm](http://www.mncppc.org/pgco/planning/plan.htm)*

## ZONING MAP AMENDMENT PETITION NO. 9959

Application	General Data
<b>Project Name</b> Voglino Property  <b>Location</b> East side of Branch Avenue approximately 320 feet south of Brandywine Road, known as 13709 Old Brandywine Road.  <b>Applicant/Address</b> Angela M. Voglino & Toni C. Voglino P.O. Box 637 White Plains, Maryland 20695  <b>Correspondent</b> Felicia Jakson-Taylor, Esq. Joseph, Greenwald & Laake, P.A. 6404 Ivy Lane, Suite 400 Greenbelt, MD 20770	Date Accepted 9/29/03
	Planning Board Action Limit N/A
	Plan Acreage 3.12
	Zone R-R
	Dwelling Units N/A
	Square Footage N/A
	Planning Area 85A
	Council District 09
	Municipality N/A
	200-Scale Base Map 218SE07

Purpose of Application			Notice Dates
Rezoning from R-R (Rural-Residential) to C-M (Commercial-Miscellaneous)			Sign(s) Posted on Site N/A
			Variance(s): Adjoining Property Owners N/A
Staff Recommendation			Staff Reviewer: Elsabett Tesfaye
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

December 30, 2003

**TECHNICAL STAFF REPORT:**

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

VIA: Arie Stouten, Zoning Supervisor

FROM: Elsabet Tefaye, Senior Planner

SUBJECT: **Zoning Map Amendment Application No. 9959**

REQUEST: **Rezoning from the R-R Zone to the C-M Zone**

RECOMMENDATION: **DENIAL**

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NOTE:

This application is on the agenda for the Planning Board to decide whether or not to schedule a public hearing. 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 sent to the Office of the Zoning Hearing Examiner at the address indicated above. Questions about becoming a person of record should be directed to the 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:

- A. **Field Inspection:** The subject property is located on the east side of Branch Avenue approximately 320 feet south of Brandywine Road, known as 13709 Old Brandywine Road. The property consists of 3.12 acres of land. The property is mostly vacant except for a small garage. Records indicate that other structures on the property were razed in 2002. It has 370 feet of frontage on Old Brandywine Road and 512 feet of frontage on Branch Avenue.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	R-R	C-M
Acreage	3.12	3.12
Use(s)	Rural-Residential	Commercial-Miscellaneous

- C. **History:** The 1993 approved Sectional Map Amendment (SMA) for Subregion V rezoned the property from R-A to R-R Zone. The subject property is in the T.B. Historic Survey Area and there was a historic resource located on the site—the Marlow-McPherson House (85A-33-16). However, this resource was deleted from the Historic Sites and Districts Plan Inventory of Historic Resources in 1996.
- D. **Master Plan Recommendation:** The 1993 approved Master Plan for Subregion V recommends the property for commercial use. The 2002 General Plan places the subject site 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.
- E. **Request:** The applicant requests rezoning of the property from the R-R (Rural-Residential) Zone to C-M (Commercial-Miscellaneous). No specific information has been provided regarding the intended development of the property.
- F. **Neighborhood and Surrounding Uses:** The neighborhood is defined by the following boundaries:

North: Brandywine Road (MD 381)

East: Crain Highway (US 301)

South: The MD 5/US 301 Interchange

West: Branch Avenue (MD 5)

These boundaries are consistent with the Zoning Hearing Examiner's boundaries for A-9920.

The neighborhood, which is bounded by major roads, is small with relatively limited development. The larger portion of the neighborhood is commercially zoned. However, development on both residentially and commercially zoned portions of the neighborhood is limited to very few residential dwellings and small-scale commercial activities.

The property is surrounded by the following uses:

- North: A tattoo parlor in the C-M Zone. Zoning Map Amendment A-9920 rezoned this property from R-R to C-M.
- Northeast: Across Old Brandywine Road, a store currently undergoing renovation for conversion to an ice cream store, in the C-S-C Zone.
- South: Residential dwellings.
- Southeast: Across Old Brandywine Road, a dial switching station for C & P Telephone Company in the C-M Zone.
- West: Across Branch Avenue, undeveloped land in the R-R Zone.

G. **Zoning Requirements:** *Section 27-157(a) of the 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**
- (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**
  - (ii) **There was a mistake in the current Sectional Map Amendment and such mistake occurred not more than six years prior to the filing of an application for the proposed zoning map amendment providing, however, that for those properties for which the current Sectional Map Amendment has been adopted prior to 1990 such mistake shall have occurred not more than 10 years prior to the filing of an application for the proposed zoning map amendment.**

H. **Applicant's Position:** The applicant puts forward arguments for both change and mistake. However, the application does not meet the time criteria for consideration of the mistake argument, because the alleged mistake occurred more than six years ago, and the Subregion V Sectional Map Amendment was adopted after 1990. The applicant recognizes the fact that the mistake argument cannot be made in this case because of the six-year limit. However, because of the proposed application's similarity to a case (A-9920) involving the adjoining property to the north, the applicant has cited the mistake argument and the subsequent rezoning (R-R to C-M) for that case as part of the justification for the subject application.

The applicant indicates that major roadways surround the subject property making the property undesirable for residential use. Branch Avenue (MD 5) is an expressway with four lanes and passes west of the property. The master plan recommends that MD 5 be upgraded to freeway status with six to eight lanes. Crain Highway (US 301) is an expressway located just south of the property. The master plan proposes that it be upgraded to a six- to eight-lane freeway. It is further recommended that the US 301 freeway and Waldorf bypass connect at T.B. A partial interchange at Brandywine Road and MD 373 would provide local access to the area at T.B. It should be noted that the proposed interchange would potentially cross the subject property. Old Brandywine Road, east of the property, and Brandywine Road, northeast of the property, are both major collector roads. The aforementioned proposed roadway improvements, and particularly the Waldorf bypass, justify the intensification of zoning use on the subject property.

Moreover, the applicant maintains that the significant level of traffic on the adjoining roadways renders the property unsuitable for an R-R Zone use. If the subject property is to be used for residential development, it may not meet the necessary standards for air and noise pollution. In addition, the R-R Zone is also unsuitable for the subject property because of the predominantly commercial nature of existing uses in the immediate area, which are not compatible with residential use.

The applicant also argues that the property's status as a Historic Site (the Marlow-McPhearson House) at the time of the 1993 sectional map amendment and until March 1996 (when it was removed from the inventory of historic resources) was a factor in preventing a rezoning request within the six-year requirement under the mistake rule.

- I. **Staff's Analysis of the Mistake Argument:** The 1995 rezoning from R-R to C-M of the 1.15-acre property (A-9920) that abuts the subject property to the north was based on the finding of mistake in the District Council's approval of the 1993 Sectional Map Amendment for Subregion V. The applicant's analysis regarding the similarities between A-9920 and this application (A-9959) is accurate. Furthermore, the findings and conclusions of A-9920 would have been similarly applicable to this application. That is, if it were not for the fact that the six-year period within which a case can be argued under the mistake rule has expired.

The master plan recommends commercial use for the area including the subject property and existing developments within the area are, for the most part, consistent with the master plan's recommendation. The Community Planning Division offers the following comments regarding the rationale behind the master plan's recommendation and the sectional map amendment's classification for the subject property:

This application is located in a relatively small area that will be surrounded by existing or proposed major roads: MD 5 (F-9), US 301 (F-10), and A-53 (Brandywine Spine Road). In the long run, the master plan envisioned this area as an institutional and commercial enclave including a variety of businesses that were more suited to the negative impacts of adjacent freeways and interchanges and road improvements. Ramp improvements associated with a proposed new interchange at MD 5 and US 301 were anticipated to affect the properties along MD 5, including the property subject to this application. In the 1993 sectional map amendment (SMA), there was neither a request nor a pressing need to implement commercial zoning or encourage commercial development for the subject property, which was occupied by a residential structure at the time. As stated in SMA Change B-14, this area was classified in the R-R Zone as the base density zone for a future commercial land use area affected by proposed right-of-way for upgrading MD 5 to a freeway...

...The applicant refers to the findings and conclusions of rezoning application A-9920, located on the adjacent property. The application was approved for rezoning from the R-R to the C-M Zone on the basis of mistake in 1995, several years following the SMA. The findings and conclusions of that application should be similarly applicable to this application.

As the applicant correctly stated, the subject property was indeed a historic resource and identified as such when the rezoning for A-9920 was approved in February 1996. However, with the removal of the subject property from the Historic Sites and Districts Plan inventory of

Historic Resources in 1996, there was ample time (three years) within which an application for rezoning could have been filed under the mistake rule.

- J. **Staff Analysis of the Change Argument:** The applicant's argument only offers vague or general references to events (such as highway widening, increased traffic, higher population and the extension of sewer lines) to support the claim of substantial change in the character of the neighborhood. Furthermore, the applicant has not demonstrated that the current R-R Zone precludes all reasonable use of the subject property. In addition to residential dwellings, there are other uses permitted by special exception that could be placed on the site. The adjoining properties to the south are zoned R-R and some are developed with residential dwellings.

There has been no substantial change in the character of the neighborhood since the adoption of the 1993 SMA. Even the 1996 zoning change on the adjoining property (A-9920), which resulted in the existing tattoo parlor, does not constitute a substantial change, nor does Zoning Amendment A-9752-C that is cited as evidence of change in the applicant's statement of justification. Zoning Amendment A-9752-C was approved in 1989, four years prior to the approval of the master plan and SMA. The 1993 Approved Master Plan recommends the property for commercial use. The zoning case number is indicated on the original zoning map because the conditions of approval imposed by the District Council were brought forward in the SMA and remain applicable to the property. Therefore A-9752-C is not a change to the original zoning map and does not qualify as evidence of change in the character of the neighborhood for this application. Furthermore, all of the events referenced by the applicant as evidence of change were contemplated by the map adoption, and they constitute nothing unusual or substantial outside of reasonable expectations, following the SMA adoption.

- K. **Transportation Facilities:** It should be noted that the future road improvements for MD 5 and the planned interchange at this location would place approximately a third of the property within the right-of-way. The Transportation Planning Section offers the following comments:

Using the estimated trip generation rates for possible uses within the R-R and C-M zoning categories found in Figure 4 of *Guidelines for the Analysis of the Traffic Impact of Development Proposals*, the following table was developed. Because a use for the property is not specified as part of a Euclidean zoning application, the R-R category is evaluated as residential lots, while C-M includes a comparison of two permitted high trip generation uses. Also, the site's location strongly suggests that it would be developed as retail. Moreover, the right-of way needed for the proposed master plan improvement for MD5 and the planned interchange at this location (approximately a third of the subject property) will certainly decrease the potential yield of the site:

<b>Comparison of Estimated Trip Generation, A-9959, 3.13 acres</b>					
Zoning or Use	Units or Square Feet	AM Pk. Hr. Trips		PM Pk. Hr. Trips	
		In	Out	In	Out
<b>Existing Zoning</b>					
R-R (residential)	6 residences	<b>1</b>	<b>4</b>	<b>4</b>	<b>2</b>
<b>Proposed Zoning</b>					
C-M (commercial)	54,540 square feet medical/professional office	<b>125</b>	<b>30</b>	<b>66</b>	<b>142</b>
C-M (commercial)	51,230 square feet retail			39	39
<b>Difference (between bold numbers)</b>		<b>+124</b>	<b>+26</b>	<b>+62</b>	<b>+140</b>

The comparison of estimated site trip generation indicates that the proposed rezoning would have an impact on area roadways—over 100 vehicle trips in either peak hour. Although this difference is large, the actual difference will be much smaller due to the factors that were noted in the text prior to the table. Nonetheless, there will be an increase in potential travel due to the rezoning, which may require off-site improvements to the MD 5/Accokey Road, Dyson Road and Floral Park Road intersection. This intersection currently operates at Level-of-Service D or worse during at least one peak hour, without consideration of other approved developments or growth. If the subject property were to be developed, the applicant would be required to submit a traffic study.

MD 5 is a master plan freeway (F-9) in this area, with 300 feet in total right-of-way. The plan also proposes an interchange in this area. The justification statement recognizes the status of MD 5 but the submitted plan shows only 200 feet in total rights-of-way for MD 5, and does not take into consideration the impact of the proposed interchange. Although the transportation staff is not qualified to assess the requirements for the rezoning, staff also believes that this facility will be constructed at some time in the future.

The State Highway Administration (SHA) offers the following comments:

Based on an SHA highway needs inventory and the future upgrade of MD 5 identified in the US 301 access control study, access to the property should be provided via a connection with Old Brandywine Road. Also, the property is located within the limits of the US 301 study area and could potentially be impacted by the future road alignment.

A “denial of access” needs to be placed on the final record along those lots fronting MD 5 prior to finalizing in the County Land Records.

L. **Historic Preservation:** The Historic Preservation Section offers the following comments:

The proposed rezoning of the subject property and its potential development will impact the viewshed of the adjacent Marlow-Huntt Store Historic Site. Regardless of the subject property’s ultimate use, construction on the site should be reviewed for its impact on the adjacent Historic Site. The sitting, scale, massing and architectural character of

structures on the subject property, as well as landscaping, fencing, paving, parking, signage and lighting features of any future development will potentially impact the character of the modest mid-nineteenth-century Historic Site.

Should this application be approved, the following condition for detailed site plan review is recommended:

*Prior to the issuance of a building permit for any proposed development of the subject property, the applicant, his heirs, successors or assignees shall submit a detailed site plan for review by the Planning Board or its designee to include the sitting, scale, massing and architectural character of any proposed building as well as proposed landscaping, fencing, paving, parking, signage and lighting features, in order to mitigate any potential impacts on the adjacent Marlow-Huntt Store Historic Site (#85A-33-14).*

M. **Conformance with the Purposes of the R-R and C-M Zones:** The purposes of the R-R Zone are contained in *Section 27-428 (a)* of the Zoning Ordinance:

- (A) **To provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, in order to better utilize the natural terrain.**
- (B) **To facilitate the planning of one-family residential developments with moderately large lots and dwellings of various sizes and styles.**
- (C) **To encourage the preservation of trees and open spaces.**
- (D) **To prevent soil erosion and stream valley flooding**

The purposes of the C-M Zone (Commercial Miscellaneous) are contained in **Section 27-459 (a)(1)** of the Zoning Ordinance:

- (A) **To provide locations for miscellaneous commercial uses which may be disruptive to the harmonious development, compactness, and homogeneity of retail shopping areas.**
- (B) **To provide these locations, where possible, on nonresidential streets.**
- (C) **To provide concentrations of these uses which are relatively far apart.**

According to the environmental Planning Section, the current R-R zoning would require a minimum woodland conservation of 20 percent of the net tract, while C-M zoning would require a minimum woodland conservation of 15 percent of the net tract. Because there is no priority woodland on site, development in the C-M Zone instead of the R-R Zone would have no significant difference with regard to woodland conservation. In terms of traffic-generated noise, the entire property is significantly impacted and the use of the property for residential structures would be problematic. A residential development under the R-R Zone standards at this location would not be a practical option, particularly in light of the recommendations of the 1993 Master Plan for Subregion V.

Notwithstanding the potential impact to existing transportation facilities, the subject property can readily conform to the purposes of the C-M Zone. Given the physical characteristics of the



property, the location of the property relative to the nature of existing and proposed roads in the area, and the prevailing development in the immediate area, the property is more suitable for the proposed commercial development than a residential development under the R-R Zone standards.

#### **CONCLUSION:**

The applicant's argument and evidence of change is mainly the rezoning of the adjoining property to the north. (A-9920). As noted, that case was approved based on the finding of mistake in the zoning of the property at the time of the last SMA. Admittedly, there are similarities with the facts and circumstances of the two properties. However, the merits of this application cannot be evaluated using the mistake argument, because the alleged mistake occurred more than six years ago. Therefore, the applicant can only argue for a substantial change in the character of the neighborhood. Furthermore, the evidence of change must be limited to development that was **not** anticipated by the most recent comprehensive rezoning. Moreover, zoning without development and development in accordance with the comprehensive plan is not sufficient to justify the requested zoning. Therefore, it is recommended that this application be DENIED.