

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>.

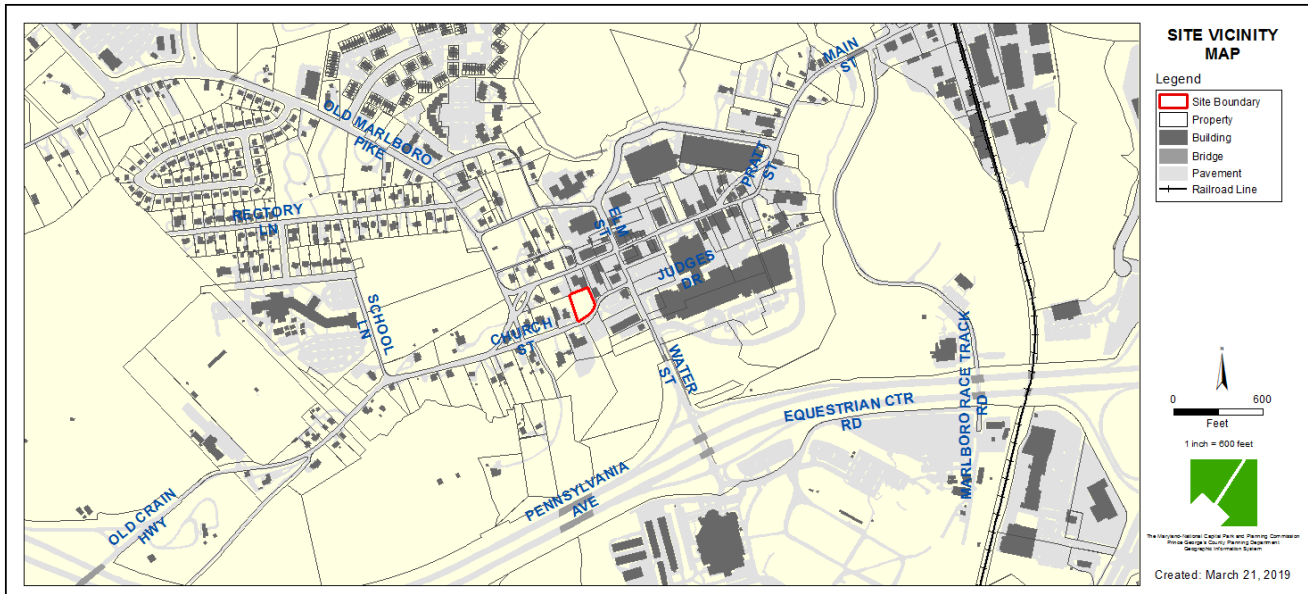
Zoning Map Amendment

A-10054

Application	General Data	
Project Name: Callicott Property Location: On the north side of Church Street, approximately 260 feet west of its intersection with Water Street. Applicant/Address: Brian D. Callicott 14518 Church Street Upper Marlboro, MD 20772 Property Owner: Same as applicant	Planning Board Hearing Date:	05/30/19
	Staff Report Date:	05/09/19
	Date Accepted:	03/25/19
	Planning Board Action Limit:	N/A
	Plan Acreage:	24,164 sq. ft.
	Zone:	C-S-C
	Gross Floor Area:	N/A
	Lots:	N/A
	Parcels:	N/A
	Planning Area:	79
	Council District:	09
	Election District:	03
	Municipality:	Upper Marlboro
200-Scale Base Map:	207SE13	

Purpose of Application	Notice Dates	
Rezone property from the C-S-C Zone to the R-80 Zone.	Informational Mailing:	01/08/19
	Acceptance Mailing:	03/22/19
	Sign Posting Deadline:	04/30/19

Staff Recommendation		Staff Reviewer: Ras Cannady II Phone Number: 301-952-3411 Email: 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, 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 A-10054**
Callicott Property

REQUEST: **Rezone property from the C-S-C Zone to the R-80 Zone.**

RECOMMENDATION: **DISAPPROVAL**

NOTE:

The Planning Board has scheduled this application to be reviewed on the agenda date of May 30, 2019. 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.

FINDINGS

1. **Location and Field Inspection:** The subject property is located on the north side of Church Street, approximately 260 feet west of Water Street, in Planning Area 79 and Council District 9. The site is comprised of 24,164 square feet of land known as Lot 1 of the Marlborough House subdivision, recorded in Plat Book NLP 137-54, approved by the Prince George's County Planning Board on February 18, 1988. The subject property, zoned Commercial Shopping Center (C-S-C), has approximately 165.46 linear feet of frontage along Church Street. The site is unimproved, with sparse woodlands along the northern portion of the site.
2. **History:** The site was designated within the Regional District as One-Family Detached Residential (R-80) property, with the surrounding area being zoned R-80. The first Subregion VI Master Plan was adopted in 1973. The master plan was subsequently followed in 1977 by the Upper Marlboro Special Treatment Area Plan. On July 12, 1977, the Prince George's County District Council adopted a sectional map amendment (SMA) for the areas covered by Subregion VI and the Upper Marlboro Special Treatment Area Plan. This SMA placed the County Administration Building and the Courthouse complex within the C-S-C Zone.

The C-S-C zoning extended west to the western limits of the funeral home site on the north side of Main Street and then followed a straight line to the south to Church Street, which included the subject property. Commercial Office (C-O) zoning was placed on properties south of Church Street, south of the subject property. During this time, the subject property and "Content," commonly referred to as the historic home west of the subject site, were located on a single lot. Thus, the zoning line split-zoned the property on which the historic house was located. Today, the same zoning exists on the subject site and surrounding properties, as described above.

In 1986, two preliminary plans of subdivision (PPS) applications were filed by the owner of the land to create two lots, which separated the neighboring historic site to the east from the undeveloped portion of the property, which is the subject site.

Both PPS applications were initially disapproved by the Planning Board; however, a note on both record plats states, "The preliminary plan of subdivision was approved by Circuit Court action CAL 86-12679 on January 14, 1987."

The first PPS, 4-86100 (PGCPB Resolution No. 86-274), was disapproved by the Planning Board on July 10, 1986. By action of the Circuit Court, the PPS was approved, and the property was recorded as "Lot One, Marlborough House," on March 8, 1988, in Plat Book NLP-137-54.

The second PPS, 4-86101 (PGCPB Resolution No. 86-275), was also disapproved by the Planning Board on July 10, 1986. By action of the Circuit Court, the PPS was approved, and the property was recorded as Lot 1 "Content" on July 13, 1987, in Plat Book NLP 133-90.

Subsequently, the owner attempted to obtain a building permit to construct an office building on the subject property. During the permit process, it was discovered that a portion of the property was zoned R-80. The subdivision line that was established by the owner was not consistent with the zoning line approved in 1977. As a result, the Maryland-National Capital Park and Planning Commission would not approve the permit, so litigation ensued. While litigation was pending, the 1993 *Subregion VI Master Plan and Sectional Map Amendment* (Subregion VI Master Plan and SMA) was updated. As part of the update, 0.14 acre of the property was rezoned from the R-80 Zone to the C-S-C Zone to amend the zoning to be consistent with the property lines. A note was placed within the SMA stating, "Given the current litigation on this property, the Commission's

Legal Department requires that a letter on this issue (Marks to Smith, November 3, 1993 RE: Lot One, Marlboro House, Upper Marlboro) be entered into the record.”

Subsequently, in 2002, the *Prince George’s County General Plan* (General Plan) divided the County into three different tiers: the Developed Tier, the Developing Tier, and the Rural Tier. More specifically, the General Plan placed the Town of Upper Marlboro in the Rural Tier. After establishment of the tier system, it was determined that Upper Marlboro, which was served by water and sewer, does not meet the criteria for Rural Tier designation. Subsequently, a moratorium on development requiring a connection to public water and/or sewer was put in place until the Subregion VI Master Plan and SMA was updated.

In 2009, a new master plan for Subregion VI was approved (Prince George’s County Council Resolution CR-62-2009). This master plan was appealed in the Circuit Court for Prince George’s County under the allegation of error that certain property owners who had sought zoning intensification, as part of the 2009 Subregion 6 Master Plan and SMA, failed to file affidavits as required by the Annotated Code of Maryland, disclosing whether or not they made contributions to the County Council members or the County Executive. The Circuit Court subsequently reversed the master plan and SMA (*Christmas Farm, LLC v. County Council of Prince George’s County, Maryland, sitting as the District Council, CAL 09-31402*). In turn, the District Council adopted the 2013 *Approved Subregion 6 Master Plan and Sectional Map Amendment* (Subregion 6 Master Plan and SMA) (CR-83-2013). One of the changes adopted in the master plan was to change the tier designation of Upper Marlboro from the Rural Tier to the Developing Tier. The change was consistent with the recommendations of the 2008 Upper Marlboro Town Vision and Action Plan, which the master plan implements in its recommendation.

Ultimately, the 2009 master plan and SMA (CR-62-2009), as well as the Subregion 6 Master Plan and SMA (CR-83-2013), retained the subject property in the C-S-C Zone and recommends mixed-use 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 area is context-sensitive infill and low- to medium-density development. Plan 2035 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 Subregion 6 Master Plan and SMA recommends mixed-use future land use for the subject property. This would allow maximum flexibility to promote a mix of commercial development (retail and office), as well as infill residential development, where appropriate.

4. **Request:** The applicant is requesting rezoning of the subject property from the C-S-C Zone to the R-80 Zone.

5. **Neighborhood and Surrounding Uses:** Significant natural features or major roads usually define neighborhoods. The neighborhood is located in the heart of Upper Marlboro, within an area bounded by streams of the Western Branch Patuxent River to the south and east, Schoolhouse Pond to the north, and Old Marlboro Pike and Trinity Lane to the west. The property is surrounded by the following uses:

North— A commercial building in the C-O Zone and a law office in the C-S-C Zone. Further north, beyond Main Street, residential and commercial uses in the R-80, One-Family Detached Residential (R-55), and C-S-C Zones.

West— The “Content,” a historic site containing a multi-section frame town dwelling with freestanding brick chimneys and pent built in the early 1800s in the R-80 Zone. Further west, single-family residential uses in the R-80 Zone.

South— Church Street and commercial uses beyond, including a parking lot, offices, and a bank in the C-O Zone, and a church in the R-80 Zone.

East— An unnamed alley, offices, and a food and beverage store in the C-S-C Zone.

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 (SOJ) submitted with this application, the applicant does not put forth an argument of change in the character of the neighborhood.

(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.

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

The applicant contends that retaining the subject property in the C-S-C Zone in the 2009 and 2013 Subregion 6 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 three distinct mistakes:

Mistake 1: The District Council failed to take into account then existing facts of the general neighborhood, which led into the action of not rezoning the subject property from C-S-C to R-80, which subsequently did not protect the abutting historic site from possible future commercial encroachment. In 1977, by the adoption of the Subregion VI Master Plan and SMA, the District Council split-zoned the property containing an historic site. However, the site had not yet achieved protected status,

since Subtitle 29 of the Prince George's County Code was not adopted until 1981. During 1977 and 1993, when a prior owner of the site attempted to seek office development approval for the site, protracted litigation ensued. When the District Council adopted the Subregion 6 Master Plan and SMA in 2013, there was no viable prospect for developing the property with a commercial office building. The Upper Marlboro Town Vision and Action Plan stated that "commercial development in Upper Marlboro has been nonexistent in the past decade. No commercial or office development has occurred in town since 1997." By the time the Subregion 6 Master Plan and SMA was adopted, it had been almost 30 years since office development had first been envisioned for the property. The District Council was aware of the development trends in Upper Marlboro and did not take that into account.

Mistake 2: When the property, along with the entire Town of Upper Marlboro, was placed in the Rural Tier in 2002, any immediate commercial development opportunity for the property was eliminated. When the District Council elected to change the Rural Tier for Upper Marlboro in 2013, it had the opportunity to determine whether office or other commercial use of the property was appropriate, and whether the property was better suited for a residential zoning category, which would better protect the historic setting of "Content." The District Council should have been aware that the property was, at one time, part of a larger property that included the historic site. Removing the Rural Tier designation and leaving the property in the C-S-C Zone did not provide sufficient protection for the historic site. The master plan continued to encourage options to protect historic properties within the town. The property is strategically located at a curve on Church Street that provides a dramatic view of "Content." Any development of the property for commercial purposes would dramatically alter that view in a negative way.

Mistake 3: The Subregion 6 Master Plan and SMA designates the entire town core as a mixed-use land use in order to encourage maximum flexibility, to implement the visions for the Town of Upper Marlboro. Furthermore, the master plan states that "rezoning will be required" to achieve the plan recommendations. The applicant submits that the subject application provides the appropriate vehicle to remove the commercial zoning of the property to protect the adjacent historic site. The master plan encourages the protection of existing residential areas within the Town, as well as the protection of historic sites. The current owner of the property is not desirous of pursuing commercial development of the property and wishes to protect the historic site and the view of the historic site from Church Street.

Staff finds that the retention of the subject property in the C-S-C Zone was intended, and that there was no mistake made by the District Council in its approval of the Subregion 6 Master Plan and SMA. The following is staff's collective analysis of the three mistakes stated by the applicant:

Mistake: Staff finds that, pursuant to Section 27-157(a)(1)(B), there was not a mistake in the 2009 and 2013 Subregion 6 Master Plan and SMA. The current C-S-C zoning classification is appropriate for the subject property.

In the SOJ, the applicant indicated that a mistake was made by the District Council in 2013 when the Subregion 6 Master Plan and SMA was approved to retain the C-S-C Zone.

The master plan and SMA recommends mixed-use future land use for the subject property. The implementation of mixed-use future land use would allow maximum flexibility to promote a mix of commercial development (retail and office), as well as infill residential development, where appropriate. The existing C-S-C Zone allows uses that support implementation of the master plan and SMA.

Additionally, page 193 of the master plan states “Rezoning will be required to encourage and facilitate this mix of new development that will complement and strengthen the town core’s existing character. It is recommended that a Mixed Use Town Center (M-U-TC) development plan be completed to rezone the area to an M-U-TC district. This development plan would include design standards, such as building heights, and the possibility for the creation of a local committee to review development proposals.

Although major rezoning for this area is not recommended in the master plan, small changes are proposed to ensure that new development is compatible with the vision for the area and consistency with the approved future land use.”

Staff finds the applicant’s argument that the District Council erred by not considering the lack of office development on the property, and that the protection of the historic site is primarily attainable through the removal of the commercial zoning is not justified. Staff is of the opinion that protection of the historic site through the vehicle of removing the commercial zoning is not appropriate or necessary, as residential uses can still be implemented upon the subject property under the current zoning. In addition, any commercial uses would also be reviewed for compatibility with the historic site at the appropriate stage of development.

Therefore, it is not possible to conclude that a mistake was made in the SMA in retaining the C-S-C 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), there was not a ‘mistake’ in the Subregion 6 Master Plan and SMA.

7. **Compliance with Section 27-143(c)(1)(C):** The applicant’s SOJ lays out a sound argument as to how the approval of the rezoning request from C-S-C to R-80 will not be detrimental to public health, safety, and welfare, as required in accordance with Section 27-143(c)(1)(C) of the Zoning Ordinance. More specifically, the applicant states that “while any development of the subject property will impact the viewshed of the historic home, construction of a commercial development would have a more detrimental impact on the viewshed due to its small size and orientation. An office building or other commercial structure would require off street parking. Since Church Street curves to the south as vehicles travel west, the historic home is very visible. If the subject property were developed, the view would be of a parking lot. In addition, commercial development would generate more traffic impact than residential development. Since the owner’s intention is to preserve the property as open space in order to preserve the viewshed of the historic home that he owns, the rezoning could not result in a detrimental impact to public health, safety or welfare. Since the master plan encourages the protection of existing residential areas within the Town of Upper Marlboro as well as the protection of Historic sites, the rezoning of the property would actually enhance public health, safety, and welfare.”

8. **Recommendation of the Municipality:**

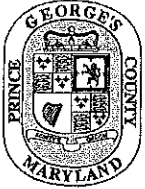
Town of Upper Marlboro—In a memorandum from the Town of Upper Marlboro, dated March 18, 2019 (Turner to Harrison), Mayor Y. Turner expressed the Town’s favor of rezoning the subject property from a commercial zone to a residential zone. More specifically, the Mayor stated that the rezoning is crucial to preservation of the Town’s historic residential district. Furthermore, the letter references Resolution No. 2019-04 that the Board of Commissioners and Mayor of Upper Marlboro will be passing Spring 2019. The resolution will indicate the Town’s position in support of rezoning the subject property from commercial to residential.

9. **Referral Comments:** 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 from the following sections/divisions, all are included as back-up to this technical staff report and incorporated by reference herein:
 - a. Community Planning Division, dated April 22, 2019 (White to Cannady II)
 - b. Transportation Planning Section, dated April 4, 2019 (Masog to Cannady II)
 - c. Prince George’s County Department of Permitting, Inspections and Enforcement, dated April 5, 2019 (Giles to Cannady II)
 - d. Historic Preservation Section, dated April 22, 2019 (Stabler to Cannady II)
 - e. Environmental Planning Section, dated April 24, 2019 (Juba to Cannady II)
 - f. Urban Design Section, dated April 30, 2019 (Bishop to Cannady II)

CONCLUSION

Pursuant to Section 27-157(a)(1)(B)(ii) of the Zoning Ordinance, retention of the C-S-C Zone on the subject property was intended, and there was not a mistake in the Subregion 6 Master Plan and SMA, (CR-83-2013). Retention of the C-S-C Zone on the subject property was intended to allow maximum flexibility to promote a mix of commercial development (retail and office), as well as infill residential

development, where appropriate. The existing C-S-C Zone allows uses that support implementation of the Subregion 6 Master Plan and SMA. The District Council chose to retain the commercial zoning due to the character of the surrounding neighborhood and future mixed-use 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 A-10054, Callicott Property.



Angela D. Alsobrooks
County Executive

THE PRINCE GEORGE'S COUNTY GOVERNMENT
Department of Permitting, Inspections and Enforcement
Site/Road Plan Review Division



MEMORANDUM

April 5, 2019

TO: Ras Cannady II, Senior Planner
Zoning Section, Development Review Division, M-NCPPC

FROM: *Mary Giles* Mary Giles, P.E., Associate Director
Site/Road Plan Review Division, DPIE

RE: Callicott Property (A-10054)

CR: Church Road
CR: Water Street

In response to the request for Zoning Map Amendment No. A-10054 from C-S-C Commercial Shopping Center to single family detached residential R-80 referral for the above-reference property, the Department of Permitting, Inspections and Enforcement (DPIE) offers the following:

- The property is located at the north side of Church Street, approximately 260 feet west of its intersection with Water Street. The applicant will be required to comply with the County's stormwater management and grading codes for any future development for this site.
- DPIE has no objection to the proposed re-zoning of this property from C-S-C to R-80.

If you have any questions or need additional information, please contact Mr. Mariwan Abdullah, P.E District Engineer for the area, at 301.636.2060.

MG:MA:dar

cc: Rene Lord-Attivor, Chief, Traffic Engineering, S/RPRD, DPIE
Mariwan Abdullah, P.E., District Engineer, S/RPRD, DPIE
Brian Callicott, 14518 Church Street, Upper Marlboro, MD 20772
Thomas Haller, 1300 Caraway Court, #102, Largo, MD 20774

9400 Peppercorn Place, Suite 230, Largo, Maryland 20774
Phone: 301.636.2060 ♦ <http://dpi.e.mypgc.us> ♦ FAX: 301.925.8510

April 24, 2019

MEMORANDUM

TO: Ras Cannady, Senior Planner, Zoning Section

VIA: Katina Shoulars, Supervisor, Environmental Planning Section

FROM: Marc Juba, Senior Planner, Environmental Planning Section

SUBJECT: Callicott Property, A-10054

KIF for KS
KIF for MNJ

The Environmental Planning Section has reviewed the above referenced Zoning Map Amendment application stamped as received on March 25, 2019. The rezoning application meets all applicable environmental requirements. The following comments and recommended condition are provided for your consideration.

Background

The Environmental Planning Section (EPS) has not performed any environmental reviews on record for this property.

Proposed Activity

This application requests to rezone Lot 1 from the C-S-C to the R-80 zone.

Grandfathering

The project is subject to the environmental regulations contained in Subtitles 24, 25, and 27 that came into effect on September 1, 2010 and February 1, 2012.

Plan Prince George's 2035 Approved General Plan (2014)

The site is located within the Environmental Strategy Area 2 (formerly the Developing Tier) of the Regulated Environmental Protection Areas Map as designated by *Plan Prince George's 2035 Approved General Plan*.

Master Plan Conformance

The *Approved Subregion 6 Master Plan and Sectional Map Amendment* (July 2013) approved by the District Council is the current master plan for this area. This master plan included environmentally related policies and their respective strategies in the Environmental Infrastructure section. The following policies are considered relevant to this case.

Policy 1: Protect, preserve, and restore the identified green infrastructure network and areas of local significance within Subregion 6 in order to protect critical resources and to guide development and mitigation activities.

Although a small portion of the site's frontage with Church Street is mapped as an evaluation area within the *Countywide Green Infrastructure Plan* of the *Approved Prince George's Resource Conservation Plan* (May 2017), this appears to have been mapped in error as there is no opportunity to link this evaluation area to the network without first demolishing and restoring Church Road to a natural state. However, the site is adjacent to an area of local significance. Specifically, a Historic Site and Environmental Setting associated with an existing church is located to the west on Lot 1. Any future development should try to preserve the existing tree-line along the western boundary of the site to the greatest extent possible.

Policy 2: Restore and enhance water quality in degraded areas and preserve water quality in areas not degraded.

Opportunities for restoration with the allowed use will be explored during future development applications. The site will be required to address water quality and quantity through an approved Stormwater Management Concept Plan.

Policy 4: Protect, restore, and enhance the Chesapeake Bay Critical Area.

This site is not in or near the Chesapeake Bay Critical Area.

Policy 6: Increase awareness regarding air quality and greenhouse gas (GHG) emissions and the unique role that the Developing and Rural Tiers in Subregion 6 have to play in this effort.

Policy 7: Encourage the use of green building techniques and community designs that reduce resource and energy consumption.

The reduction of overall energy consumption throughout the lifecycle of any future development of this site is encouraged. Local sourcing materials and using materials that reduce energy loss as well as utilizing alternative clean power sources is encouraged. Information regarding the use of green building techniques and the use of alternative energy will be evaluated with future applications.

Policy 8: Reduce energy usage from lighting, as well as light pollution and intrusion into residential, rural, and environmentally sensitive areas.

Comment: The use of alternative lighting technologies and the limiting of total light output should be demonstrated prior to the first building permit. Full cut-off optic light fixtures should be used. The use of streetlights and entrance lighting except where warranted by safety concerns is discouraged.

Recommended Condition: Full cut-off optic light fixtures shall be used on this site to reduce light intrusion.

Policy 9: Reduce adverse noise impacts to meet acceptable state noise standards.

This site is not adjacent to a roadway regulated for noise with respect to proposed residential developments. A noise study is not required with future applications.

Conformance with the Green Infrastructure Plan

This site is not mapped within any regulated areas within the *Approved Countywide Green Infrastructure Plan* (2017). Although a small portion of the site's frontage with Church Street is mapped as an

evaluation area, this appears to have been mapped in error as there is no opportunity to link this evaluation area to the network across Church Road, without first demolishing Church Road and restoring it to a natural state. Therefore, there are no opportunities in the foreseeable future to connect this site to the existing network.

Environmental Review

Existing Conditions/Natural Resource Inventory

An NRI is not required as part of a zoning amendment application. Although a Forest Stand Delineation (FSD) is usually required with a zoning amendment application, staff has waived this requirement based on prior research of the site on PG Atlas, which revealed that the site is less than 40,000 square feet, contains less than 10,000 square feet of woodland on-site, and not associated with any regulated environmental features. It appears that an NRI equivalency letter would be adequate for any future development applications not exceeding the entire land area included with this application.

Woodland Conservation

The site is eligible for an exemption from the provisions of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance because the property is less than 40,000 square feet in size and contains less than 10,000 square feet of woodland on-site and has no previous Tree Conservation Plan (TCP) approvals.



No additional information is required regarding woodland conservation.


If you have any questions concerning these comments, please contact me at 301-883-3239 or by e-mail at marc.juba@ppd.mncppc.org.

April 22, 2019

MEMORANDUM

TO: Ras Cannady, Senior Planner, Development Review Division

VIA: Scott Rowe, AICP, CNU-A, Supervisor, Long-Range Planning Section, Community Planning Division 
David A. Green, MBA, Master Planner, Community Planning Division 

FROM: Samuel L. White, Jr., Senior Planner, Neighborhood Revitalization Section, Community Planning Division  for Sam White

SUBJECT: **A-10054 Callicott Property**

FINDINGS

Community Planning Division staff finds that, pursuant to Section 27-157(a)(1)(B) of the Zoning Ordinance, there was not a mistake in the 2013 *Approved Subregion 6 Sectional Map Amendment*. The current C-S-C zone classification was appropriate because the existing C-S-C zone allows uses that support implementation of the 2013 *Approved Subregion 6 Master Plan*.

BACKGROUND

Application Type: Zoning Map Amendment for Euclidean Zone

Location: The site is located on the north side of Church Street approximately 260 feet west of its intersection with Water Street

Size: 0.55 acres

Existing Uses: Vacant property

Proposal: Request to rezone from the C-S-C (Commercial Shopping Center) Zone to R-80 (One-Family Detached Residential) Zone.

GENERAL PLAN, MASTER PLAN, AND SMA

General Plan:

This application is located in the Established Communities. The vision for the Established Communities is context-sensitive infill and low to medium-density development and recommends maintaining and enhancing existing public services, facilities, and infrastructure to ensure that the needs of residents are met. (p. 20).

Master Plan: The 2013 *Approved Subregion 6 Master Plan* recommends mixed-use future land uses on the subject property.

Planning Area: 79

Community: Upper Marlboro & Vicinity

Aviation/MIOZ: This application is not located within an Aviation Policy Area or the Military Installation Overlay Zone.

SMA/Zoning: The 2013 *Approved Subregion 6 Sectional Map Amendment* retained the subject property in the C-S-C Zone.

SECTIONAL MAP AMENDMENT ANALYSIS

Community Planning Division staff finds that, pursuant to Section 27-157(a)(1)(B) of the Zoning Ordinance, there was not a mistake in the 2009 and 2013 the *Subregion 6 Master Sectional Map Amendment*. The current C-S-C zone classification is appropriate.

The applicant is requesting a rezoning of subject property from the C-S-C (Commercial Shopping Center) zone to R-80 (One-Family Detached Residential) zone pursuant of Part 3. Division 2, Subdivision 1 of the Prince George's County Zoning Ordinance. In the statement of justification, the applicant indicated a mistake was made by the District Council in 2013 when the *Subregion 6 Sectional Map Amendment* was approved to retain the C-S-C zone.

The 2013 *Approved Subregion 6 Master Plan* recommends mixed-use future land use for the subject property. This would allow maximum flexibility to promote a mix of commercial development (retail and office) as well as infill residential development where appropriate. The existing C-S-C zone allows uses that support implementation of the 2013 *Approved Subregion 6 Master Plan*.

“Rezoning will be required to encourage and facilitate this mix of new development that will complement and strengthen the town core’s existing character. It is recommended that a Mixed-Use Town Center (M-U-TC) development plan be completed to rezone the area to an M-U-TC district. This development plan would include design standards, such as building heights, and the possibility for the creation of a local committee to review development proposals.

Although major rezoning for this area is not recommended in the master plan, small changes are proposed to ensure that new development is compatible with the vision for the area and consistency with the approved future land use.” (Page 193)


c: Long-range Agenda Notebook

Fred Stachura, Planning Supervisor, Neighborhood Revitalization Section, Community Planning Division

April 4, 2019

MEMORANDUM

TO: Ras Cannady, Subdivision and Zoning Review Section, Development Review Division

FROM:  Tom Masog, Transportation Planning Section, Countywide Planning Division

SUBJECT: A-10054: Callicott Property

Proposal

The applicant is proposing a rezoning from the C-S-C Zone to the R-80 Zone.

Background

This is a conventional rezoning request. The granting of the request is based on proof by the applicant of a change in the character of the neighborhood or a mistake in the original zoning or the recommendation of a plan. Neither of these are transportation-related determinations. The transportation staff evaluates conventional zoning map amendments for net traffic impact of the highest and best by-right use of the proposed zone versus the highest and best by-right use of the existing zone in order to inform the record. The transportation staff also reviews the relationship of the site vis-à-vis the *Countywide Master Plan of Transportation* and raises any other potential transportation-related development issues. The application is not subject to transportation-related findings related to traffic or adequacy.

Review Comments

The application does not present a concept for development under the proposed zone; it is a simple request for a rezoning. Therefore, using the estimated development yields for each zone along with trip generation rates, the table below was developed. The information presented is based upon the entire site being usable. Density in the R-80 Zone is based upon 3.40 residences per acre; density in the C-S-C Zone is based on information in the traffic study, with the application of trip generation rates from Figure 4 of the "Guidelines for the Analysis of the Traffic Impact of Development Proposals (Guidelines):"

Comparison of Estimated Trip Generation, A-10054: 0.5547 acres						
Zoning or Use	Units or Square Feet	AM Peak Hour Trips		PM Peak Hour Trips		Weekday Trips (ADT)
		In	Out	In	Out	
Existing Zoning C-S-C (retail)	6,040 square feet	7	4	18	19	438
Proposed Zoning R-80 (residential)	1 detached residence	0	1	1	0	9
Difference (between bold numbers)		-7	-3	-17	-19	-429

The comparison of estimated site trip generation indicates that the proposed rezoning would have little or no impact during each peak hour and on a daily basis. In considering the ultimate buildout of all vacant zoned property, with the rezoning in place, weekday average daily travel could decrease by over 400 daily trips.

The site is not within or adjacent to any Master plan transportation facilities. No other transportation issues have been identified during this review.

Conclusion

Transportation staff is aware that the adequacy or inadequacy of transportation facilities is not a central issue pertaining to the change or mistake finding required for a Euclidean rezoning. Based on potential trip generation, the proposed rezoning would have little if any impact on existing transportation facilities in the area of the subject property.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.mncppc.org/pgco

April 22, 2019

MEMORANDUM

TO: Ras Cannady II, Subdivision and Zoning Review, Development Review Division

VIA: Howard Berger, Supervisor, Historic Preservation Section, Countywide Planning Division *BB*

FROM: Jennifer Stabler, Historic Preservation Section, Countywide Planning Division *JAS*
Tyler Smith, Historic Preservation Section, Countywide Planning Division *TAS*

SUBJECT: A-10054 Callicott Property

The subject property comprises 0.55 acres located at 14520 Church Street on the north side of the road approximately 260 feet west of its intersection with Water Street in Upper Marlboro. The subject application proposes rezoning the property from the C-S-C Zone to the R-80 Zone. The subject property is currently undeveloped.

The parcel is located adjacent to Content (PG:79-019-16), a county historic site that is also adjacent to the Upper Marlboro National Register Historic District (PG:79-115). The approval of this proposal would not impact any historic sites or resources or known archeological sites. The request to change the zone of the property from a commercial zone to a residential zone, is intended to foster more compatible development adjacent to the historic site. In addition, the applicant's intention to include the subject property within the environmental setting of the adjacent historic site, which is currently under the same ownership, would further ensure compatible new development in this location. The Historic Preservation Commission is expected to revise the historic site's environmental setting to include the subject property at its May 21, 2019 meeting.

Based on the foregoing, Historic Preservation staff recommends approval of A-10054, Callicott Property, with no conditions.



Town of Upper Marlboro

Town Hall, 14211 School Lane
Upper Marlboro, MD 20772

Tel: (301) 627-6905
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info@uppermarlboromd.gov
www.uppermarlboromd.gov

March 18th, 2019

The Honorable Sydney J. Harrison
Prince George's County Council District 9
14741 Governor Oden Bowie Drive 2nd Floor
Upper Marlboro, MD 20772

RE: Property Rezoning Request Reference # A-10054

Councilmember Harrison,

The Town of Upper Marlboro is in favor of rezoning the property located at 14520 Church Street, Upper Marlboro, MD 20772 (Tax ID 0195800) (located within the Town of Upper Marlboro's corporate limits) from commercially zoned to residentially zoned. This rezoning is crucial to the preservation of the Town's historic residential district. To further support this position, the Board of Commissioners and I will be passing Resolution 2019-04 later this spring. This resolution will serve as official legislation passed by the Town, indicating our official position and support of rezoning the aforementioned property from commercial to residential.

As always, please do not hesitate to contact my office should you have any questions or concerns.

In Partnership & Service,

Mayor Tonga Y. Turner
President Board of Town Commissioners

CC: Clerk of the County Council 14741 Governor Oden Bowie Drive 2nd Floor Upper
Marlboro, MD 20772

Linda Pennoyer
Commissioner/ Treasurer

Tonga Y. Turner
Commissioner/ President

Wanda Leonard
Commissioner

STATEMENT OF JUSTIFICATION
(REZONING FROM C-S-C ZONE TO R-80 ZONE)

The property forming the subject matter of this Zoning Map Amendment application is located at 14520 Church Street in Upper Marlboro (the "Property"). The Property is more particularly described as Lot One, as depicted on a plat of subdivision titled "Lot One, Marlborough House", which plat is recorded among the Land Records of Prince George's County, Maryland in Plat Book NLP 137 Plat No. 54. The property is owned by Brian D. Callicott pursuant to a deed recorded among the Land Records of Prince George's County, Maryland on April 24, 2012 in Liber 33559, Folio 60.

The Property is roughly rectangular in shape and is located on the north side of Church Street, approximately 260 feet west of its intersection with Water Street. The Property is abutted on two sides by public rights of way. Church Street abuts the Property on the south and an unnamed alley abuts the Property along the eastern property line. The property is currently unimproved. As noted above, the Property is owned by the applicant, Brian D. Callicott and is zoned C-S-C. Mr. Callicott also owns, and resides in, the property abutting the western boundary of the Property, located at 14518 Church Street, which is zoned R-80 and improved with a single family home which will be described in greater detail below. Pursuant to this application,

the applicant requests a rezoning of the Property from the C-S-C Zone to the R-80 Zone such that both parcels of land owned by Mr. Callicott are in the same zoning category.

NEIGHBORHOOD AND VICINITY

The applicant submits that the appropriate neighborhood to be considered for this application is Rectory Land/Elm Street/Governor Oden Bowie Drive to the north, and the municipal boundaries of the Town of Upper Marlboro to the east, south and west. A map depicting these boundaries is attached hereto as Exhibit "A". The neighborhood contains the historic core of Upper Marlboro, with the southern and eastern boundaries defined by environmental features. The western boundary follows a previously proposed extension to the south of Brown Station Road (this extension is still shown on the Master Plan of Transportation). The environmental features separate the Town boundaries from MD 4 on the south and MD 202 and US 301 to the east.

The Property is located in the heart of Upper Marlboro, within an area bounded by Main Street to the north, Old Crain Highway/Trinity Lane to the west, Church Street to the south and Water Street to the east. Abutting the Property to the north is the law office of Wilson and Parlett, which is located in the former Ritchie Funeral Home building, constructed in 1934. This property is zoned C-S-C. To the north is also the parking lot of

a building formerly used as the law offices of Duly and Haskell, formerly the convent for St. Mary of the Assumption School. To the east is an unnamed alley, and across the alley is the former offices of RDA Engineering in the C-S-C Zone. To the south, across Church Street, is a gravel parking lot owned by the Town of Upper Marlboro, and zoned C-0. Finally to the west, is the residence of the Applicant, known as Content. Content is a multi-section frame town dwelling with free standing brick chimneys and pent, built in the 1780's and early 19th century. It is one of the oldest surviving buildings in Upper Marlboro. The property is zoned R-80.

PLANNING HISTORY AND MASTER PLAN

The Property is located within the Subregion 6 Master Plan and Sectional Map Amendment ("SMA"), adopted and approved by the Prince George's County Council sitting as the District Council ("District Council") in 2009 (CR-62-2009) and in 2013 (CR-82-2013 & CR-83-2013). However, the planning history of the Property dates back to the early 1970's.

The first Subregion 6 Master Plan was adopted in 1973. This plan was followed in 1977 by the Upper Marlboro Special Treatment Area. Then, on July 12, 1977, the Prince George's County Council, sitting as the District Council, adopted a Sectional Map Amendment for the areas covered by Subregion 6 and the Upper Marlboro Special Treatment Area. At that time, a large portion

in the center of Upper Marlboro, which included the County Administration Building and the Courthouse complex, was placed in the C-S-C Zone. This C-S-C Zoning extended west to the western limits of the funeral home site to the north, and then followed a straight line to the south to Church Street, and C-O zoning was placed on the property south of Church Street. C-O zoning was also extended along Main Street to include the offices to the west of the funeral home site. When this zoning line was struck, the Property and Content, the historic home, were located on a single lot. Thus, the zoning line split zoned the property on which Content was located.

In 1986, two subdivision applications were filed by the then owner of the land to create two lots and separate Content from the undeveloped portion of the property. Preliminary Plan 4-86100 was filed for the C-S-C zoned portion of the land (or so the owner thought) and Preliminary Plan 4-86101 for the land on which Content is located. The subdivision was apparently not without controversy, as litigation ensued. This is noted on the two record plats. The record plat for Content, recorded at Plat Book NLP 133 at Plat 90, and the record plat for the Property, recorded at Plat Book 137 at Plat 54, each contain a note stating "the preliminary plat of subdivision was approved by Circuit Court action CAL-86-12679 on January 14, 1987."

In 1989, the owner attempted to obtain a building permit to construct an office building on the Property. However, it was discovered that the a portion of the Property was zoned R-80. Apparently, the subdivision line that was established by the owner was not consistent with the zoning line approved in 1977. As a result, the Maryland-National Capital Park and Planning Commission would not approve the permit, and litigation followed. While the litigation was pending, the 1993 Subregion 6 Master Plan and Sectional Map Amendment was updated. As part of that update, .14 acres of the Property was rezoned from the R-80 zone to the C-S-C zone. The SMA text, in discussing the zoning change, notes:

Given the current litigation on this property, the Commission's Legal Department requires that a letter on this issue (Marks to Smith, November 3, 1993, re: Lot One, Marlboro House, Upper Marlboro) be entered into the record.

The rezoning of the errant strip did not, however, put an end to the litigation, as evidenced by the attached Unreported Opinion of the Court of Special Appeals dated April 14, 1997, a copy of which is attached as Exhibit "B".

Aside from the litigation referenced, there was extensive discussion regarding the Town of Upper Marlboro in the 1993 Subregion VI Master Plan. The Master Plan also included a map depicting Urban Design Opportunities and a Concept Plan for the Town. It is interesting to note that both the design

opportunities map and the concept plan identify the "Boundary Demarcating the Town Core", and this boundary did NOT include the Property. Further, neither of the maps identified the Property as an Urban Design Opportunity or as a key component to the future Concept Plan. In addition, the 1993 Master Plan set forth several Objectives on Page 105 which bear on the Property which is the subject of this application. These Objectives are:

- Preserve boundaries between traditional core and the adjacent residential neighborhoods;
- Maintain quality of established neighborhoods and the value of existing properties;
- Recognize historic resources and sites as valuable physical components of our heritage that contribute to the historic character of the Town.

In 2002, Prince George's County adopted a new General Plan. The 2002 General Plan divided the County into three tiers, the Developed Tier, the Developing Tier and the Rural Tier. The vision for the Rural Tier was protection of large amounts of woodland, wildlife habitat, recreation and agricultural pursuits, and preservation of rural character and vistas. One of the key components of property being included in the Rural Tier was the inability to extend public infrastructure, such as water and sewer, to support development. The 2002 General Plan placed the Town of Upper Marlboro in the Rural Tier. It was subsequently determined that Town, which is served by water and sewer, does not meet the criteria for Rural Tier designation. However, until

the Subregion VI Master Plan was updated, no development requiring a connection to public water and/or sewer was permitted.

The planning process for the update to the Subregion VI Master Plan commenced in 2007 with citizen input and staff analysis which occurred during numerous community planning workshops. This led to the adoption and approval of a new Master Plan for Subregion 5 in 2009 (see CR-62-2009). The adoption and approval of the 2009 Subregion 6 Master Plan and SMA was the subject of an appeal filed in the Circuit Court for Prince George's County. A central allegation of error raised by the Petitioners in that case was that certain property owners who had sought zoning intensifications as a part of the 2009 Master Plan and SMA had failed to file affidavits as required by the Annotated Code of Maryland disclosing whether or not they had made contributions to County Council members or to the County Executive. Ultimately, after an unsatisfactory remand, the Circuit Court reversed—on very narrow grounds—the 2009 Master Plan and Sectional Map Amendment.

One of the changes adopted by the new Master Plan was to change the tier designation of Upper Marlboro from the Rural Tier to the Developing Tier. This change was consistent with the recommendations of the 2008 Upper Marlboro Town Vision and Action Plan, which the Master Plan implements in its recommendations.

Unlike the 1993 Master Plan, the 2013 Master Plan includes the Property in the Town Core, albeit on the western edge. The text (p. 184) states that "Upper Marlboro's distinctive town core is generally divided into four quadrants by two primary, commercial-oriented streets: (1) the north-south Elm/Water Street; and (2) the east-west Main Street corridor that is looped by two streets serving major government offices." The Property is located in the southwestern quadrant, which is further described as "primarily dedicated to retail and office uses lining Main and Water Streets." Thus, while the Property is located in the Town Core, it is not a key contributor to the core since it does not front on Main or Water Streets.

The Master Plan did not recommend major rezonings for the town core. It did, however, recognize that there were opportunities to promote the character of the town and promote economic development in certain identified locations. As a result, the town core was designated as "mixed use" in order to allow maximum flexibility to not only promote commercial development but also infill residential development. In order to implement this recommendation, the Master Plan further noted that "rezoning will be required to encourage and facilitate this mix of new development that will complement and strengthen the town core's existing character." (See p. 193). While the ultimate

recommendation for the town core was the use of the M-U-T-C zone, no rezoning to the M-U-T-C was approved.

LEGAL AND FACTUAL BASIS FOR REZONING

Part 3, Division 2, Subdivision 1 of the Prince George's County Zoning Ordinance governs zoning map amendments for conventional zones. The basic test to be applied to a zoning map amendment is set forth in Section 27-157. That section states:

(a) Change/Mistake Rule.

(1) 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.

MISTAKE

The applicant respectfully submits that the District Council erred in not rezoning the Property from the C-S-C Zone to the R-80 Zone pursuant to the adoption of the Subregion 6 Master Plan and SMA, first in 2009 and then in 2013. In discussing the basis for a traditional "mistake"

argument, Maryland courts have summarized the principle as follows:

"In order to . . . establish mistake or error, there must be probative evidence to show that the assumptions and premises relied upon by the council . . . were invalid. This may be done by showing that, at the time of the comprehensive rezoning, "the council failed to take into account then existing facts . . . so that the council's action was premised initially upon a misapprehension.'"

"The burden of showing mistake or error in zoning is to show both:

- (1) The then existing facts and conditions that allegedly made the comprehensive rezoning incorrect; *and also*
- (2) The literal failure of the council to have considered those facts and conditions."

"Thus, a conclusion based on a factual predicate that is incomplete or inaccurate may be deemed an error in zoning law; but an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment." People's Counsel for Baltimore County v. Beachwood I Ltd. Partnership, 107 Md. 627, 670 A.2d 484, 492-93 (1995).

As noted above, the applicant is also the owner of a historic site known as Content. Content is located on a .6118 acre site which is immediately adjacent to the Property which is the subject of this application. The Property was at one time part of the land that included the Historic site. The applicant desires to rezone the Property in order to protect the Historic Site from possible future commercial encroachment. The applicant contends that the

District Council erred by not rezoning the Property to the R-80 Zone in the 2013 SMA. The applicant submits that the Council failed to take into account then existing facts and that the action was premised on a misapprehension.

In the discussion of the planning history of the Property set forth above, the property was placed in the C-S-C zone in 1977 by the adoption of the Subregion VI SMA. At that time, the District Council split zoned a property containing a historic site. However, the site had not yet achieved protected status since Subtitle 29 of the Prince George's County Code was not adopted until 1981. During the time period between 1977 and 1993, a prior owner attempted to seek development approvals for the Property which resulted in protracted litigation. In 1993, when the next SMA was considered, while the authority to protect the Historic Site now existed, the pending litigation clearly factored in the action taken by the District Council, which increased the amount of commercial zoning which existed.

At the time that the District Council adopted the Subregion 6 Master Plan and Sectional Map Amendment in 2013, circumstances had changed, and the failure to take those changed circumstances into account resulted in an error on the part of the District Council.

First, the planning history of the property clearly shows that the Property had been proposed as an office development site over a period of years, and actions had been taken to protect the ability of the owner to pursue office development. Outlined above are details regarding the litigation that was pending in 1993 and which was referenced when the District Council increase the area of C-S-C zoned land to conform with the plat recorded for the subject property.

In 2009, when the Upper Marlboro Action Plan was adopted, several development scenarios were evaluated for the town. These development scenarios are discussed in Appendix 5 of the 2009 Upper Marlboro Action Plan. Several of the maps included with the plan show a conceptual office building on the property with the designation "Currently Proposed Office Infill Site (Plans Underway)." Thus, as late as 2009, this site was viewed as a viable site for office development.

However, it was clear that when the Council adopted the SMA in 2013, there was no viable prospect for developing the Property with a commercial office building. The Property was initially proposed for development as offices in the 1980s. Even the Upper Marlboro Action Plan, which showed the Property as a potential office site, stated that

"commercial development in Upper Marlboro has been nonexistent in the past decade. No commercial or office development has occurred in town since 1997." Thus, by the time the 2013 SMA was adopted, it had been almost 30 years since office development had first been envisioned for the property. The District Council was aware of the development trends in Upper Marlboro and did not take that into account.

Also, the Property, along with the entire Town of Upper Marlboro, had been placed in the Rural Tier in 2002. This designation essentially eliminated any immediate commercial development opportunity for the Property. When the District Council elected to change the Rural Tier designation for Upper Marlboro in 2013, it had the opportunity to determine whether office or other commercial use of the Property was appropriate, or whether the Property was better suited for a residential zoning category which would better protect the Historic setting of Content. The District Council was, or should have been aware, that the Property was at one time part of a larger property that included the Historic Site. Removing the Rural Tier designation and leaving the property in the C-S-C zone did not provide sufficient protection for the Historic Site. However, even though the District Council did not consider rezoning the Property, the Master Plan did designate the Town Core, including the Property, as

mixed use to facilitate the application of zoning categories that best implemented the vision of the Town. The Master Plan also recognized that changes in zoning would be necessary to implement the vision. In this case, the lack of office development over a 30 plus year period, the designation of Content as an historic site and changes in development regulations that rendered the Property too small for meaningful development, all indicate that the noncommercial zoning is most appropriate, as discussed more fully below.

Another factor is that the Master Plan continued to encourage options to protect historic properties within the Town. While context sensitive infill development was encouraged, the sites that were identified as possible development sites did not include the Property. While designated as being within the Town core, the property did not front on a main commercial street, such as Main Street or Water Street. Protection of residential areas and historic properties was an important goal of the Master Plan. The Property is strategically located at a curve on Church Street that provides a dramatic view of Content. Any development of the Property for commercial purposes would dramatically alter that view in a negative way.

The Subregion 6 Master Plan designates the entire town core as a mixed-use land use in order to encourage maximum flexibility to implement the visions for the Town. The Master Plan further states that "rezoning will be required" to achieve the Plan recommendations. The applicant submits that this rezoning application provides the appropriate vehicle to remove the commercial zoning of the Property to better protect the adjacent Historic Site. The Plan encourages the protection of existing residential areas within the Town, as well as the protection of Historic Sites. Now that ownership of the Property has changed, and the current owner is not desirous of pursuing commercial development of the Property, the opportunity exists to better protect the Historic Site and the view of the Historic Site from Church Street.

Finally, Section 27-143(c)(1)(C) also requires that a Statement of Justification in support of a Zoning Map Amendment application set forth "factual reasons showing why approval of the request will not be detrimental to the public health, safety and welfare." As discussed above, the Subject Property is located adjacent to an historic site. While any development of the Subject Property will impact the viewshed of the historic home, construction of a commercial development would have a more detrimental impact

on the viewshed in due to its small size and orientation. An office building or other commercial structure will require off street parking. Since Church Street curves to the south as vehicles travel west, the historic home is very visible. Currently, the view is of a grassed lawn leading to the home. If the Subject Property were developed, the view would be of a parking lot. In addition, commercial development would generate more traffic impact than residential development. Since the owner's intention is to preserve the property as open space in order to preserve the viewshed of the historic home that he owns, the rezoning could not result in a detrimental impact to public health, safety or welfare. Since the Master Plan encourages the protection of existing residential areas within the Town, as well as the protection of Historic Sites, rezoning of the property will actually enhance public health, safety and welfare.

CONCLUSION

Taken cumulatively, the District Council's failure to take into account the trends away from office development and the opportunity to protect an important Historic Site within the Town constitute a mistake. Commercial zoning was retained for the Property in 1993, and actually expanded, due to litigation. However, the Property was not viewed as being in the Town core or essential for growth of the tax

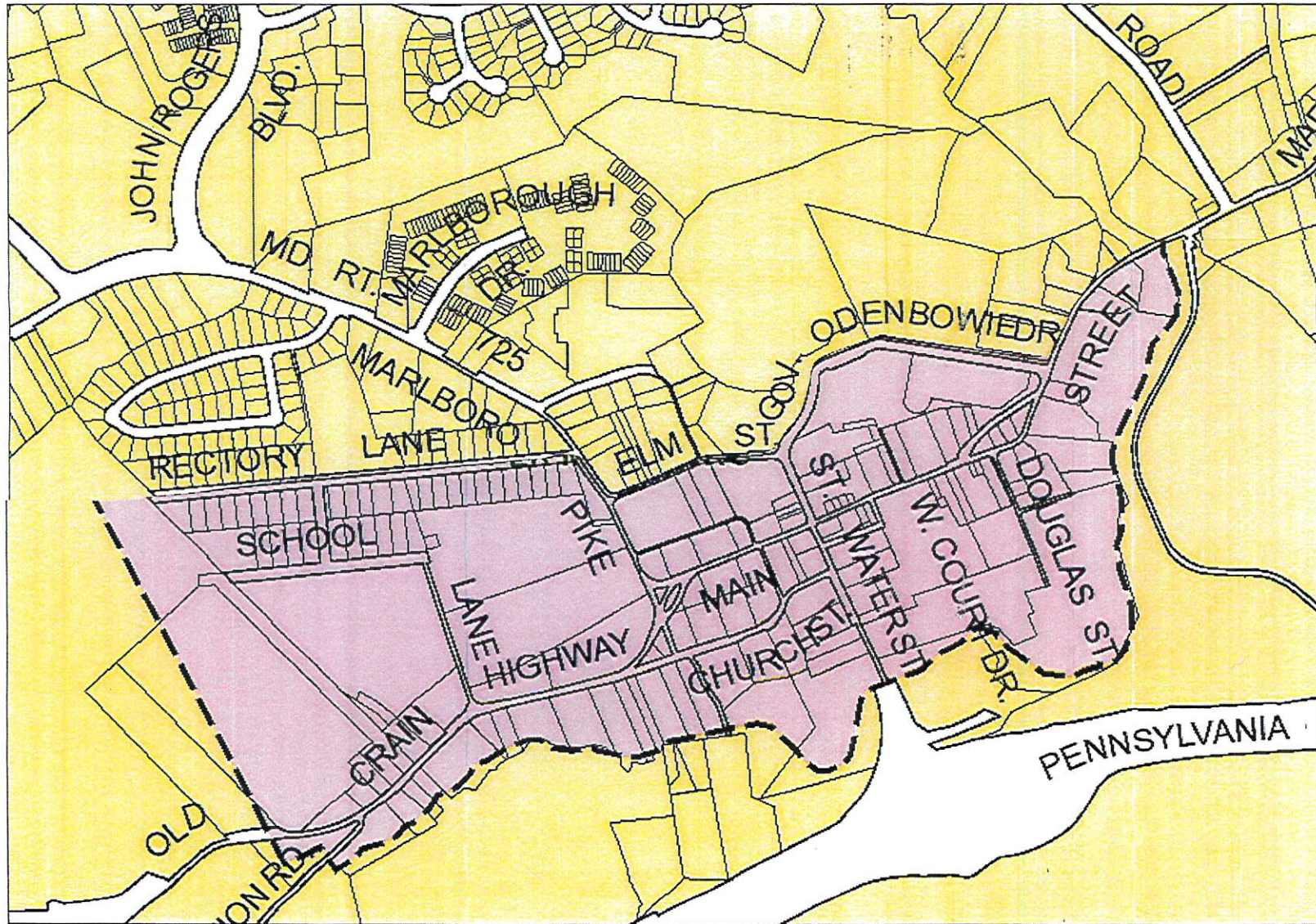
base. By the time the next SMA was processed, the property had been placed in the Rural Tier and no meaningful office development had occurred in Upper Marlboro for several years. While no zoning changes were made to the Town core in the 2013 SMA, the Master Plan recommended that rezoning applications will be needed to implement the vision for the development of the Upper Marlboro Town core, constitutes a mistake. Had all of these factors, including the change in ownership of the property been taken into account at the time of the adoption of the SMA, then the applicant submits that such facts would have led to a zoning change to the R-80 Zone.

The Applicant therefore requests a rezoning of the Property to the R-80 Zone.



Thomas H. Haller
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102
Largo, Maryland 20774
(301) 306-0033
Attorney for Applicant

Exhibit "A"



Data provided by Prince George's County Planning Department

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 927

September Term, 1996

MAENETTE B. SMITH, et vir.

v.

**MARYLAND NATIONAL CAPITAL PARK
AND PLANNING COMMISSION, et al**

**Wenner,
Davis,
Eyer,**

JJ.

Per Curiam

Filed: April 14, 1997

#CAE89-24602A

Exhibit "B"

Appellants, Maenette B. and Jess Joseph Smith, Jr. (the Smiths), appeal from an order of the Circuit Court for Prince George's County, granting summary judgment in favor of appellee, Maryland National Capital Park and Planning Commission (MNCPPC) and dismissing appellees, Prince George's County (the County), and the Prince George's County Council sitting as the District Council (Council). On appeal, the Smiths present us with a panoply of issues, which we have consolidated and rephrased for clarity:

- (1) whether the circuit court erred in granting MNCPPC's motion for summary judgment;
- (2) whether the circuit court erred in denying the Smiths' motion for summary judgment; and
- (3) whether the circuit court properly dismissed the County and the Council as defendants.

Finding no error, we shall affirm the judgment of the circuit court.

Facts

The present appeal is the culmination of nearly a decade of disputes between the Smiths and the County's various agencies dealing with zoning matters. We will discuss such disputes as necessary. The Smiths own a parcel of land consisting of two lots, designated as 14520 Church Street in Upper Marlboro. Until 1986, the parcel was zoned both R-80 (residential) and C-S-C (commercial).

In 1987, the Smiths subdivided the parcel into two lots. The one designated as Lot 1-Content, was zoned R-80.¹ The other,

¹ Lot 1-Content is not involved in this appeal.

designated as Lot 1-Marlborough House (the Property), was purportedly zoned C-S-C. The subdivision was recorded by MNCPPC on the base maps maintained by it pursuant to Art. 28 § 111.²

In 1989, the Smiths applied to the County's Department of Environmental Resources (DER) for a building permit, intending to construct an office building on the Property. Pursuant to Section 27-255 of the Prince George's County Zoning Ordinance (Ordinance), the application was referred to MNCPPC for review.

Upon reviewing the Smiths' application, MNCPPC realized that a portion of the Property was zoned R-80 and a portion was zoned C-S-C.³ Consequently, MNCPPC advised the Smiths to apply for a special exception to permit parking on the portion of the Property zoned R-80 (residential). MNCPPC also advised the Smiths that issuance of a building permit could not be recommended until an application had been submitted. Accordingly, MNCPPC recommended denial of the building permit.

In 1990, MNCPPC offered, at its expense, to have the Property surveyed in order to correct its zoning status, but the Smiths declined MNCPPC's proposal. There were two methods to correct the Property's zoning. One was to file a zoning map amendment pursuant to section 27-143 of the Ordinance. The other was to file a

² A base map consists of geographical data such as property boundary lines, streets and roads, while a zoning overlay map consists of land use zones and zoning boundary lines. A combined zoning base map and a zoning overlay map create a zoning map.

³ Apparently, this split zone was the result of an incorrect subdivision by appellants, as appellants failed properly to subdivide the property along the zoning line. As a result, a portion of the Marlborough lot continued to be located in the R-80 zone, and not entirely in the C-S-C zone as appellants had desired.

sectional map amendment pursuant to section 27-220 of the Ordinance.

The Smiths eventually chose the second method. As a result, the Property was zoned C-S-C, effective 24 May 1994.

The Smiths' application for a building permit was then approved both by MNCPPC and DER. Nonetheless, damages were sought by the Smiths for what they perceived to be a taking of the Property during the period they were unable to obtain a building permit. All parties moved for summary judgment. Following a hearing, the Smiths' motion was denied, and that of MNCPPC was granted. The County and the Council were dismissed as defendants. This appeal followed.

Standard of Review

The Smiths principally contend that the circuit court erred in denying their motion for summary judgment and granting that of MNCPPC. According to the Smiths, the circuit court improperly determined that the Property was zoned both R-80 and C-S-C upon applying for a building permit. According to the Smiths, MNCPPC had improperly changed the zoning map. We disagree.

"The standard for appellate review of a trial court's grant of a motion for summary judgment is simply whether the trial court was legally correct." *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737, 625 A.2d 1005 (1993). Maryland Rule 2-501(e) provides that:

the court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor

judgment is entered is entitled to judgment as a matter of law.

Not only is one opposing a motion for summary judgment entitled "to have the facts viewed in light most favorable to it but also to all reasonable inferences which may be drawn from those facts . . . (citations omitted). The inferences the non-moving party seeks to draw, however, must be 'reasonable' . . ." In other words, "the party opposing the motion is to be given the benefit of all reasonable doubts in determining whether a genuine issue exists." *Clea v. Mayor of Baltimore*, 312 Md. 662, 678, 541 A.2d 1303 (1988). In determining whether material facts are in dispute, neither the "mere existence of a scintilla of evidence in support of the plaintiff's claim" nor "general allegations which do not show facts in detail and with precision" are sufficient. *Beatty*, 330 Md. at 738.

With these principles firmly in mind, we now turn to the issues before us.

I.

We agree with the Smiths and MNCPPC that there are no material facts in dispute. What is in dispute, however, is whether the Smiths' are entitled to damages. In the Smiths' view, the delay in receiving a building permit entitles them to damages. The Smiths advance two theories in support of their position.

The first is that their delay in obtaining a building permit resulted in a taking of the Property, because they were unable

during this period to erect an office building on the Property. We see it somewhat differently.

"While all government regulations affecting private property restrict the owner's use and enjoyment to some extent, not all such regulations result in a "taking" in the constitutional sense. (Citations omitted.) It is not enough for the owner to show that the regulations cause a diminution in value or other hardship. If they leave the owner in substantial enjoyment of the property, they do not constitute a "taking." (Citations omitted.) Thus, regulations which restrict the use and enjoyment of property, but which nonetheless permit an existing use to continue, generally do not constitute a "taking" because they leave the owner with some beneficial use of the property. (Citations omitted.) Regulations generally constitute a "taking" only if the owner affirmatively demonstrates that the restrictions imposed deprive him of essentially all beneficial use of the property." *Cider Barrel Mobile Home Court v. Eader*, 287 Md. 571, 580, 414 A.2d 1246 (1980) (citations omitted). That is not what has occurred.

Although the Smiths were unable during this period to erect an office building on the Property, they were not deprived of all use of the Property. As the Property was zoned R-80 during the course of the dispute, the Property could have been employed as property zoned R-80. Thus, the Smiths' assertion that the period during which they were denied a building permit constituted a taking is without merit. Moreover, the Smiths' have presented no evidence of

their assertion that the delay was the result of any wrongdoing by MNCPPC.

b.

The Smiths also contend they are entitled to damages because of MNCPPC's failure to approve the granting of a building permit. According to the Smiths, they were denied a building permit because MNCPPC improperly changed the base maps and rezoned the Property without authority to do so and without a hearing. To be sure, MNCPPC updated the base map which includes the Property, but Art. 28, § 7-111 grants it authority to do so. Thus, MNCPPC's failure initially to approve the Smiths' building permit was neither improper nor entitles the Smiths to damages.

As the trial court said in its order denying the Smiths' motion for summary judgment and granting that of MNCPPC, MNCPPC had neither acted improperly nor beyond its authority in denying the Smiths' building permit.¹

Before being updated by MNCPPC, the Property was zoned both R-80 and C-S-C. Hence, it was incumbent upon the Smiths to correct the zoning if they desired to obtain a building permit. We have earlier noted that, although it was not obligated to do so, MNCPPC endeavored on several occasions to assist the Smiths in obtaining a building permit, even offering to have the Property surveyed at its own expense, to correct the zoning problem. The Smiths,

¹The Smiths believe *Prince George's County v. Maenette Smith*, CAL 91-00205, renders this issue *res judicata*. This assertion is misplaced, however, as MNCPPC had merely updated the base maps. As we have said, Art. 28, § 7-111 granted MNCPPC authority to do so, and it doing so does not entitle the Smiths to damages for any delay which may have resulted.

however, rebuffed all of MNCPPC's attempts to resolve the matter diplomatically, choosing instead to proceed in the courts. Consequently, it seems disingenuous for the Smiths to claim damages from MNCPPC for the delay in obtaining a building permit. There was no error.

II.

Finally, the Smiths contend that the circuit court erred in dismissing the County and the Council as defendants. We again disagree. MNCPPC has authority in the County to prepare and maintain zoning maps. In sum, it was appropriate for the circuit court to dismiss the County and the Council as defendants.

JUDGMENT AFFIRMED.

COSTS TO BE PAID
BY APPELLANTS.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

PGCPB NO. 86-274

FILE NO. 4-86100

RESOLUTION

WHEREAS, Jess J. Smith, Jr., et ux., are the owners of a .5922 acre parcel of land known as Marlborough House (Lot 1) said property being in the 3rd Election District of Prince George's County, Maryland, and being zoned C-S-C; and

WHEREAS, on May 28, 1986, Jess J. Smith, Jr., et ux., filed an application for approval of a Preliminary Subdivision Plat (Staff Exhibit #1) for 1 lot; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plat, also known as Preliminary Plat 4-86100, was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on July 10, 1986, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended disapproval of the application; and

WHEREAS, on July 10, 1986, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application;

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board disapproved Preliminary Plat of Subdivision 4-86100.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

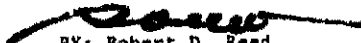
PGCPB NO. 86-274
FILE NO. 4-86100
Page Two

Not in conformance with the requirements of Section 24-123(a)(2) of the Subdivision Regulations. No provisions have been made for the widening of Church Street.

* * * * *

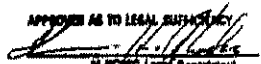
This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Yewell, seconded by Commissioner Dabney, with Commissioner Botts voting against, Commissioner Rhoads abstained and Commissioner Keller being absent, at its regular meeting held on Thursday, July 10, 1986, in Upper Marlboro, Maryland.

Thomas H. Countee, Jr.
Executive Director


BY: Robert D. Reed
Community Relations Officer

THC:RDR:DRA

APPROVED AS TO LEGAL SUFFICIENCY


M. H. [unclear]
M-DCPBG (Legal Department)

Date 8/4/86



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

PGCPB NO. 86-275

FILE NO. 4-86101

RESOLUTION

WHEREAS, Jess J. Smith, Jr., et ux., are the owners of a .6100 acre parcel of land known as Content (Lot 1) said property being in the 3rd Election District of Prince George's County, Maryland, and being zoned R-80; and

WHEREAS, on May 28, 1986, Jess J. Smith, Jr., et ux., filed an application for approval of a Preliminary Subdivision Plat (Staff Exhibit #1) for 1 lot; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plat, also known as Preliminary Plat 4-86101, was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on July 10, 1986, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended disapproval of the application; and

WHEREAS, on July 10, 1986, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application;

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board disapproved Preliminary Plat of Subdivision 4-86101.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:


PGCPB NO. 86-275
FILE NO. 4-B6101
Page Two

Not in conformance with the requirements of Section 24-123(a)(2) of the Subdivision Regulations. No provisions have been made for the sidening of Church Street.

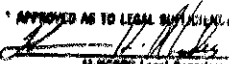
* * * * *

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Yewell, seconded by Commissioner Dabney, with Commissioner Botts voting against, Commissioner Rhoads abstained and Commissioner Keller being absent, at its regular meeting held on Thursday, July 10, 1986, in Upper Marlboro, Maryland.

Thomas H. Countee, Jr.
Executive Director


BY: Robert D. Reed
Community Relations Officer

THC:RDR:DRA

APPROVED AS TO LEGAL MATTERS

PGCPB Legal Department
Date 8/6/86

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE PLAT SHOWN HEREON IS CORRECT; THAT IT IS A SUBDIVISION OF PART OF THE LAND CONVEYED BY MITTE P. BOWLING, ELLEN B. SMITH AND HELEN E. BOWLING TO JESS JOSEPH SMITH JR. AND MAENETTE B. SMITH BY DEED DATED APRIL 2, 1977 AND RECORDED IN THE PRINCE GEORGE'S COUNTY LAND RECORDS IN LIBER 4740 FOLIO 805. THE AREA INCLUDED IN THIS SUBDIVISION IS 26,649 SQ. FT. OR 0.6118 AC.

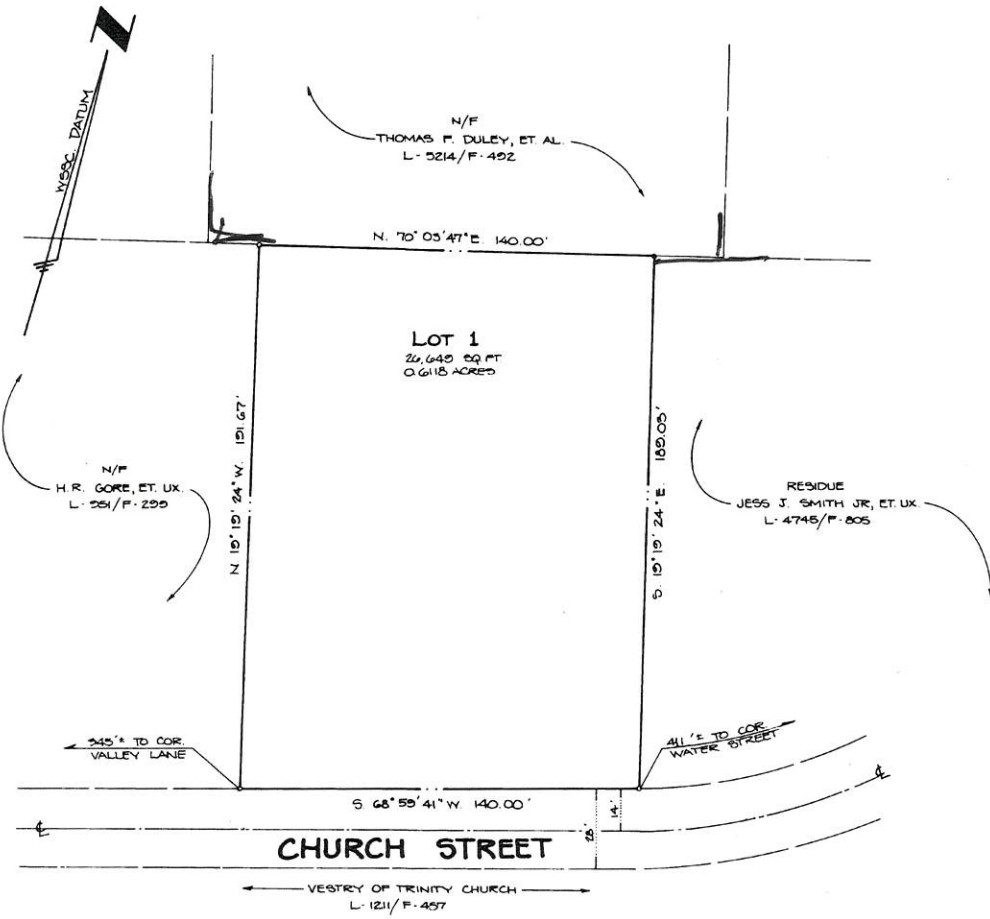
3/3/87
DATE

John A. Kephart
JOHN A. KEPHART
MD. LICENSE # 10105
REGISTERED LAND SURVEYOR

OWNER'S DEDICATION

WE, JESS JOSEPH SMITH, JR. & MAENETTE B. SMITH OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, HEREBY ADOPT THIS PLAT OF SUBDIVISION; ESTABLISH THE MINIMUM BUILDING RESTRICTION LINES, ALLEYS, WALKS, AND PARKS TO PUBLIC USE. THERE ARE NO SUITS, ACTIONS AT LAW, LEASES, LIENS, MORTGAGES, TRUSTS, EASEMENTS, OR RIGHTS-OF-WAY AFFECTING THE PROPERTY IN THIS PLAT OF SUBDIVISION, EXCEPT THE FOLLOWING:
DEED OF TRUST - LIBER 5677/FOLIO 032
MORTGAGE - LIBER 5011/FOLIO 120
AND ALL PARTIES IN INTEREST THERETO HAVE HERETO AFFIXED THEIR SIGNATURES, INDICATED THEIR ASSENT TO THIS PLAT OF SUBDIVISION. THAT PROPERTY LINE MARKERS DESIGNATED THUS WILL BE PLACE IN ACCORDANCE WITH SECTION 24-120 (b)(6)(F)(i) OF THE SUBDIVISION REGULATIONS OF THE PRINCE GEORGE'S COUNTY CODE. WE ASSENT TO THIS PLAN OF SUBDIVISION.

3/5/87 DATE	<i>John A. Kephart</i> WITNESS	<i>Jess Joseph Smith Jr.</i> JESS JOSEPH SMITH JR.	L.S.
3/5/87 DATE	<i>Kenn Farnas</i> WITNESS	<i>Maenette B. Smith</i> MAENETTE B. SMITH	L.S.
3-7-87 DATE	<i>John E. Emard</i> WITNESS	<i>John E. Emard</i> JOHN E. EMARD (L.S. # 10105)	L.S.
3-5-87 DATE	<i>John S. Kephart</i> WITNESS	<i>John S. Kephart</i> FOR DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT OF THE STATE OF MARYLAND (L. 5011/F. 120)	



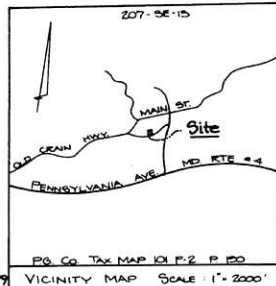
APPROVAL OF THIS PLAT WILL HAVE NO IMPACT ON EXISTING WATER AND SEWER SYSTEMS. APPROVAL OF FUTURE BUILDING PERMIT WILL BE BASED UPON PUBLIC WATER AND SEWER SYSTEMS BEING AVAILABLE PRIOR TO CONSTRUCTION.

THE PRELIMINARY PLAT OF SUBDIVISION WAS APPROVED BY CIRCUIT COURT ACTION CAL. 86-12679 ON JAN. 14, 1987

HEALTH DEPARTMENT - Prince George's County
APPROVED: *Helen R. McAllister*
DATE: 3/16/87
COUNTY HEALTH OFFICER

**LOT 1
"CONTENT"**

MARLBORO (3RD) DISTRICT
PRINCE GEORGE'S COUNTY, MARYLAND
SCALE: 1" = 30'
DATE: MAR. 87



DEPARTMENT OF ASSESSMENTS AND TAXATION
APPROVED
John A. Kephart
DATE: 3/16/87

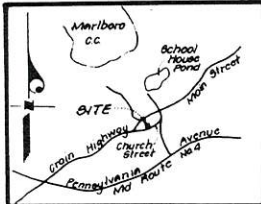
KEPHART AND COMPANY
5300 WATER STREET
UPPER MARLBORO, MARYLAND 20776
201-262-1000

MARYLAND NATIONAL CAPITAL PARK & PLANNING COMMISSION
PRINCE GEORGE'S COUNTY PLANNING BOARD
APPROVED: *John A. Kephart* April 16, 1987
CHAIRMAN
ASST. SECRETARY: *Robert*
M.N.C.P. & P.C. RECORD FILE NO. 5-87087

Recorded: 7-13-87
PLAT BK: NLP 133
PLAT NO: 90

Preliminary Approval # 4-86101/CAL-86-12679
VICINITY MAP SCALE: 1" = 2200'

NLP-137-544

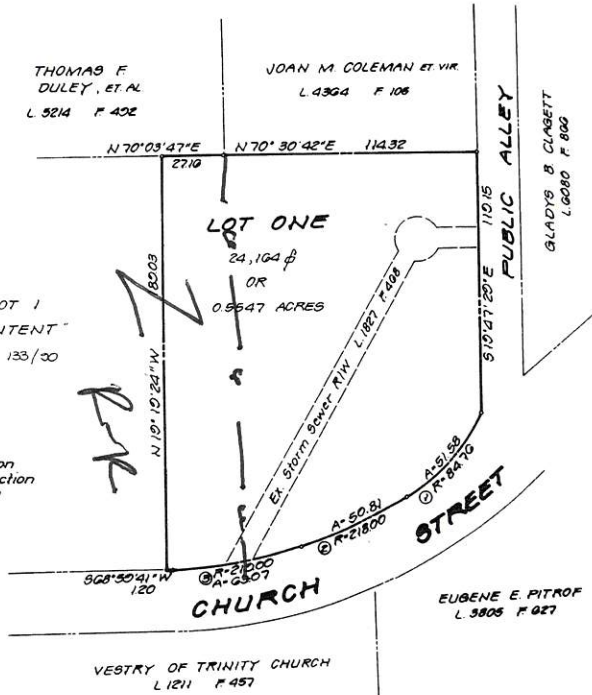


VICINITY MAP
Scale: 1"=2000'

THOMAS F. DULEY, ET AL
L 5214 P 402

JOAN M. COLEMAN ET VIR
L 4364 P 106

LOT 1
"CONTENT"
NLP 133/20



NOTE

The preliminary plan of subdivision was approved by Circuit Court Action CAL 86-12672 on January 14, 1987

LINE	ROADIUS	Δ	ARC	TAN	CHORD	BEARING
1	8470	34°52'12"	5158	2662	50.70	92°1'42"18"W
2	21800	13°21'18"	5081	2552	50.70	94°5'40"00"W
3	21500	10°30'00"	6307	3175	62.85	90°0'44"30"W

HEALTH DEPARTMENT APPROVAL

Approval of this plat is predicated upon public water and sewer being available prior to construction.

Date: 1/18/88
Nelson B. McAllister
County Health Officer

FOR PUBLIC WATER AND SEWER SYSTEMS ONLY
MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION
PRINCE GEORGE'S COUNTY PLANNING BOARD
APPROVED February 18, 1988
SECRETARY

RECORDED 3-8-88
PLAT BOOK NLP-137
PLAT NO. 54

PRELIMINARY PLAN NO 4-86100



OWNERS' DEDICATION

WE, JESS JOSEPH SMITH, JR., AND MAENETTE B. SMITH, HIS WIFE, OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, HEREBY ADOPT THIS PLAN OF SUBDIVISION. PROPERTY LINE MARKERS WILL BE PLACED IN ACCORDANCE WITH SECTION 24-120 (8X6X7X11) OF THE SUBDIVISION REGULATIONS, PRINCE GEORGE'S COUNTY CODE. THERE ARE NO SUITS OF ACTION, LEASES, LIENS OR TRUSTS ON THE PROPERTY INCLUDED IN THIS PLAN OF SUBDIVISION.

Witness: [Signature] 11/24/87 Date: Jess Joseph Smith, Jr.
Witness: [Signature] 11/24/87 Date: Maenette B. Smith, L.S.

FILED

DATE: 11/24/87
PRINCE GEORGE'S COUNTY, MD

SURVEYORS CERTIFICATE

I hereby certify that the plan shown hereon is correct, that it is a subdivision of part of the land conveyed by Mittie P. Bowling, Ellen B. Smith, Helen E. Bowling, individually as personal representatives of the Estate of Edmund Nellie Bowling, Dominic B. Edelen, I Gardner Edelen Jr., Wallace H. Edelen and Richard B. Edelen to Jess Joseph Smith, Jr. and Maenette B. Smith, his wife, by deed dated April 2, 1977 and recorded in Liber 4745 of Folio 805, said land also being a resubdivision of Lots 36 and 38 as shown on an unrecorded plat entitled Marlborough Town, all among the Land Records of Prince Georges County, Maryland.

Further subdivision or resubdivision of this lot is strictly controlled. That the total area included in this plan of subdivision is 0.5547 acre.
Date: 1-11-88
Kenneth O. Baldwin
Registered Land Surveyor, Maryland No 4820

**LOT ONE
MARLBOROUGH HOUSE**
3RD ELECTION DISTRICT
PRINCE GEORGE'S COUNTY, MARYLAND
JUNE, 1987 SCALE: 1"=30'

DEPARTMENT OF REVENUE AND TAXATION APPROVED
DATE BY

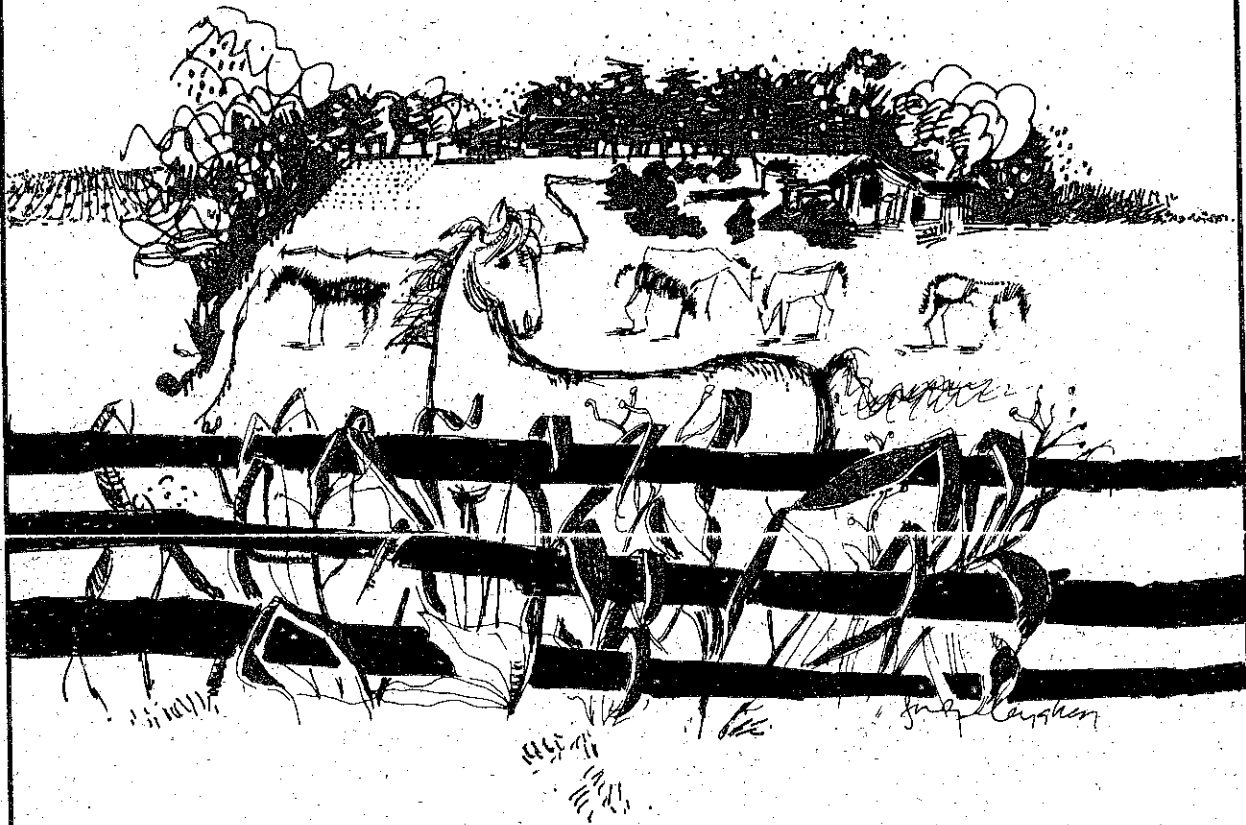
BALDWIN & SAMPSON, INC.
REGISTERED LAND SURVEYOR
7500 OLD BRANCH AVENUE
CLINTON, MARYLAND 20735
PHONE: 301-850-1800

1064

MSA SSC 1250-2383

\$10.00

SUBREGION VI STUDY AREA

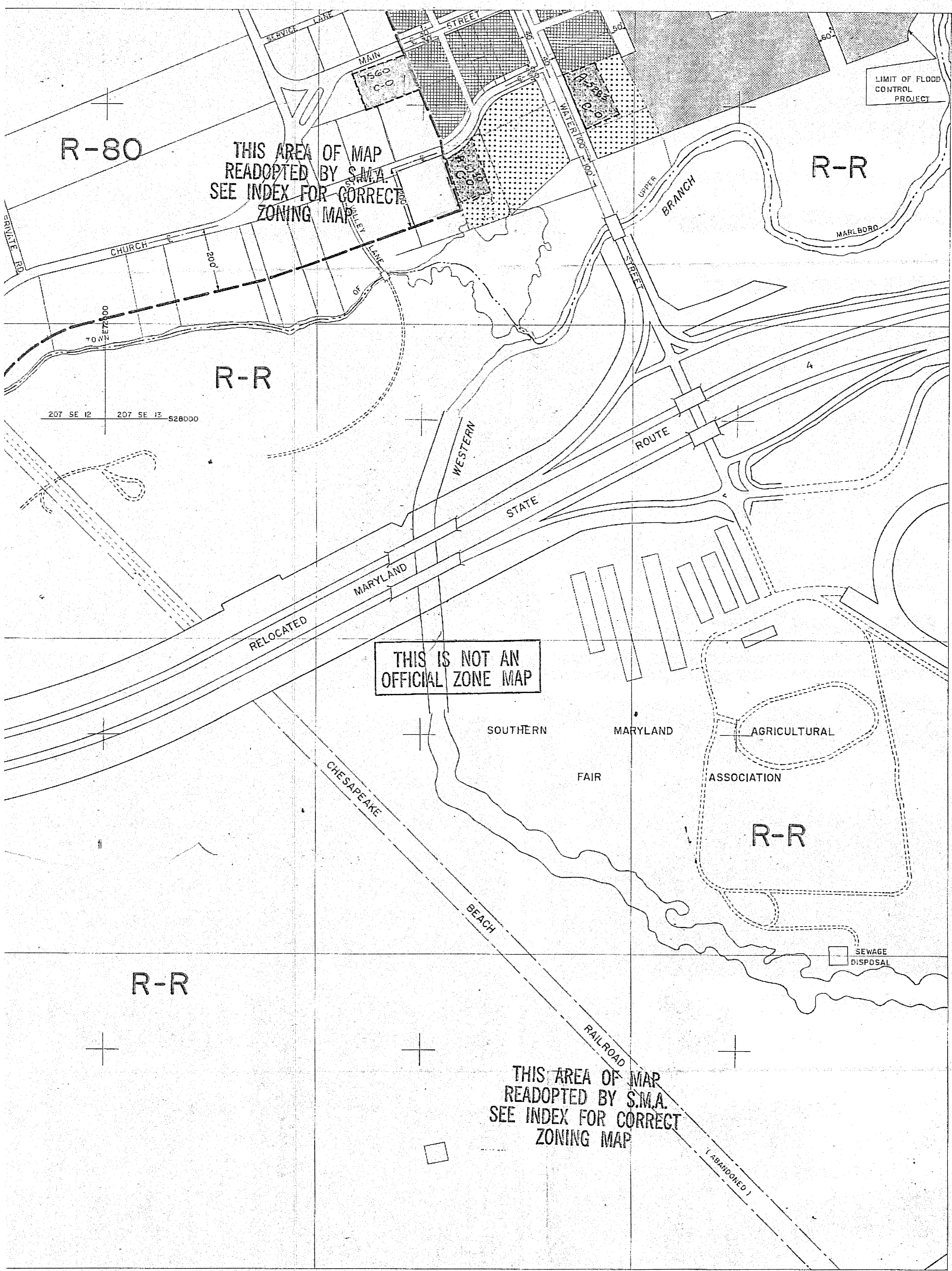


APPROVED MASTER PLAN-SEPTEMBER 1993
APPROVED SECTIONAL MAP AMENDMENT-MAY 1994



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

E. 872,000
N. 358,000



THIS AREA OF MAP
READOPTED BY S.M.A.
SEE INDEX FOR CORRECT
ZONING MAP

THIS IS NOT AN
OFFICIAL ZONE MAP

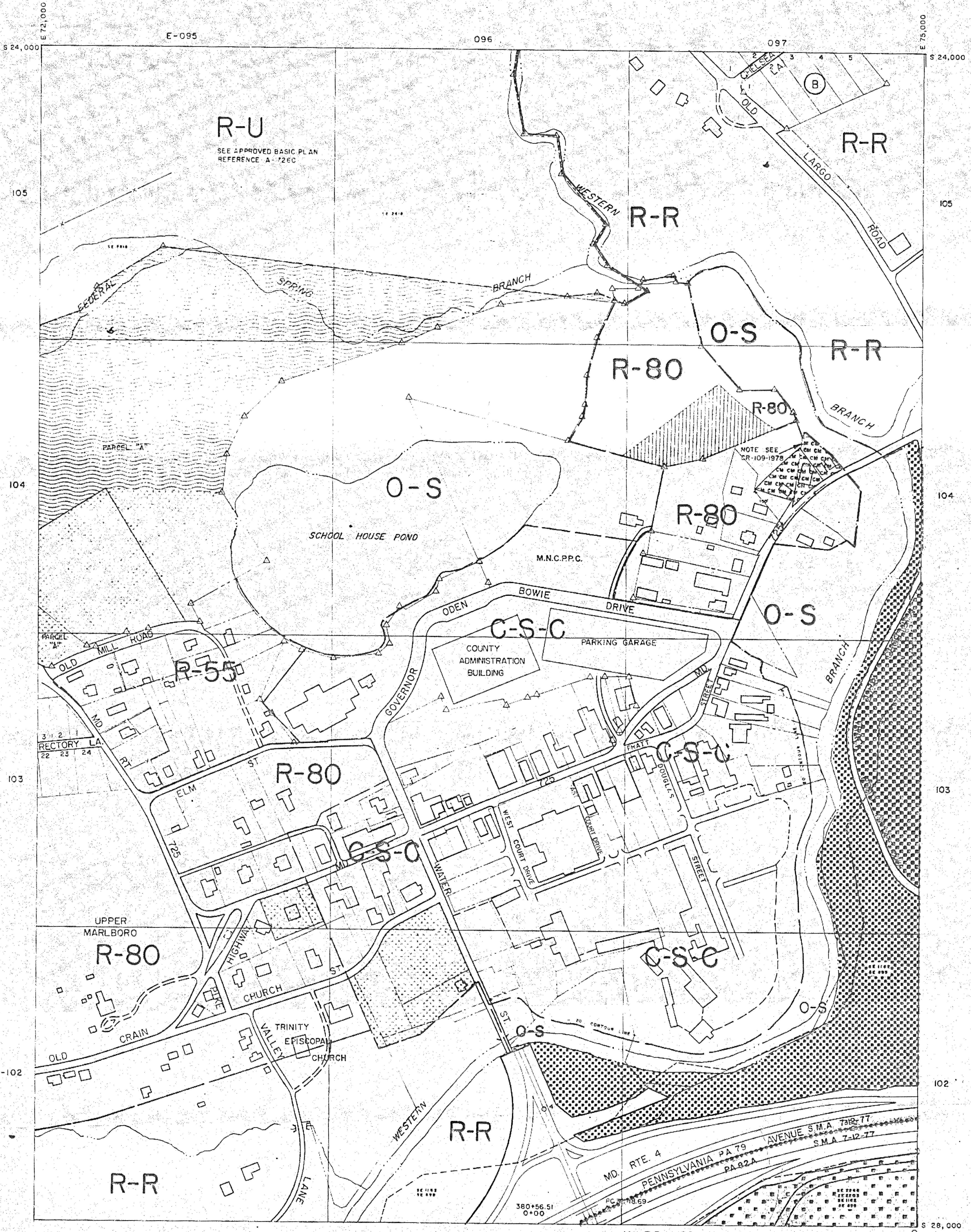
THIS AREA OF MAP
READOPTED BY S.M.A.
SEE INDEX FOR CORRECT
ZONING MAP

208 SE 13
THIS AREA OF MAP
READOPTED BY S.M.A.
SEE INDEX FOR CORRECT
ZONING MAP

THIS IS NOT AN
OFFICIAL ZONE MAP

E. 872,000
N. 354,000

Original Charter Plan

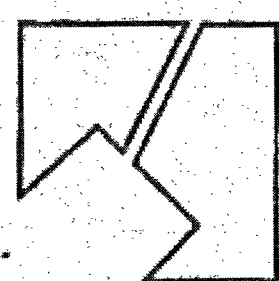


207 SE 13

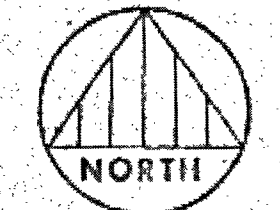
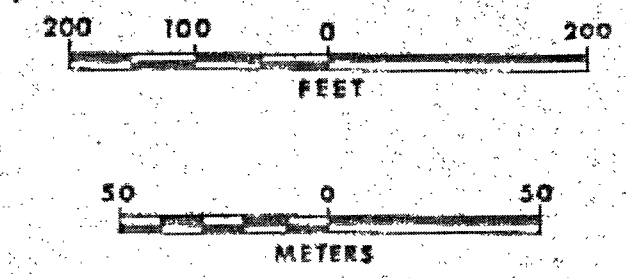
ORIGINAL COPY

BASE MAP LATEST UPDATE 7-12-77

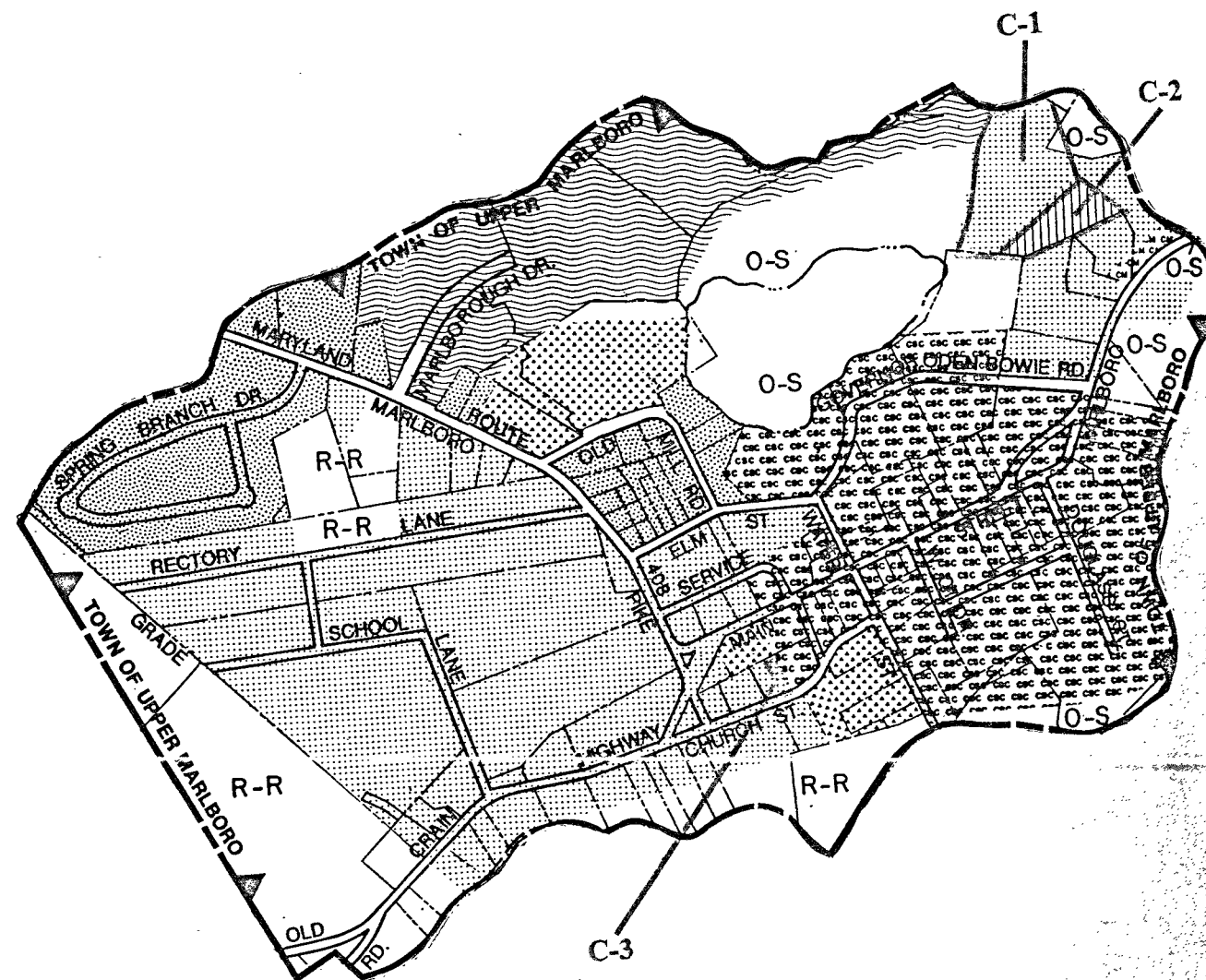
ZONE MAP LATEST UPDATE 11-30-78
207 SE 13L



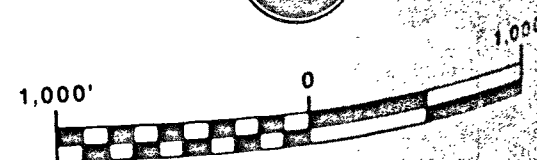
The Maryland-National Capital
Park and Planning Commission



7-12-77
Subregion VI



C-1: R-80 TO O-S
 C-2: R-18 TO O-S
 C-3: R-80 TO C-S-C



SUBREGION VI STUDY AREA
AREA C
TOWN OF UPPER MARLBORO
APPROVED ZONING CHANGES

APPROVED ZONING CHANGES

ANALYSIS AREA C - TOWN OF UPPER MARLBORO

Change Number	Zone Change	Area of Change	Approved SMA/ZAPS/SE		ZAP	200' Scale Index Map
			Number	Date		
C-1	R-80 to O-S	4.85 ac.	SMA	7/12/77	—	207SE 13L
<p><u>Use & Location:</u> Wooded vacant land northeast of Schoolhouse Pond and north of Darnall's Chance. (TM 101, Grid F-1, p/o Parcel 250)</p> <p><u>Discussion:</u> The O-S Zone is approved in accordance with the Plan recommendation for Low-Rural residential land use.</p>						
C-2	R-18 to O-S	1.54 ac.	SMA	7/12/77	—	207SE 13L
<p><u>Use & Location:</u> Wooded vacant land northeast of Darnall's Chance. (TM 101, Grid F-1, p/o Parcel 250)</p> <p><u>Discussion:</u> The O-S Zone is approved in accordance with the Plan recommendation for Low-Rural residential land use.</p>						
C-3	R-80 to C-S-C	0.14 ac.	SMA	7/12/77	—	207SE 13L
<p><u>Use & Location:</u> Western section of a vacant 0.554-acre parcel at 14520 Church Street, Upper Marlboro. (TM 101, Grid F-2, p/o Parcel 137054).</p> <p><u>Discussion:</u> The C-S-C Zone is approved to eliminate split zoning of the property, which is already largely in that zone. The existing boundary line between R-80 and C-S-C represents part of a zoning boundary running through several lots located 400 feet west of, and parallel to, the center line of Water Street.</p> <p>Given the current litigation on this property, the Commission's Legal Department requires that a letter on this issue (Marks to Smitn, November 3, 1993, re: Lot One, Marlboro House, Upper Marlboro) be entered into the record.</p>						

Additional Back-up – May 30, 2019

Town of Upper Marlboro

RESOLUTION: 2019-04
SESSION: Regular Town Meeting
DATE: April 16, 2019

RESOLUTION BY THE BOARD OF COMMISSIONERS FOR THE TOWN OF UPPER MARLBORO TO SUPPORT A ZONING MAP AMENDMENT (A-10054) FOR A PARCEL OF UNDEVELOPED PROPERTY, BY OWNER, FROM C-S-C (COMMERCIAL SHOPPING CENTER) TO R-80 (ONE FAMILY DETACHED RESIDENTIAL)

WHEREAS, the owner of an undeveloped property at 14520 Church Street, Upper Marlboro, Maryland 20772 "LOT 1, MARLBOROUGH HOUSE" Plat Book NLP 137 Plat No. 54, herein referred to as the "Property", has submitted an application for a Zoning Map Amendment; and

WHEREAS, the owner of said Property also owns and maintains residence at the adjoining property located at 14518 Church Street known as "LOT 1, CONTENT", as recorded in Plat Book NLP 133 as Plat Number 90, among the Land Records of Prince George's County, Maryland; and

WHEREAS, the owner's domicile known as "LOT 1, CONTENT" is listed on the National Historic Register and is a historical landmark within the corporate boundaries of the Town of Upper Marlboro, and;

WHEREAS, the Property known as "LOT 1 MARLBOROUGH HOUSE" is currently zoned C-S-C (Commercial Shopping Center), and;

WHEREAS, the Owner is desirous of protecting the historical integrity of the Property in regards to the community's vista of the historic site known as "LOT 1, CONTENT"; and

WHEREAS, the Town of Upper Marlboro shares in the owner's vision for preserving the historic appeal of both adjoining properties; and

WHEREAS, The Board Of Commissioners has determined that any future development of the aforementioned Property would not be in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF UPPER MARLBORO that it hereby supports the approval of the application by the owner requesting a zoning map amendment for the Property from C-S-C (Commercial Shopping Center) to R-80 (One Family Detached Residential); and

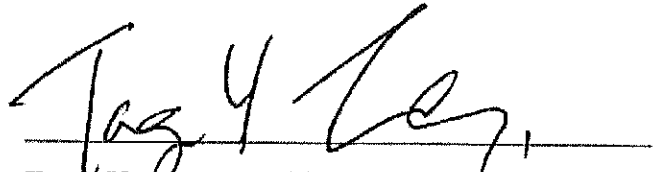
Town of Upper Marlboro

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon passage.

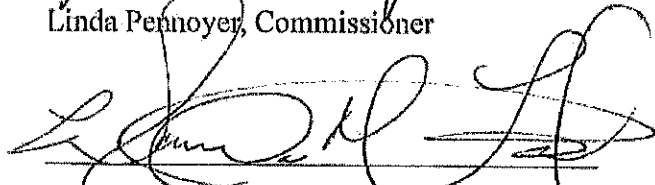
INTRODUCED AND PASSED by the Board of Commissioners of the Town of Upper Marlboro, Maryland at a regular meeting on the 16th day of April, 2019.


Attest:

BOARD OF COMMISSIONERS OF THE TOWN
OF UPPER MARLBORO, MARYLAND


Tonga Y. Turner, President


Linda Pennoyer, Commissioner


Wanda Leonard, Commissioner


M. David Williams, Town Clerk

CERTIFICATION

I, the undersigned, hereby certify that I am the Town Clerk of the Town of Upper Marlboro and that the Board of Town Commissioners of the Town of Upper Marlboro at a public meeting at which a quorum was present adopted this Resolution, and that said Resolution is in full force and effect and has not been amended or repealed.

In witness whereof, I have hereunto set my hand and seal of the municipal corporation, this 16th day of April, 2019.


M. David Williams, Town Clerk