



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

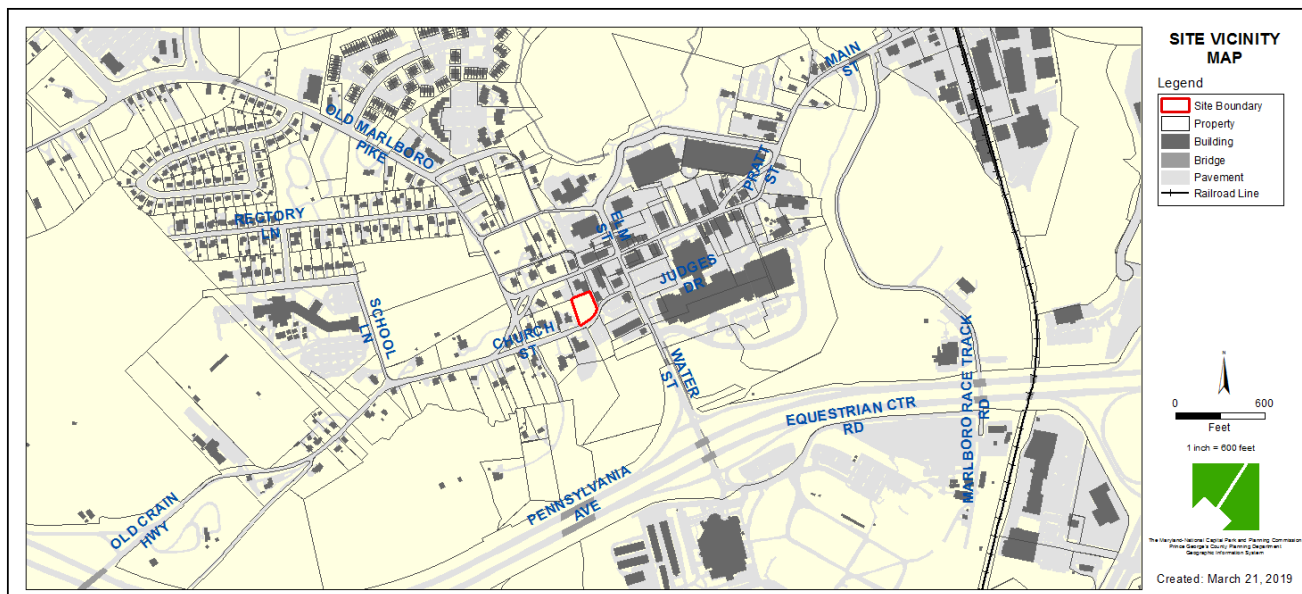
Zoning Map Amendment

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 consistence 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.