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## Zoning Map Amendment Petition Application No. A-9961

Application	General Data
<b>Project Name:</b> Atlantic Plumbing  <b>Location:</b> South side of Marlboro Pike approximately 590' west of Forestville Road, known as 7521 Marlboro Pike.  <b>Applicant/Address:</b> Atlantic Plumbing Supply Profit Sharing Trust Fund 807 V ST. NW Washington, D.C. 20001  <b>Correspondent:</b> Anthony Brown Gibbs and Haller 4640 Forbes Blvd 1 <sup>st</sup> Floor	Date Accepted: 2/2/04
	Planning Board Action Limit: N/A
	Plan Acreage: 1.37
	Zone: R-T
	Dwelling Units: N/A
	Square Footage: N/A
	Planning Area: 75A
	Tier: Developed
	Council District: 06
	Municipality: N/A
200-Scale Base Map: 205SE07	

Purpose of Application	Notice Dates
Rezoning From R-T to C-S-C	Adjoining Property Owners Previous Parties of Record 12/16/03 Registered Associations: (CB-12-2003)
	Sign(s) Posted on Site: N/A

Staff Recommendation		Staff Reviewer: Elsabett Tesfaye	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

July 7, 2004

## **TECHNICAL STAFF REPORT:**

TO: The Prince Georges County Planning Board  
The Prince Georges County District Council

VIA: Jimi Jones, Acting Zoning Supervisor

FROM: Elsabett Tesfaye, Senior Planner, Zoning Section

SUBJECT: **Zoning Map Amendment Petition Application No. A-9961**

REQUEST: Rezoning from R-T to C-S-C

RECOMMENDATION: Disapproval

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### **NOTE:**

This application is on the agenda for the Planning Board to decide whether or not to schedule a public hearing. If the Planning Board decides to hear the application, it will be placed on a future agenda.

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

You are encouraged to become a person of record in this application. The request must be made in writing and sent to the Office of the Zoning Hearing Examiner at the address indicated above. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

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## FINDINGS:

- A. **Field Inspection:** The subject property, 7521 Marlboro Pike, is located on the south side of Marlboro Pike approximately 590 feet west of Forestville Road. The property consists of 1.37 acres of land. The property is rectangularly shaped and improved with a two-story frame house, two sheds and a garage all in deteriorating condition. It has 180 feet of frontage on Marlboro Pike and approximately 270 feet of frontage on Pinevale Avenue.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	R-T	C-S-C
Acreage	1.37	1.37
Use(s)	Rural-Residential	Commercial Shopping Center

- C. **History:** The 1986 approved sectional map amendment (SMA) for Suitland District Heights and vicinity rezoned the property from the R-R Zone to R-T Zone.

- D. **Master Plan Recommendation:** The 1986 master plan for Suitland District Heights and vicinity recommends the property for Low-Urban residential use. The master plan recommends Low-Urban residential density for the property. The intent of the master plan is to discourage commercial strip development along this section of Marlboro Pike and to protect the existing single-family detached residences in the immediate area. An illustrative scheme for proposed residential development (which includes the subject site) along Marlboro Pike is shown on page 99 of the master plan.

The 2002 General Plan places the property in the Developed Tier. The vision for the Developed Tier is to maintain a pattern of low-to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable.

- E. **Request:** The applicant requests rezoning of the subject property from the R-T (Townhouses) Zone to C-S-C (Retail-Commercial). No specific information has been provided regarding the intended development of the property.

- F. **Neighborhood and Surrounding Uses:** The neighborhood is defined by the following boundaries:

North: Marlboro Road

East: Forestville Road

South: Pennsylvania Avenue

West: Donnell Drive

These boundaries differ from the applicant's, which included a much broader area that extends to the northeast and west.

The neighborhood, which is bounded by major roads, is fully developed with small- and large-scale retail and commercial uses (including two major shopping centers) in the C-S-C, C-A and

C-C zones, as well as residential developments in the R-T and R-55 Zones. The commercial developments are located along Marlboro Pike at the northeastern portion of the neighborhood and on the northwest and western portion of the property along Marlboro Pike and Donnell Drive, where the two shopping centers are located.

The property is surrounded by the following uses:

North:	Across Marlboro Pike, an insurance office, a bank, and a gas station in the C-O and C-S-C- Zones respectively.
East	A mini-shopping mall with small retail and service uses in the C-S-C Zone
South:	Single-family residential properties in the R-55 Zone
Southeast:	Single-family residential properties in the R-55 Zone.
West:	A vacant land, a parking lot, and a meeting hall in the C-S-C Zone

**G. Zoning Requirements: Section 27-157(a) of the Zoning Ordinance provides that no application shall be granted without the applicant proving that either:**

- (A) There has been a substantial change in the character of the neighborhood; or**
- (B) Either**
  - (i) There was a mistake in the original zoning for property which has never been the subject of an adopted Sectional Map Amendment, or**
  - (ii) There was a mistake in the current Sectional Map Amendment and such mistake occurred not more than six years prior to the filing of an application for the proposed zoning map amendment providing, however, that for those properties for which the current Sectional Map Amendment has been adopted prior to 1990 such mistake shall have occurred not more than 10 years prior to the filing of an application for the proposed zoning map amendment.**

**H. Applicant's Position:** The applicant contends that there has been a substantial change in the character of the neighborhood since the enactment of the current sectional map amendment in 1986.

As evidence of change in the character of the neighborhood, the applicant cites two rezoning cases, which, the applicant argues, are responsible for the decline in the availability of commercial property in the neighborhood. The two cases are:

1. The 1992 rezoning of the 5.2-acre property, at the south side of Marlboro Pike at its intersection with Forest Drive, from C-O to the R-18C Zone (A-9864-C). The applicant argues that this rezoning resulted in a significant decrease in the amount of commercial space.

2. The 1993 rezoning of the 1.73-acre property, at the north side of Marlboro Pike at its intersection with Sidney Road, from C-O to the R-18C Zone (A-9879-C).

The applicant also cited, as further evidence of change, the 1990 rezoning from R-T to C-S-C, of the .57-acre property located on the east side of Boons Lane, approximately 300 feet north of Marlboro Pike (A-9816). The applicant indicated that the primary justification for this zone was to “square-off” the boundaries of the adjoining C-S-C zoned properties between the rezoned property and Marlboro Pike. The applicant reasoned “although this rezoning case did not contribute to the reduced availability of commercially zoned property in the planning neighborhood, this rezoning nevertheless is evidence that the neighborhood has changed substantially since 1986.”

The applicant also refers to the 1997 approval of a special exception to allow an expansion of an existing nursing home (SE-4259) on a 3-acre property in a C-O Zone as a second factor that is evidence of change in the character of the neighborhood. The applicant noted that the special exception property, which is located approximately 550 feet northwest of the subject site across Marlboro Pike, was rezoned from the R-R Zone to the C-O Zone during the 1986 sectional map amendment and yet, still maintains its residential nature.

The increasing presence of churches in the neighborhood is also another factor cited by the applicant as further evidence of substantial change in the neighborhood. The applicant noted that over 50 percent of the 215, 000 square feet of commercial retail space at the Forest Hill Plaza Shopping Center, located in the northeast quadrant of the intersection of Marlboro Pike and Forestville Road, has been converted to noncommercial, religious use. The applicant argues that this trend has resulted in the loss of a considerable amount of commercial retail space, particularly on the east side of the Marlboro Pike corridor where the subject property is located.

Finally, the applicant indicated that notwithstanding the intent of the 1986 master plan, none of the residential properties along Marlboro Pike that were placed in the R-T zone were developed with town houses. Moreover, with the enactment of CB-55-1996 that prohibited the expansion of R-T zoning throughout the county and required approval of special exception for townhouses in certain high-density residential zones, the number of townhouses developed has been substantially reduced. The applicant noted that all of the properties along Marlboro Pike that were rezoned to R-T in 1986 are developed with single-family detached dwellings, and that the master plan’s intent for the higher density townhouse development to serve as a buffer between Marlboro Pike and the existing single-family dwellings to the south has not materialized. The applicant argues that, as it is the case for the other properties along Marlboro Pike, it is unlikely that the subject property could be successfully developed with townhouses. Moreover, given the nature of the property, which is wedged between two C-S-C zoned properties, it is almost impossible to develop the subject property with a quality residential development.

The applicant concludes that the cumulative effect of the loss of commercial properties to medium-density residential properties, the loss of commercial shopping center space to religious uses, and the loss of commercial office property to residential nursing care use have substantially changed the commercial character of the neighborhood.

- I. **Staff Analysis of the Change Argument:** Staff notes that most of the rezoning and special exception cases cited in the applicant’s argument to show substantial change are located just outside of the neighborhood boundaries, as defined by staff, but within the boundaries, as defined by the applicant. However, staff recognizes the properties’ close affinity to the neighborhood (as

defined by staff) and their interrelation and influences, in terms of development activities, by the virtue of their location in close proximity to the neighborhood and the subject property.

Staff has considered the applicant's arguments but does not find them persuasive to support the claim of substantial change in the character of the neighborhood. Furthermore, the applicant has not demonstrated that the current R-T Zone precludes all reasonable use of the subject property. In addition to residential dwellings, there are other uses permitted by special exception that could be placed on the site.

The master plan recommends Low Urban residential density for the property. The intent of the master plan is to discourage commercial strip development along this section of Marlboro Pike and to protect the existing single-family detached residences in the immediate area. The adjoining properties to the south are zoned R-55 and are developed with single-family residential dwellings. An illustrative scheme for proposed residential development (which includes the subject site) along Marlboro Pike is shown on page 99 of the master plan. The Community Planning Division offers the following comments regarding the rationale behind the master plan's recommendation and the sectional map amendment's classification for the subject property:

The applicant argues that there has been a decline of commercial spaces, which the applicant attributes to two rezoning of C-O zoned properties to R-18C, conversion of commercial retail space in a shopping center to noncommercial (mainly churches), and a granting of a special exception to allow a residential type of use on a commercially zoned property. The Community Planning Division has offered the following comments regarding the applicant's argument of a substantial change.

The applicant claims there has been a substantial change in the character of the neighborhood. The applicant states there has been a decline in the availability of commercial properties, partly because of rezoning and an approved special exception to permit a noncommercial use on commercial property. The applicant contends this loss of commercial land was not contemplated by the plan. The neighborhood has not seen substantial change in the character to justify the rezoning of this property from the R-T Zone to the C-S-C Zone. Two rezonings cited by the applicant were for commercial to residential zoning, which might support a change toward residential. The one rezoning from residential to commercial consists of one-half acre of land, which does not change the character of the neighborhood. The applicant notes this rezoning was to correct or adjust the zoning boundary line for the site.

The applicant contends that the development of a nursing home in a commercial zone via a special exception application supports the change argument. However, as part of the District Council approval of a special exception, it must find that the use **does not impair the integrity** of the master plan.

The applicant also contends that the increasing presence of churches in the commercial shopping centers in the neighborhood reduces available commercial space. While churches are occupying space in shopping centers, etc., the properties are still zoned commercial and may be reused in a commercial manner in the future. This situation is not occurring solely in the subject area and it is not static.

The last point the applicant makes is that some R-T zoned properties have not developed with townhouses but with single-family detached units. The applicant states that because the plan envisioned townhouses providing a buffer between the existing commercial uses

on Marlboro Pike and the abutting single-family detached development, the absence of the townhouses supports a rezoning of the property to commercial use. The fact that a residentially zoned property develops with a permitted lower density residential use than what was envisioned by the master plan does not support a commercial rezoning of the subject site even though the envisioned development was to function as a buffer. The new development, recognizing the existing commercial uses along the corridor, now has become the buffer.

The applicant contends that all these arguments support the requested rezoning. The staff does not agree with the applicant's arguments.

In a supplemental submission dated June 8, 2004, the applicant's land planner responded to the comments of the Community Planning Division by reiterating the applicant's position (letter dated June 8, 2004, from Land Visions, Inc.). The applicant's planner contends that the cumulative effect of the various elements of change identified by the applicant demonstrate that "there has been a substantial change in that a significant amount of commercially zoned land in the neighborhood which was expected to be used for commercial space is now planned or actually developed for noncommercial uses." The applicant's land planner went on to say that this significant change in the character of the community, as demonstrated by the applicant, justifies the rezoning of the subject property from the R-T Zone to the C-S-C zone, either in whole or in part.

Staff recognizes the fact that there have been some changes in the neighborhood since the last SMA was adopted in 1986. However, staff is of the opinion that the changes cited as evidence of change in the applicant's statement of justification do not constitute **a substantial change**. It should also be noted that the intent of the master plan is to discourage commercial strip development along this section of Marlboro Pike and protect the existing single-family detached residential development in the immediate area. The two piecemeal rezonings (A-9864-C—5.2 acres and A-9879—1.7 acres), from commercial to medium-density residential, that are cited by the applicant did not result in development activities that substantially impaired the intent of the master plan or had a cumulative effect that brought about a substantial change in the character of the neighborhood. As the applicant indicated, despite the fact that the rezoning in both cases had taken place in 1992 and in 1993, neither one of the properties have been developed yet. Zoning without development or development itself is not sufficient to justify a rezoning unless that development creates a substantial change.

With regard to the applicant's reference to the loss of commercial space to noncommercial religious uses, the granting of the special exception use of a residential nature on a commercially zoned property, and the existing single-family detached development on the R-T zoned properties, staff agrees with the Community Planning Division in that the commercial zoning of the properties still remains unchanged and the uses may be reverted to commercial and townhouse uses that are permitted within their respective zoning categories. The current development pattern, which incidentally by no means is inconsistent with the requirements of the zone categories, does not constitute a substantial change nor does it justify the proposed rezoning of the subject property from the R-T Zone to the C-S-C Zone.

Admittedly, the last comprehensive planning occurred nearly 20 years ago. Although there is no plan in the immediate future for another comprehensive rezoning, it is obvious that the area is due for one in the near future. A new comprehensive plan and rezoning would take into account the current needs and priorities of the community in terms of social and economic development of the

area, which might be more supportive of the applicant's rationale for the proposed rezoning of the subject property.

**J. Urban Design Issues:**

Upon reviewing the applicant's proposal for rezoning of the subject property, the Urban Design section has offered the following comments:

...The Urban Design staff believes that the proposed rezoning of the subject property from R-T to C-S-C and its potential development will impact the existing residential subdivision. The staff does not oppose the rezoning application, but has concerns about the negative impact that the future commercial uses on the site may have on the adjacent established residential subdivision.

To rezone the subject site from the R-T Zone to the C-S-C Zone will make the subject site incompatible with the existing residential uses because of the shape of the property that results half of the property still surrounded by the residential subdivision. However, the potential impact of development on the site can be mitigated through a detailed site plan review. The detail of screening and buffering should be determined at that time. Additional buffering than what is required by the *Landscape Manual* may be needed in order to mitigate any potential impacts on the adjacent single-family houses.

Based on the above analysis, the Urban Design Section recommends the following condition:

Prior to the issuance of any permits, the applicant, his heirs, successors or assignees shall submit a detailed site plan for review and approval by the Planning Board or its designee. The site plan review shall focus on the proposed landscaping, fencing, and buffering as well as the siting of any proposed building, paving and on-site parking, especially between the internal portion of the site and the existing residential uses.

In the supplemental submission of June 8, 2004, the applicant's land planner suggested that the Urban Design recommendation, or alternatively, split-zoning the subject property by retaining the southern portion of the property in a residential zone category, is more appropriate than merely denying the application.

The suggestion to rezone to C-S-C only the portion of the property that is adjacent to the C-S-C zoned properties to the east and west and retain the southern portion of the property (adjacent to the residential properties in the R-55 Zone) in the existing R-T Zone is convincing from the planning perspective. However, the fact remains that a substantial change in the character of the neighborhood has not been demonstrated to support a rezoning of all or part of the site from the R-T Zone to the C-S-C Zone.

**K. Conformance with the Purposes of the R-T and C-S-C Zones:** The purposes of the R-T Zone are contained in **Section 27-433(a)(1) and (2)** of the Zoning Ordinance:

- 1. The general purpose of the R-T Zone is to provide for attractive communities with a variety of dwelling types designed to efficiently utilize available land area, public utilities, and public facilities.**
- 2. The specific purposes of the R-T Zone are:**



- (A) To provide the maximum possible amount of freedom in the grouping, layout, and design of townhouses and other attached dwellings.
- (B) To encourage variety in the design and mix of dwelling unit types, and in site design.
- (C) To protect or enhance (where feasible) important or distinguishing natural features of the site through innovative site layout and green area design.
- (D) To avoid the monotony of similarly designed or sited rows of attached dwellings commonly known as "row houses," by encouraging variety in the number of dwelling units per building group and the relationship between building groups and parking.
- (E) To provide the maximum possible amount of visible open space for the development.
- (F) To provide recreational and other community facilities which are normally associated with less dense zoning categories and are easily accessible to all residents.
- (G) To permit the greatest possible amount of freedom in the type of ownership of attached dwelling unit development.
- (H) To prevent detrimental effects on the use or development of adjacent properties and the neighborhood.
- (I) To promote the health, safety, and welfare of the present and future inhabitants of the County.

The purposes of the C-S-C Zone (Commercial Shopping Center) are contained in **Section 27-454(a)(1)** of the Zoning Ordinance:

- (A) To provide locations for predominantly retail commercial shopping facilities.
- (B) To provide locations for compatible institutional, recreational, and service uses.
- (C) To exclude uses incompatible with general retail shopping centers and institutions.
- (D) For the C-S-C Zone to take the place of C-1, C-2, C-C, and C-G Zones.

The Environmental Planning Section has recommended that all future development applications on this site shall include a Phase I and/or Phase II Noise study as appropriate, show the location of the 65 dBA Ldn noise contour (mitigated and unmitigated), and show that all state noise standards have been met for interior areas.

The Transportation Planning Section has offered the following comments:

Using the estimated trip generation rates for possible uses within the R-T and C-S-C zoning categories found in Figure 4 of *Guidelines for the Analysis of the Traffic Impact of Development Proposals*, the table below was developed. Because a use for the property is not specified as a part of a Euclidean zoning application, the R-T category is evaluated as residential lots, while C-S-C includes a comparison of two permitted high trip generation uses. It would be very speculative on the part of staff to suggest a likelihood of any ultimate use:

<b>Comparison of Estimated Trip Generation, A-9961, 1.37 acres</b>					
Zoning or Use	Units or Square Feet	AM Peak Hour Trips		PM Peak Hour Trips	
		In	Out	In	Out
<b>Existing Zoning</b>					
R-T (residential)	10 residences	<b>1</b>	<b>6</b>	<b>6</b>	<b>2</b>
<b>Proposed Zoning</b>					
C-S-C (commercial)	23,870 square feet medical/ professional office	<b>55</b>	13	29	62
C-S-C (commercial)	14,920 square feet retail	34	<b>17</b>	<b>90</b>	<b>90</b>
<b>Difference (between bold numbers)</b>		<b>+54</b>	<b>+11</b>	<b>+84</b>	<b>+88</b>

The comparison of estimated site trip generation indicates that the proposed rezoning could have a major impact on area roadways—over 170 trips in the PM peak hour and a lesser amount in the AM peak hour. While this difference is large, the actual difference could be much smaller due to environmental and other factors. Nonetheless, there will be an increase in potential travel due to the rezoning, which may require off-site improvements to the Marlboro Pike/Forestville Road intersection or the Marlboro Pike/Donnell Drive intersection—or both. Transportation staff has no recent data at either location. If the subject property were to be developed, the applicant would be required to submit a traffic study considering both intersections.

Marlboro Pike is a planned collector facility.

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 the potential trip generation, the proposed rezoning would appear to have a significant and adverse impact on the existing transportation facilities in the area of the subject property.

Notwithstanding the potential impact to existing transportation facilities, and given the physical characteristics of the property, the location of the property relative to the nature of existing roads in the area, and the prevailing development in the immediate area, the portion of the property that borders the commercially zoned properties is more suitable for the proposed commercial development than a residential development under the R-T Zone. However, this is not true in the case of the remaining half of the property that is wedged into the R-55 zoned properties; a commercial development on this portion of the property would be incompatible with the adjacent residential development. If a rezoning or partial rezoning of the property is to be contemplated, a

series of screening and buffering measures would need to be employed to mitigate any potential impacts on the adjacent residential development.

**CONCLUSION:**

The applicant has not been able to demonstrate that the character of the neighborhood has been substantially altered by the changes cited. Furthermore, the applicant has not demonstrated that the current R-T Zone precludes all reasonable use of the subject property. In addition to residential dwellings, there are other uses permitted by special exception that could be placed on the site. Therefore, it is recommended that this application be DENIED