



*Note: Staff reports can be accessed at [www.mncppc.org/pgco/planning/plan.htm](http://www.mncppc.org/pgco/planning/plan.htm).*

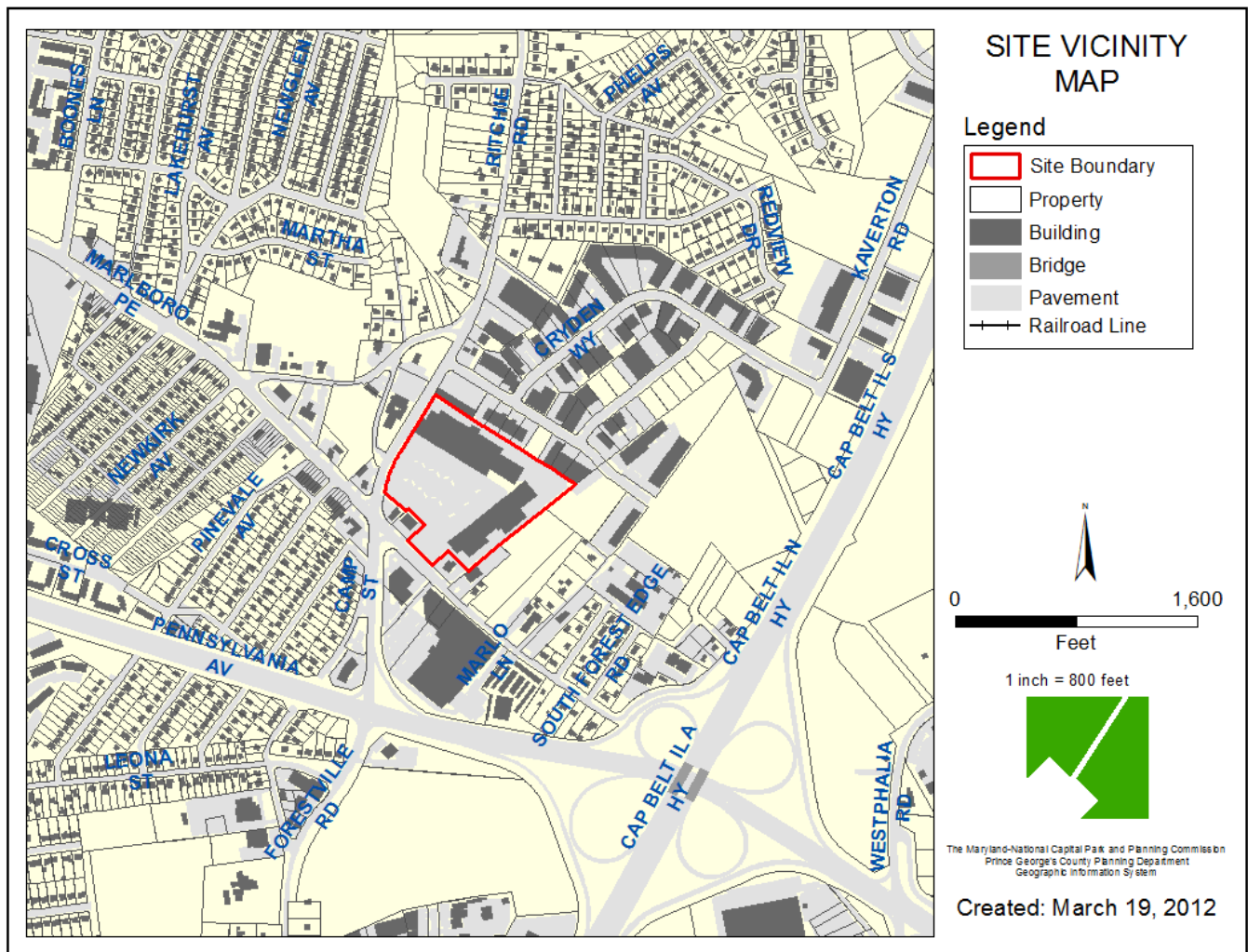
## Special Exception

## SE-4716

Application	General Data	
<b>Project Name:</b> Bazz and Crue  <b>Location:</b> Northeast corner of Forestville Road and Marlboro Pike.  <b>Applicant/Address:</b> CD #15CL2001, Inc. d/b/a Bazz and Crue Group Hall P.O. Box 471647 District Heights, MD 20753  <b>Property Owner:</b> <b>Previous:</b> Big Apple, LLC 1334 Tampa Road Palm Harbor, FL 34683  <b>New:</b> PMM Enterprises, LLC c/o Michael Amann, Sr. 3680 Wheeler Avenue, Suite 300 Alexandria, VA 22304	Planning Board Hearing Date:	11/08/12
	Staff Report Date:	10/24/12
	Date Accepted:	05/17/12
	Planning Board Action Limit:	N/A
	Plan Acreage:	18.17
	Zone:	I-1/D-D-O
	Gross Floor Area:	400 sq. ft.
	Lots:	N/A
	Parcels:	1
	Planning Area:	75A
	Tier:	Developed
	Council District:	06
	Election District	06
	Municipality:	N/A
200-Scale Base Map:	205SE07	

Purpose of Application	Notice Dates	
Adult entertainment in the I-1/D-D-O Zone per Section 27-473, Footnote 56, of the Prince George's County Zoning Ordinance.	Informational Mailing	03/30/12
	Acceptance Mailing:	05/11/12
	Sign Posting Deadline:	N/A

<b>Staff Recommendation</b>		<b>Staff Reviewer:</b> Tom Lockard <b>Phone Number:</b> 301-952-3410 <b>E-mail:</b> Thomas.Lockard@ppd.mncppc.org	
<b>APPROVAL</b>	<b>APPROVAL WITH CONDITIONS</b>	<b>DISAPPROVAL</b>	<b>DISCUSSION</b>
		<b>X</b>	



THE 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: Jimi Jones, Zoning Supervisor, Development Review Division

FROM: Tom Lockard, Planner Coordinator, Zoning Section, Development Review Division

SUBJECT: **Special Exception Application No. SE-4716  
Bazz and Crue**

REQUEST: **Approval of a special exception for adult entertainment in the I-1/D-D-O Zone per  
Section 27-473, Footnote 56, of the Prince George's County Zoning Ordinance.**

RECOMMENDATION: **DISAPPROVAL**

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NOTE:

The Planning Board has scheduled this application to be reviewed on the agenda date of November 8, 2012. 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 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. **Location and Field Inspection:** The subject property comprises two units (7752 and 7754 Forestville Road) in the Forestville Plaza Shopping Center. Access is gained through a door in 7754, beyond which is a vestibule where identification and membership information is exchanged and a cover charge collected. Membership is required, however membership criteria seems to be non-selective. Members can apparently bring their own alcohol into the club, but there is no licensed bar. The remaining windows are blacked out and bear the logos of the establishment, “Bazz & Crue.” Both the front and rear of the club are heavily lit and numerous video cameras are evident. The hours of operation are not posted at the door, but advertising for the club suggests it is open most evenings of the week with hours ranging from 10:00 p.m. to 7:00 a.m.

Other than a small storefront church, the remainder of the shopping center seems vacant. On the day staff visited, the center was being worked on by a paving company, painters, electricians, and others; a welcome sight for this badly declining property. The center has been recently purchased by a new owner, PMM Enterprises LLC. The new owner or their authorized representative must eventually sign the special exception application.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	I-1/D-D-O	I-1/D-D-O
Use(s)	Adult Entertainment	Adult Entertainment
Acreage	18.17	18.17
Lots	None	None
Parcels	1	1
Square Footage/GFA	4,000	4,000

- C. **History:** The site has a long permit history:

<b>July 17, 2001—</b>	The applicant, as “Masonic Lodge C.D. #15 Class 2001 t/a Bazz & Crue Group Hall F and AM,” applied for a use and occupancy permit for “a private club and offices” for 7752 Marlboro Pike.
<b>August 17, 2001—</b>	Permit 19557-2001-U was issued for a private club and offices for 7752 Marlboro Pike.
<b>February 6, 2007—</b>	The applicant, as “CD #15CL2001, Inc. Masonic Hall t/a B&C Group Hall F.A.M II,” applied for a use and occupancy permit for a “banquet hall/events center” for the adjoining unit at 7754 Marlboro Pike. The permit is put on hold to allow the applicant to change the requested use.
<b>February 9, 2007—</b>	The applicant revised the application to request a permit for “classes, small receptions, and official gatherings, rest area for elderly.”
<b>April 27, 2007—</b>	Permit 3802-2007-U was issued for a “private club with a maximum of 65 seats” for 7754 Marlboro Pike.

May 2009—

The applicant was issued a permit to connect the two units by placing doorways in the common wall.

The applicant was one of several plaintiffs in a 2006 lawsuit (Wet Sands, Inc., et al., vs. Prince George's County) questioning the constitutionality of two County Council Bills (CB-31-2006 and CB-61-2006) enacted regulating adult entertainment. In a Memorandum of Decision filed on April 12, 2007, U.S. District Court Judge Marvin J. Garbis concisely describes the inner workings of the clubs, including the applicant's:

"The adult entertainment provided by Plaintiffs herein includes entertainers performing dances on a stage while nude or scantily attired. There is physical contact or proximity between customers and entertainers during the stage dancing if customers approach - or touch - the dancers while giving tips. Plaintiffs also permit customers to have female entertainers perform "lap dances" in which a female entertainer moves on a male customer's lap. Plaintiffs extensively monitor physical contact between patrons and entertainers to prevent overt sexual activity and other intimacies.

"Plaintiffs (and others in the same business) typically generate revenue by charging admission, selling beverages (including alcoholic beverages if licensed to do so), selling of some edibles and charging fees for lap dances. The entertainers are typically not paid by the business. Indeed, the entertainers normally pay the business a fee for the privilege of entertaining and earning tips that, it appears, can amount to considerable sums in the course of an evening."

- D. **Master Plan Recommendation:** The 2002 *Prince George's County Approved General Plan* placed the site in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods.

The 2009 *Approved Marlboro Pike Sector Plan and Sectional Map Amendment* (Marlboro Pike Sector Plan and SMA) designated the subject property as Priority Area 7, Forestville Flex Space Campus, and rezoned it to Light Industrial (I-1) in the Development District Overlay (D-D-O) Zone as part of the Low-Intensity Business Park character area. The vision for the site is to develop flex and auxiliary office space for industrial businesses and related professional service companies that form the supply chain for major industrial tenants. The site is located in the Andrews Air Force Base Safety Zones, APZ I and APZ II. Prince George's County and Andrews Air Force Base worked collaboratively to prepare a joint land use study (JLUS), which aimed at limiting the loss of life and property in the APZ's by reducing the public's exposure to hazards by planning for low-density land uses and development patterns. The Marlboro Pike Sector Plan and SMA complement JLUS recommendations regarding land use and density.

The D-D-O Zone Table of Uses Permitted contained in the plan supersedes the table of uses for industrial zones found in Section 27-473 of the Zoning Ordinance, in accordance with Section 27 548.22(b):

- (b) **Development District Standards may limit land uses or general use types allowed in the underlying zone where the uses are incompatible with, or detrimental to, the goals of the Development District and purposes of the D-D-O Zone. Development District Standards may not allow uses prohibited in the underlying zone, with the exception of Development District Standards of the Prince George's County Gateway Arts District**

**D-D-O Zone, where the uses are compatible with the goals of the Prince George's County Gateway Arts District and purposes of the D-D-O Zone.**

The D-D-O Zone Table of Uses Permitted states “No use shall be allowed in the Industrial Zones, except as provided for in the Table of Uses...” The current I-1/D-D-O Zone expressly prohibits a private club and does not have a listing for adult entertainment. Uses which are not listed in the table of uses are prohibited.

- E. **Request:** The applicant seeks approval of a special exception to continue an existing adult entertainment establishment that has operated at this location since 2001.

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

**North—** Parston Drive, Fernham Lane, and Cryden Way;

**East—** Capital Beltway (I- 95/495);

**South—** Pennsylvania Avenue (MD 4); and

**West—** Forestville Road.

The neighborhood is predominantly mixed commercial and industrial uses and corresponds to the boundaries of the Low-Intensity Business Park character area of the D-D-O Zone. Much of the former commercial space (including the majority of the subject shopping center) is vacant. Many of the surrounding commercial/industrial buildings are underutilized. There is a small area of single-family residences to the southeast at the end of Marlboro Pike.

The property is surrounded by the following uses:

**North—** Strip commercial, light industrial, and auto-related uses in the I-1/D-D-O Zone along Parston Drive.

**East—** A vacant parcel and light industrial uses in the I-1/D-D-O Zone. Further east on Marlboro Pike are the Forestville Baptist Church and single-family residences in the R-R (Rural Residential) Zone.

**South—** A small church, mattress store, and liquor store in the I-1/D-D-O Zone. Across Marlboro Pike are several vacant buildings and the old Marlo Furniture store in the I-1/D-D-O Zone.

**West—** Across Forestville Road is the Forest Memorial United Methodist Church in the R-55 (One-Family Detached Residential) Zone and a gas station in the C-S-C (Commercial Shopping Center) Zone.

- G. **Specific Special Exception Requirements:** Staff's position is that the proposed use is not permitted in the zone in which it is located, since it is the use table within the D-D-O Zone plan which applies to this property, not the general use table for industrial zones, Section 27-473(b) of the Zoning Ordinance. That notwithstanding, **Section 27-473(b)**, Table of Uses, in the industrial zones, allows an “auditorium” in the I-1 Zone as a use permitted by right. This use has a footnote which provides:

- 56      **Any existing establishment in the I-1 or U-L-I Zone with a valid use and occupancy permit for an auditorium, private club or lodge that included activity that meets the definition of “adult entertainment” may continue upon approval of a Special Exception. Applications for adult entertainment must be filed and accepted by June 1, 2012.**

The applicant has received two use and occupancy permits for a “private club.” The definitions for adult entertainment and a private club are found in **Section 27-107.01(a)**:

- (7.1)    **Adult Entertainment: Adult Entertainment means any exhibition, performance or dance of any type conducted in a premise where such exhibition, performance or dance involves a person who:**
- (A)      **Is unclothed or in such attire, costume or clothing as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region , anus, buttocks, vulva or genitals with the intent to sexually arouse or excite another person; or**
  - (B)      **Touches, caresses or fondles the breasts, buttocks, anus, genitals or pubic region of another person, or permits the touching, caressing or fondling of his/her own breasts, buttocks, anus, genitals or pubic region by another person, with the intent to sexually arouse or excite another person.**
- (49)    **Club or Lodge, Private: An establishment providing facilities for entertainment or recreation for only bona fide members and guests, and not operated for profit excluding adult entertainment.**

At the time they applied for their use and occupancy permits, the applicant, CD#15CL2001, Inc., established they were a nonprofit corporation. According to a letter from the Internal Revenue Service dated March 23, 2005 (Lerner to CD#15CL2001, Inc.), they are a public charity, exempt from federal income taxes since 2001. The applicant’s 2001 Articles of Incorporation describes the nature of their business as being, among other things:

- “1.      To establish, own, maintain, conduct, carry on, manage and generally engage in the operation of a business for the purpose of conducting events, receptions, lodge meetings, and classes for an auxiliary group of the Masonic Lodge CD#15, and all services, matters, transactions, activities and things necessary and related thereto.”

The applicant’s 2005 Articles of Amendment to their corporate charter states that they are:

- “...organized exclusively for charitable, religious, educational and social purposes, including, for such purposes, the making of distributions to organizations that qualify under exempt organizations under 501(c)(3) of the Internal Revenue Code.”

The applicant applied for and received their initial use and occupancy permit at 7752 Marlboro Pike as “Masonic Lodge C.D. #15 Class 2001.” That permit was approved for a private club and offices.

Correspondence received from the applicant at the time of the 2007 permit review for 7754 Marlboro Pike bears a letterhead containing not only their corporate name, but separate lines denoting “FREE and ACCEPTED MASONS [also variously referred to by the acronym F. & A.M.J]” and “P.H.A. AFFILIATION.” P.H.A. is an acronym used in the Masonic fraternity to denote (P)rince (H)all (A)ffiliation, referring to the Prince Hall Masons, the largest of the predominantly African American Masonic organizations. In a letter to the permit reviewer (Hudson to Hampton dated February 7, 2007), the applicant makes numerous references to their Masonic affiliation and states the intention of the hall to be:

“This Hall will be intended for the use of our elder members who hold the Masonic degrees of 32° and above and suitable vouched for individuals only. Its uses will be for classes, small receptions, and official gatherings.”

The applicant has claimed an affiliation with a bona fide nonprofit and charitable fraternal organization, the Prince Hall Masons, in order to obtain a permit for a private club. Given the true nature of the club, it seems dubious at best that such an affiliation now exists or indeed ever existed. The applicant now makes no such claims in their statement of justification. While staff cannot categorically state that elder members of the fraternity have never visited Bazz and Crue, we do feel absolutely secure in stating that the club has not been used for their classes, receptions, and official gatherings. Given the evidence presented, it is very difficult to conclude that the permits obtained by the applicant for a private club are valid.

- H. **Additional Requirements for Specific Uses in the I-1 Zone:** Section 27-475.06.06, Adult Entertainment, of the Zoning Ordinance states:

(a) **The hours of operation shall be limited to 5:00 P.M to 3:00 A.M.**

**Comment:** Advertising for the club shows its hours of operation to vary between 10:00 p.m. and 7:00 a.m. These would need to be changed to conform to the above hours or a variance secured.

(b) **The establishment shall be located at least one thousand (1,000) feet from any school, or any other building or use providing adult entertainment and at least one thousand (1,000) feet from any residential zone or land used for residential purposes in any zone.**

**Comment:** The nearest residence to the subject site is approximately 450 feet to the southeast at the end of Harley Lane, a nonconforming use in the I-1 Zone. Additional residences are found approximately 750 feet to the southeast along North Forest Edge Road in the R-R Zone. There is property in the R-55 Zone approximately 840 feet west of the subject property, developed with the Forest Memorial United Methodist Church. If this application were to go forward, a variance would be necessary.

- I. **Parking Regulations:** Adult entertainment requires one off-street parking space per 80 square feet of gross floor area. At 4,000 square feet, the applicant must provide 50 parking spaces. The site plan shows parking calculated at the rate for a private club, i.e., one space per four seats. This would need to be corrected.
- J. **Prince George’s County Landscape Manual:** The application is exempt from the 2010 *Prince George’s Landscape Manual* pursuant to Section 1.1 (b), which states that the existing conditions on the developed site not in conformance with the requirements of this manual that were



otherwise lawful on December 13, 2010, and not the subject of any building or grading permit, may continue as a matter of right.

**Tree Canopy Coverage**

The application does not propose 1,500 square feet or greater disturbance and, therefore, is not subject to the requirements of the Tree Canopy Coverage Ordinance.

- K. **Zone Standards:** The applicant's proposal is in compliance with the standard zoning requirements of the I-1 Zone. No variances have been requested as part of the special exception application. However, as discussed previously, staff does not believe this is a permitted use in the I-1/D-D-O Zone.
- L. **Sign Regulations:** The site has two building-mounted signs for which they obtained permits.
- M. **Required Findings:** Section 27-317(a) of the Zoning Ordinance provides that a special exception may be approved if:

**(1) The proposed use and site plan are in harmony with the purposes of this Subtitle;**

**Comment:** The primary purposes of the Zoning Ordinance are to protect public health, safety, and welfare; to promote the most beneficial relationship between the uses of land and buildings; and to protect landowners from adverse impacts of adjoining development. The proposed continued use as adult entertainment is permitted through the special exception process in the I-1 Zone, but not in the I-1/D-D-O Zone use table contained in the 2009 Marlboro Pike Sector Plan and SMA. Therefore, there is no legislative presumption that the uses can be carried out in harmony with the purposes of this Subtitle with no adverse impacts on health, safety, and welfare. The District Council could have chosen to add that zone to CB-56-2011, but did not. The presumption is that the Council, relying on Section 27-548.22(b) of the Zoning Ordinance, found that such uses “...are incompatible with, or detrimental to, the goals of the Development District and purposes of the D-D-O Zone.”

**(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;**

**Comment:** The proposed use is not permitted in the zone in which it is located and the permits which were issued were fraudulently obtained through what appears to be gross misrepresentation. In addition, the use does not comply with the hours of operation or locational requirements of Section 27-475.06.06 of the Zoning Ordinance.

**(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;**

**Comment:** The continuation of a use not permitted in the table of uses in the Marlboro Pike Sector Plan and SMA would impair the integrity of the plan. Barring evidence to the contrary, we must conclude that, by prohibiting private clubs and adult entertainment, the District Council relied upon Section 27-548.22(b), finding that such uses “...are incompatible with, or detrimental to, the goals of the Development District and purposes of the D-D-O Zone.”

**(4) The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area.**

**(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and**

**Comment:** The adult entertainment use operates during the late evening and early morning hours when other nearby uses are closed, with the exception of the liquor store to the south along Marlboro Pike and a convenience store to the north along Forestville Road. However, there are residences to the southeast, well within the 1,000-foot radius prescribed by the District Council to ameliorate negative impacts. One of the homes, the Harley residence, is less than half that distance from the rear doors of the club, separated from the use by a vacant lot. While staff would stop short of finding the use to have adverse affects or detrimental impacts to the surrounding properties, we would reiterate our belief that the District Council, by omitting the uses from the I-1/D-D-O Zone, found them to be incompatible uses.

**(6) The proposed site plan is in conformance with an approved Tree Conservation Plan.**

**Comment:** According to the Environmental Planning Section, the property is not subject to the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance because it contains less than 10,000 square feet of woodland on-site and currently has no valid tree conservation plan approvals.

**(7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible.**

**Comment:** There are no regulated environmental features within the limits of the special exception boundaries.

## **CONCLUSION**

In order to be eligible for consideration as a special exception use, the applicant must first produce a valid use and occupancy permit. It seems clear from the preceding discussion that both of the permits issued to the applicant were the result of fraud and misrepresentation. In short, these permits would never have been issued if the county had known that the applicant was misrepresenting themselves and their intended use. Staff concludes that the use and occupancy permits for this use are not valid, and thus the applicant has not met the prerequisite for consideration as a special exception use. Additionally, staff would reiterate our belief that Footnote 56 is not applicable to this property, even if the permits could be held valid. The District Council could have added the use to the 2009 *Approved Marlboro Pike Sector Plan and Sectional Map Amendment's* I-1/D-D-O Zone through County Council Bill CB-56-2011, but chose not to.

Based on the preceding analysis and findings, staff recommends **DISAPPROVAL** of Special Exception Application No. SE-4716.