



Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

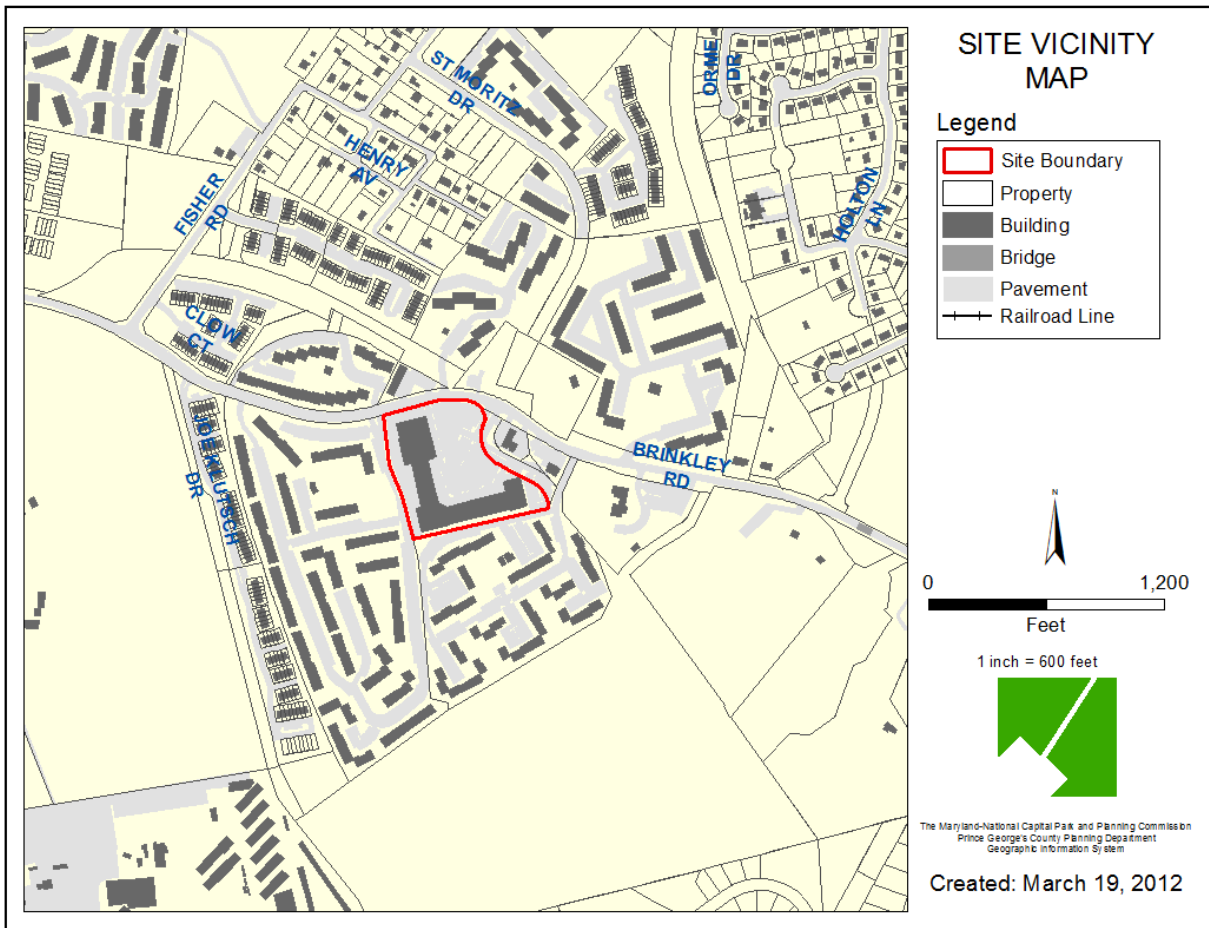
Special Exception

SE-4717

Application	General Data	
Project Name: X4B Luxury Club Location: Located along the south side of Brinkley Road, approximately 1,400 feet east of its intersection with Fisher Road. Applicant/Address: CD#15CL2001, Inc., d/b/a Shriners, CD#15CL2001, Inc., d/b/a Shriners United d/b/a X4B Luxury Club P.O. Box 471647 District Heights, MD 20753 Property Owner: Rosecroft Center, LLC. 678 Reisterstown Road Pikeville, MD 21208	Planning Board Hearing Date:	11/08/12
	Staff Report Date:	10/24/12
	Date Accepted:	05/21/12
	Planning Board Action Limit:	N/A
	Plan Acreage:	9.3 acres
	Zone:	C-S-C
	Gross Leasable Area of S.C.:	113,095 sq. ft.
	Lots:	N/A
	Parcels:	3
	Planning Area:	76B
	Tier:	Developing
	Council District:	08
	Election District	12
	Municipality:	N/A
	200-Scale Base Map:	208SE03

Purpose of Application	Notice Dates	
Special Exception application to operate an adult entertainment establishment in the C-S-C Zone.	Informational Mailing	03/30/12
	Acceptance Mailing:	05/11/12
	Sign Posting Deadline:	N/A

Staff Recommendation		Staff Reviewer: John Ferrante Phone Number: 301-952-3665 E-mail: John.Ferrante@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	



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: John Ferrante, Senior Planner, Zoning Section, Development Review Division

SUBJECT: **Special Exception Application No. SE-4717**
X4B Luxury Club

REQUEST: **Adult Entertainment**

RECOMMENDATION: **DISAPPROVAL**

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.

FINDINGS

- A. **Location and Field Inspection:** The site is located along the south side of Brinkley Road, approximately 1,400 east of its intersection with Fisher Road. The property consists of 9.3 acres in the C-S-C Zone and is known as the Rosecroft Shopping Center. This integrated shopping center was constructed in 1971 and has a gross leasable area of 113,095 square feet. Approximately 482 surface parking spaces and four loading spaces are provided on the site to serve the shopping center.

B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	C-S-C	C-S-C
Use(s)	Private Club (4,200 sq. ft.)	Adult Entertainment (4,200 sq. ft.)
Acreage	9.3	9.3
Lots	None	None
Parcels	3	3
Square Footage/GLA	113,095	113,095
Variance	No	No

- C. **History:** Numerous permits have been issued for the property since its' initial construction. The following provides a partial list of permits or approvals that may have impacted or altered the approved site plan for the property or that specifically relate to the subject application;

August 27, 1969—	Final Plat of Subdivision, WWW 72@35, was recorded in Land Records.
1971—	The shopping center was initially constructed per the approval of Building Permit No. 1375-71-CG.
December 1987—	Appeal No. 8974 was granted by the Board of Zoning Appeals for the requirement for a ten-foot-wide landscape strip and rear yard landscaping.
March 10, 1988—	Departure from Design Standards application, DDS-309 was approved by the Planning Board to waive the requirement for access to a loading space being within 50-feet of residentially-zoned land (PGCPB Resolution No. 88-104).
November 2, 2000—	Detailed Site Plan application, DSP-00036 was approved by the Planning Board for the Rosecroft Shopping Center Day Care Facility. The day care was approved for up to 100 children to occupy approximately 14,280 square feet in the southwest corner of the shopping center (PGCPB Resolution No. 00-202).
September 21, 2006—	Use and Occupancy Permit No. 37380-2006-U-01 was approved by the Maryland-National Capital Park and Planning Commission (M-NCPPC) Permit Review Section per the

submitted documentation from the applicant and Section 27-101.01(49) of the Zoning Ordinance. The permit was approved to allow CD#15CL2001INC. (Doing business as Shriners United) to operate a 4,200-square-foot private club in the C-S-C Zone.

October 4, 2006—

During the inspection for the issuance of Use and Occupancy Permit 37380-2006-U, the Department of Environmental Resources (DER) issued a correction order to the applicant due to a change in the use group of the building to a different type of assembly use (from a church to a private club). DER required the applicant to amend the use and occupancy permit to a building permit and obtain the services of a Fire Protection Specialist that could prepare a detailed plan for the review of the County Fire Engineer.

November 9, 2006—

Building Permit 45960-2006 was approved by M-NCPPC for a private club and the permit was further amended on May 16, 2007 through the approval of Permit 45960-2006-CU-01 to add the “doing business as X4B name” to the permit.

August 10, 2007—

Use and Occupancy Permit No. 45960-2006-CUW was issued by the County to the Shriners CD#15CL2001, Inc. (operating as X4B Shriners United) to operate a 4,200-square-foot private club per the submitted documentation to the M-NCPPC Permit Review Section and in accordance with Section 27-107.01(49) of the Zoning Ordinance.

- D. **Master Plan Recommendation:** In a memorandum dated June 26, 2012, the Community Planning South Division stated that the subject application conforms to the commercial land use recommendation within the April 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac (SMA)*.

The property is located in the Developing Tier. The vision for Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities, distinct commercial centers and employment areas that are increasingly transit serviceable. By memorandum dated June 26, 2012, the Community Planning South Division found the application to not be inconsistent with the 2002 General Plan Development Pattern policies for the Developing Tier.

The April 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac* retained the subject property in the C-S-C Zone.

- E. **Request:** The applicant seeks approval of a special exception application to operate an adult entertainment establishment in the C-S-C Zone. The site is located within the Rosecroft Shopping Center, an integrated shopping center that is 9.3 acres in size. However, the special exception boundaries are confined to a 4,200-square-foot unit within the shopping center.

Section 27-107.01(7.1) of the Zoning Ordinance defines Adult Entertainment as the following:

Sec. 27-107.01. Definitions.

(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.**

On August 10, 2007, Use and Occupancy Permit No. 45960-2006-CUW was issued by the County to the Shriners CD#15CL2001, Inc. (operating as X4B Shriners United) to occupy a 4,200-square-foot unit in the Rosecroft Shopping Center to operate a private club. The applicant was required to provide proof of their tax exempt status. At that time, a private club was defined as an establishment providing facilities for entertainment or recreation for only bona fide members and guests, and not operated for profit. Since the time the applicant was issued the use and occupancy permit, the definition of a private club was amended in the Zoning Ordinance per County Council Bill, CB-46-2010(DR-2) to specifically exclude the use of adult entertainment.

Section 27-461(b)(5) Footnote 58 of the Zoning Ordinance as amended by County Council Bill, CB-56-2011 and states the following;

Footnote 58

Any existing establishment in the C-S-C Zone or C-M 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 hours of operation shall be limited to 5:00 P.M. to 3:00 A. M.

Comment: The subject application was accepted on May 21, 2012. No notes or statements are provided on the site plan or in the Applicant’s Justification Statement that indicate that the proposed use will comply with the hours of operation limitations that are provided in Footnote 58.

F. Neighborhood and Surrounding Uses:

The Rosecroft Shopping Center is part of the larger Rosecroft community which lies south of the Capital Beltway (I-495), north and west of Henson Creek, and north and east of Rosecroft Raceway. The use is located within an integrated shopping center which is defined in Section 27-107.01(208) of the Zoning Ordinance as a group of three or more retail stores planned and developed under a uniform development scheme and served by common and immediate off-street parking and loading facilities. The uses that abut the shopping center are as follows;

North— Brinkley Road right-of-way

South— Huntley Square Condominiums in the R-18 Zone

East— Auto Filling Station and Food or Beverage Store in the C-S-C Zone

West— Brinkley House Apartments in the R-18 Zone

- G. **Specific Special Exception Requirements:** There are no specific special exception requirements for the use. The additional requirements for the use of Adult Entertainment contained in Section 475.06.06 of the Zoning Ordinance only apply to the use when located in the I-2 Zone.
- H. **Parking Regulations:** The use is located within an integrated shopping center which requires one parking space for every 250 square feet of gross leasable area. The shopping center has a gross leasable area of 113,095 square feet and requires a total of 453 parking spaces and four loading spaces to serve the property. A total of 482 parking spaces and four loading spaces are provided on the site.
- I. **Prince George's County Landscape Manual Requirements:** In a memorandum dated July 20, 2012, the Urban Design Section stated that the application is exempt from the 2010 *Prince George's County Landscape Manual* pursuant to Section 1.1 (b) which states: Existing conditions on 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, is therefore, not subject to the requirements of the Tree Canopy Coverage Ordinance (TCC).
- J. **Zone Standards:** The property is in conformance with the requirements of the C-S-C Zone. No new construction or increase in gross floor area (GFA) is being proposed through the subject special exception application. Departure and variance applications have been previously approved by both the Planning Board and the Board of Zoning Appeals for the shopping center for any prior zoning standards that were unable to be met. No variances have been requested as a part of the subject special exception request.
- K. **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: During the review of the use and occupancy permit, the M-NCPPC Permit Review Section requested that the applicant submit evidence demonstrating that the proposed use met the definition of a private club as stated in Section 27-107.01(49) of the Zoning Ordinance. Articles of Incorporation and a tax-exempt determination from the Internal Revenue Service (IRS) were requested.

Along with the Articles of Incorporation, the applicant submitted a letter from the IRS dated March 23, 2005, which determined that the applicant, CD#15CL2001, Inc., was exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Organizations exempt under Section 501(c)(3) of the Internal Revenue Code are further classified as either public charities or private foundations. The Internal Revenue Service (IRS) determined that the applicant, CD#15CL2001, Inc., was a public charity.

At the time of the use of occupancy permit, Section 27-107.01(49) of the Zoning Ordinance defined a Private Club or Lodge as the following:

Section 27-107.01(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.

Since the time the applicant was issued the use and occupancy permit, the definition of a private club was amended in the Zoning Ordinance on September 7, 2010 per County Council Bill CB-46-2010(DR-2), to specifically exclude the use of adult entertainment.

During the review of the use and occupancy permit, the applicant submitted documentation stating that the Shriners United was an auxiliary group of the Masonic Lodge. A copy of the retail lease between the landlord of the Rosecroft Shopping Center and CD#15 CL2001,INC., doing business as the Shriners United, was also submitted. Paragraph (L) within the lease agreement states the following:

Permitted Use of Premises: Non-Profit, Charitable Masonic Fraternal Organization. Tenant will utilize space primarily to hold lodge meetings, conduct educational classes, hold fund raisers, and provide receptions/parties for members. As a secondary use, Tenant will rent out space to other Fraternal, Masonic Groups to hold the same types of events as described above. At some events, alcoholic beverages may be brought in by the group. Tenant will meet all County ABC requirements for “one day” usage of alcoholic beverages and carry the necessary insurance.

Whether the applicant operates in accordance with their signed lease agreement with the owner of the shopping center would appear to be a private legal matter between the two parties. However, the lease agreement with the shopping center was submitted to M-NCPPC staff during the review of the use and occupancy permit to further clarify how the proposed use intended to operate at this location. The use of adult entertainment was not one of the “permitted uses” that was proposed at the time.

Although the applicant has an issued use and occupancy permit for a private club, there obviously appears to have been some misrepresentation on the applicant’s behalf at the time of the use and occupancy permit as to what their ultimate intentions were in operating at this location. Since adult entertainment was not a use that was listed in the Zoning Ordinance’s table of uses at the time of the use and occupancy permit, the Permit Review Section generally considered adult entertainment to be a form of a recreational establishment of a commercial nature.

At that time, Section 27-107.01 (192) of the Zoning Ordinance defined a Recreational Establishment of a Commercial Nature as the following:

(192) Recreational or Entertainment Establishment of a Commercial Nature: An establishment which provides entertainment, recreation, or amusement for profit. This term shall not include an “Amusement Arcade,” “Reducing/Exercise Salon or Health Club,” or a “Massage Establishment”.

Since that time, the Zoning Ordinance’s definition of a Recreational Establishment of a Commercial Nature was amended on September 7, 2010 thru the District Council’s adoption of County Council Bill CB-46-2010 (DR-2), and further amended on November 15, 2011 through the District Council’s adoption of County Council Bill CB-56-2011 (DR-3) to the following:

- (192) Recreational or Entertainment Establishment of a Commercial Nature: An establishment which provides entertainment, recreation, or amusement for profit. This term shall not include an “Amusement Arcade,” “Reducing/Exercise Salon or Health Club,” or a “Massage Establishment” but shall include any form of a “Rental Hall” or “Dance Hall” or “Banquet Hall” not sanctioned by another special exception or private club.
(CB-46-2010, CB-56-2011)**

On September 19, 2006, the Permit Review Section issued written comments to the applicant for Use and Occupancy Permit 37380-2006-U asking the applicant to clarify their proposed use, and to clarify whether they met the definition of a private club in accordance with Section 27-107.01(49) of the Zoning Ordinance. The first one of these comments provided the applicant the definition of a private club as it was listed in the Zoning Ordinance at that time, and further named two examples of non-profit private clubs that are only open to bona fide members and guests (the Knights of Columbus and the American Legion). The comments further stated that if the proposed use did not meet the definition of a private club, further clarification on how the proposed hall will be used must be submitted by the applicant in order to determine the correct use and whether the use should be considered an auditorium or a recreational establishment of a commercial nature.

Obtaining a use and occupancy permit for a recreational establishment of a commercial nature on this property would have required the applicant to obtain approval of a special exception application. However, the applicant chose to apply for a use and occupancy permit for a private club. Private clubs such as the Knights of Columbus and the American Legion are legitimate examples of a non-profit establishment for only bona-fide members and guests. If the applicant intended to have adult entertainment at this location, to be open to any member of the general public who pays their membership fee on a given night, and to operate for a profit, then the use and occupancy permit was obtained fraudulently, and is therefore, not in harmony with the purposes of this Subtitle.

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

Comment: To be in accordance with this Subtitle, and specifically Footnote 58 within Section 27-461 of the Zoning Ordinance, the applicant would have to have a valid use and occupancy permit for a private club that was not obtained fraudulently.

- (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: In a memorandum dated June 26, 2012, the Community Planning South Division stated that the subject application conforms to the commercial land use recommendation within the April 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac*.

April 2006 Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac:

2. Place-Making and Economic Development (page 15)

There is a need to create places of distinction-central places that provide appropriate and attractive retail, commercial and transit services and reflect a new and improved character for the community.

Policy 3: Renew or replace declining retail and commercial areas with compatible, economically viable land uses (page 23)

Strategies

- **Design new or restored uses for compatibility with the surrounding neighborhood.**

This application proposes the use of adult entertainment that would be located in a building that is only 34 feet away from residentially-zoned land. However, the master plan states that there is a need to provide “appropriate and attractive retail and commercial services that reflects a new and improved character for the community.” At the time of the writing of this technical staff report, staff has received over 55 letters from the surrounding residential communities requesting that the special exception application be denied due to the adverse impacts the use has had on the residents and workers in the area. The use is not only incompatible with the adjacent residential communities, it is incompatible with many of the uses that are located in the shopping center, such as the day care center, the churches, the grocery store, and the martial arts studio just to name a few.

The proposed use will not provide an appropriate and attractive service that reflects a new and improved character for the community as envisioned by the April 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac*. As a result, staff finds that the proposed use will substantially impair the integrity of the master plan.

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

Comment: The proposed adult entertainment establishment would be situated approximately 34 feet from residentially-zoned property. The Huntley Square Condominiums abut the subject property to the south and the Brinkley House Apartments abut the property to the west. Both of these adjoining properties are located in the R-18 Zone. The proposed use is also located in the same building as the Abundant Community Church and the Remnant of Christ Ministries, and it is less than 370 feet away from a day care center. The day care center was required to go through a public hearing process in order to obtain their zoning approval to operate in this shopping center. As a part of this process, the day care had to demonstrate that they had a safe and adequate outdoor play area to serve 100 children and that it was adequately setback from the adjacent residential dwellings. The Planning Board approved the day care center’s Detailed Site Plan application, DSP-00036, on November 2, 2000 (PGCPB Resolution No. 00-202).

The proposed adult entertainment establishment would be located in a building that contains two existing churches, and among other uses, located in the same shopping center with a day care center, martial arts studio, hair and nail salons, barber shop, family dollar store, thrift store, and a grocery store, and it would be sharing common parking facilities with all of these uses.

On March 16, 2005, Department of Environmental Resources (DER) issued Use and Occupancy Permit No. 22433-2001-U to the Club Elite Restaurant, located right next door to the proposed adult entertainment establishment. The permit was for a restaurant with up to 197 seats. This

approval did not include live entertainment or patron dancing past the hours of 11:00 P.M. This exclusion was added to the restaurant's use and occupancy permit due to their proximity to the abutting residentially-zoned land and their desire to not go through the special exception process. At that time, special exception approval would have been required for live entertainment and patron dancing past the hours of 11:00 P.M., and under current zoning standards, an eating and drinking establishment of any type, including music and patron dancing past the hours of 12:00 A.M., excluding adult entertainment, requires the approval of a special exception application in the C-S-C Zone.

Since, the X4B Luxury Club submitted documentation at the time of the use and occupancy permit stating that they were a non-profit private club for only bona fide members and guests, much like a Knights of Columbus Hall or an American Legion, they were not required to go through the special exception process or to demonstrate that the use would not adversely affect the health, safety, or welfare of residents or workers in the area, or be detrimental to the use or development of adjacent properties or the general neighborhood. However, there are obvious concerns that the use could adversely affect the abutting Huntley Square Condominiums located just 34 feet south of the proposed use and be detrimental to the use of the adjacent properties, most of which are already developed with residential uses.

Staff has received several letters of concern and opposition for this application from the residents of Huntley Square Condominiums and from the Huntley Square Condominiums Board of Directors. The residents cite concerns of having a sexually explicit business operate in such close proximity to their homes, the negative impact that it could have on children, noise complaints, and the posting of explicit flyers and postcards on vehicles in the shopping center. Other complaints include inappropriately or provocatively dressed employees, some possibly wearing advertisement signs for the facility, trash, some of which is sexual in nature, on the shopping center grounds nearby school bus stops and on the main access road into the Huntley Square Condominiums. Complaints also include that noise levels from this facility will shake/vibrate the windows of the adjacent residential dwellings well into the morning hours, and that the music is filled with profanity. Complaints have also been received that during nice weather, many of the patrons of the club will loiter within the parking lot adjacent to the Huntley Square Condominiums during late hours. These citizens state that the business has been a source of numerous complaints of improper and illegal activities and they believe that the use has had a negative impact on the shopping center itself. While staff is unable to confirm these specific reports, these type of issues are typically found to be associated with adult entertainment establishments and would appear to be valid concerns.

Although, the Zoning Ordinance restricts the hours of operation for adult entertainment to 5:00 P.M. to 3:00 A.M., the additional requirements for the use contained in Section 475.06.06 of the Zoning Ordinance only apply when the use is located in the I-2 Zone. If the use were located in the I-2 Zone, the establishment would have to be located at least 1,000 feet from any school, or any other building or use providing adult entertainment and at least 1,000 feet from any Residential Zone or land used for residential purposes in any zone. Staff has significant concerns that with this use being situated in the less intense C-S-C Zone, being open until 3:00 A.M. in the morning, and being located just 34 feet from the abutting residentially-zoned land, would adversely affect the health, safety and welfare of residents 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: On November 2, 2000 – Detailed Site Plan DSP-00036 (PGCPB Resolution No. 00-202), was approved by the Planning Board for the Rosecroft Shopping Center Day Care Facility. The day care was approved for up to 100 children to occupy approximately 14,280 square feet in the southwest corner of the shopping center. The site plan that was submitted for the special exception application indicates that the current tenant is the Bethal IGC Day Care Center. The day care center and the outdoor play area are situated approximately 370 linear feet from the proposed adult entertainment establishment.

Within a memorandum dated June 26, 2012, the Community Planning South Division stated that a complaint was made by a resident to M-NCPPC Staff and meeting attendees at the District IV Coffee Club meeting in July of 2012 against the club operation, citing noise from the patrons during the early hours of the morning and the littering of vehicle windows in the shopping center parking lot with explicit event flyers. Given the above report by the nearby resident, the Community Planning South Division stated that this applicant would need to properly address the special exception criterion that requires the proposal to not be detrimental to use or development of adjacent properties or general neighborhood.

A letter dated October 17, 2012 from Mary Frances Doyle, President of the District IV Citizens Advisory Council and a resident of the Huntley Square Condominiums, stated that at the end of last year she attended a meeting with the manager of the shopping center, the Assistant States Attorney, the owners and/or operators from the X4B Luxury Club and Club Elite (located next door to X4B), two county police officers, and the applicant's attorney. Discussions at the meeting pertained to the littering of the parking lot with explicit postcards, the loitering in the parking lot after club hours that sometimes extends into the parking lot of the Huntley Square Condominiums, and the fact that the residents of the adjacent Huntley Square Condominiums could not open their windows in warm weather due to the noise levels coming from the clubs. In her letter, Mrs. Doyle states that the end result of the meeting in her opinion was that the management company for the shopping center and the club representatives were not interested in improving the neighborhood.

Staff believes that not only will the proposed use be detrimental to the use or development of adjacent properties and the general neighborhood, which is primarily residential in nature, that the proposed use could also affect the development of the shopping center itself, which has at least four units that are currently vacant. Numerous letters of opposition have been received from the residents who live closest to the use and who are most affected by the proposed use. It is obvious that they have been negatively impacted by this facility and that it appears to be having detrimental affects on their quality of life. As a result, staff finds that the proposed use will be detrimental to the use or development of adjacent properties and the general neighborhood.

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

Comment: Because the property contains less than 10,000 square feet of wood land on-site and has no previous tree conservation plan approvals, a Standard Letter of Exemption from the Prince George's County Woodland Conservation Ordinance was issued by the Environmental Planning Section on May 15, 2012.

(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 that are proposed to be disturbed. The special exception application requests the approval of a use only that would be located within an existing unit in the shopping center. No new construction is proposed as part of the application.

CONCLUSION

By definition, a private club is only open to bona fide members and guests and it is not operated for profit. The applicant appears to advertise this facility as being open to the general public. Even if a one-time membership fee is charged, it would appear that anyone can be a member with a paid membership. Typical private clubs, such as the American Legion and the Knights of Columbus do not typically offer pay at-the-door events on a daily basis and their memberships require that certain criteria be met. These uses are typically viewed by the Internal Revenue Service (IRS) as being a public charity because they are a public benefit to the community and provide services and programs to help others. For example, the primary mission of the American Legion is to support the American Legion and to honor the sacrifice of those who serve by enhancing the lives of our veterans, military, and their families, both at home and abroad. That is what the Zoning Ordinance envisions a private club to be within Section 27-107.01(49).

Although the applicant may have obtained a use and occupancy permit for a private club, they did not operate as one. This private club never had the zoning approval or the legal right to operate an adult entertainment establishment at this location. The M-NCPPC Legal Department has stated that if the applicant was not truthful about their intended use at the time of review of the use and occupancy permit application, then any permit that was approved that was contingent upon the definition of “private club” was obtained through fraud.

Notwithstanding the applicant’s intended use of adult entertainment, staff is of the opinion that if a special exception application had been received for an eating and drinking establishment at this location, including music and patron dancing past the hours of 12:00 A.M., excluding adult entertainment, the applicant would be unable to meet the required findings that the proposed use which would not be detrimental to the use or development of adjacent properties or the general neighborhood, or that the proposed use would not adversely affect the health, safety, or welfare of residents or workers in the area. In this case, this shopping center is so close to residentially-zoned land that the adverse impact to the adjacent properties and the general neighborhood seems clear.

Pursuant to Section 27-461(b)(5) Footnote 58 of the Zoning Ordinance, 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 the permits issued to the applicant were the result of fraud and misrepresentation. In short, the 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.

Based on the preceding analysis and findings, staff recommends DISAPPROVAL of Special Exception Application No. SE-4717.