



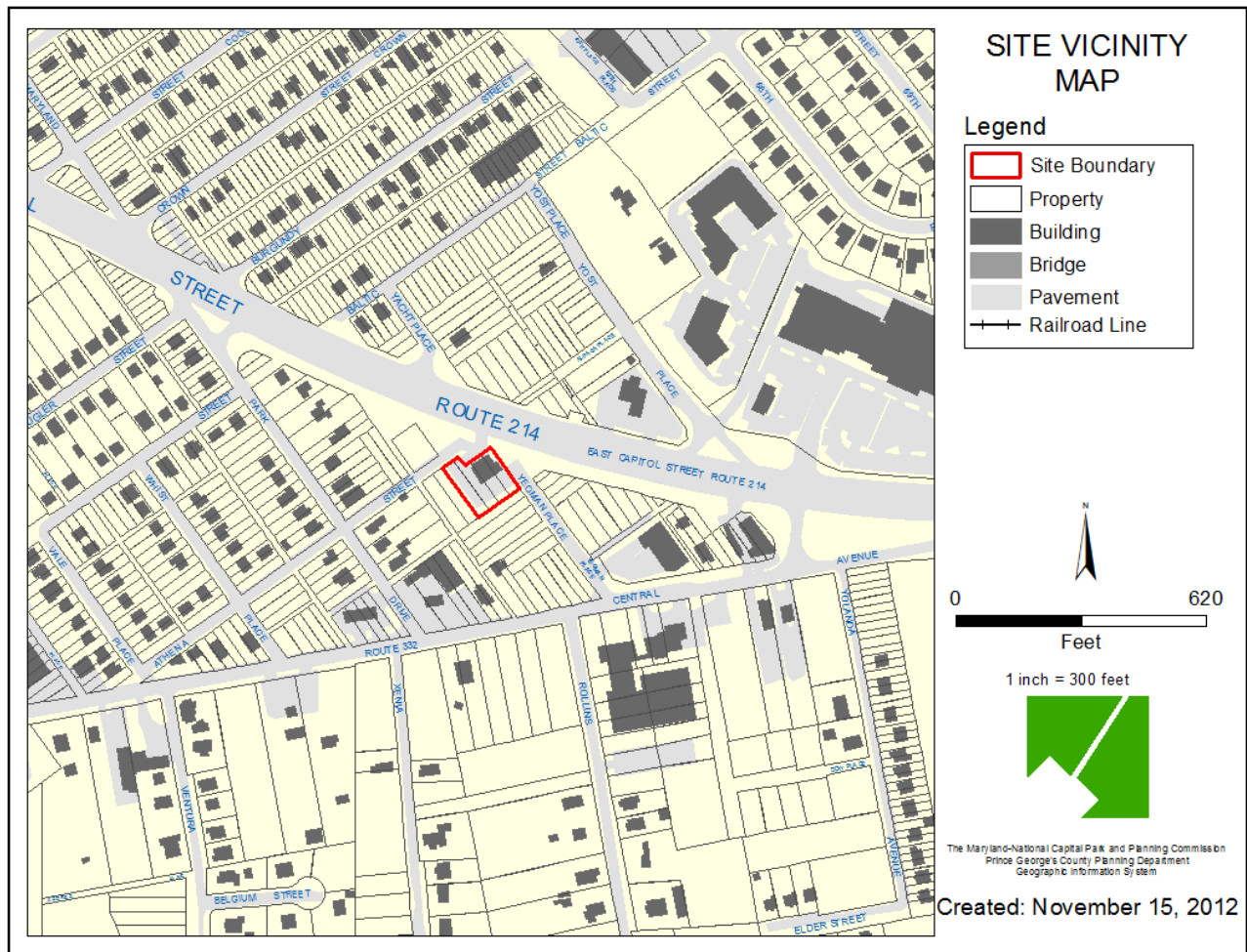
Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

Special Exception SE-4719

Application	General Data	
Project Name: Music Studio 63 d/b/a Grandma's South Carolina Catering Location: South of East Capitol Street, southeast of Athena Street, and southwest of Yeoman Place. Applicant/Address: Music Studio 63 d/b/a Grandma's South Carolina Catering 5915 Athena Street Capitol Heights, MD 20743 Property Owner: Washington Spring Works 1505 Hass Court Davidsonville, MD 21035	Planning Board Hearing Date:	12/06/12
	Staff Report Date:	11/19/12
	Date Accepted:	05/31/12
	Planning Board Action Limit:	N/A
	Plan Acreage:	0.38
	Zone:	C-M/D-D-O
	Gross Floor Area:	2,500 sq. ft.
	Lots:	2
	Parcels:	0
	Planning Area:	72
	Tier:	Developed
	Council District:	07
	Election District	18
	Municipality:	N/A
	200-Scale Base Map:	201SE05

Purpose of Application	Notice Dates	
Special exception for adult entertainment in the C-M/D-D-O Zone.	Informational Mailing	04/10/12
	Acceptance Mailing:	Pending
	Sign Posting Deadline:	N/A

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



November 19, 2012

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-4719**
Music Studio 63, d/b/a Grandma's South Carolina Catering

REQUEST: **Adult Entertainment in the C-M and D-D-O Zones**

RECOMMENDATION: **DISAPPROVAL**

NOTE:

The Planning Board has scheduled this application to be reviewed on the agenda date of December 6, 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 at the intersection of Athena Street, East Capitol Street, and Yeoman Place, bearing the address of 5915 Athena Street. Vehicular access to the property is provided via both East Capitol Street and Athena Place. The property consists of 0.38 acre in the Miscellaneous Commercial (C-M) and Development District Overlay (D-D-O) Zones. The application describes the site as Lots 8 and 9, Block 3, of the Maryland Park Subdivision, but the subject property appears to include at least parts of Lots 5 and 7 as well. The entire gross floor area of the existing one-story building consists of approximately 2,500 square feet. Seventeen surface parking spaces in a fenced-in lot are provided on the site to serve patrons and employees.

B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	C-M/D-D-O	C-M/D-D-O
Use(s)	Permitted: Auditorium, Catering Establishment, Banquet Hall Actual: Adult Entertainment	Adult Entertainment
Acreage	0.38	0.38
Lots	Parts of 4	Parts of 4
Parcels	1	1
Square Footage	2,500	2,500
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:

December 7, 1989—	Permit 54563-89-U was approved for a three-bay auto repair shop on the site.
April 16, 1998—	Permit 2839-98-U was approved for a new auto repair shop.
May 1, 2003—	Permit 13659-2003-CU for “Multi-purpose recreation” was applied for. Permit Review staff assigned the closest use category, “recreational establishment of a commercial nature.” When told that this use is not permitted in the Addison Road D-D-O Zone but that a catering establishment would be, the permit was put on hold.
June 19, 2003—	Permit 13659-2003-01 was approved for an auditorium/catering establishment/banquet facility with 56 seats. The permit approval specifically states “no recreational establishment of a commercial nature,” which was the use category under which adult entertainment was then classified.

- August 1, 2006—** Permits 31331-2006-U and 31339-2006-U were applied for, proposing adding a limo company and party rental and supply business, respectively. They were put on hold and not pursued.
- February 2, 2008—** Permit 37720-2008-CG was approved to add a carport, concrete slab, and new fencing.
- May 31, 2012—** Special Exception SE-4719 for an adult entertainment use in the C-M/D-D-O Zone was accepted by the Planning Department. The applicant was requested to submit additional plans and justification so that the case can be referred out for comments, but they failed to do so.
- July 10, 2012—** The Zoning Section received a letter from the applicant's attorney requesting that the processing of the subject special exception application be placed on hold until after the applicant has the opportunity to request and process a forthcoming application for certification of a nonconforming use.
- October 10, 2012—** Jimi Jones, Supervisor of the Zoning Section, sent an email to the applicant's attorney stating that, per their earlier phone conversation that day, they have been advised that the special exception applications for the proposed adult entertainment uses are scheduled to be reviewed by the Planning Board on December 6, 2012 (SE-4719 and SE-4721). Mr. Jones further stated that the required site plans and documents needed to process the application are still outstanding and that staff will continue to move forward with their review regardless of the status.
- October 16, 2012—** Jimi Jones, Supervisor of the Zoning Section, sent an email to the applicant's attorney reminding them that the scheduled hearing date is rapidly approaching and that materials needed for the review and processing of the special exception application have not been submitted to the Planning Department, and that a staff report will be issued without this information if need be.
- October 31, 2012—** Permit 32362-2012-U was placed on hold by the Permit Review Section and written comments were issued to the applicant's attorney. This permit proposes the use of a "nonconforming" auditorium in the C-M/D-D-O Zone.

- D. **Master Plan Recommendation:** The 2002 *Prince George's County Approved General Plan* placed the subject 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 property is subject to the recommendation of the 2000 *Approved Sector Plan and Sectional Map Amendment for the Addison Road Metro Town Center and Vicinity* (Addison Road Metro Town Center Sector Plan and SMA). It proposes a service-commercial use for the site as part of Subarea 1—MD 214/Addison Road Urban Boulevard. The illustrative concept plan for Subarea 1 recommends that the existing access to MD 214 be removed.

- E. **Request:** The applicant seeks approval of a special exception application to operate an adult entertainment establishment in the C-M/D-D-O Zone. The D-D-O Zone Table of Uses Permitted contained in the Addison Road Metro Town Center Sector Plan and SMA supersedes the table of uses for commercial zones found in Section 27-461 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, except as provided for in the Table of Uses..." The current C-M/D-D-O Zone does not have a listing for adult entertainment, and expressly prohibits "recreational establishment of a commercial nature," which was the use category applied to such uses at the time of the 2000 Addison Road Metro Town Center Sector Plan and SMA. Uses which are not listed in the table of uses are prohibited.

Section 27-107.01(7.1) of the Zoning Ordinance defines adult entertainment as the following:

- (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.**

Section 27-461(b)(5) Footnote 58 of the Zoning Ordinance states the following;

- 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.**

On June 19, 2003, Permit 13659-2003-01 was approved for an auditorium/catering establishment/banquet facility with 56 seats. The permit approval specifically states "no recreational establishment of a commercial nature," which was the use category under which adult entertainment was then classified.

When the Permit Review Section asked this applicant to clarify their intended use during the review of the permit, the applicant's attorney, under protest, stated in writing that:

"Grandma's South Carolina Catering and Banquet Hall (GSCC&BH) will be a family-owned company whose philosophy will be to promote entertainment to all segments of the community. The activities that will be sponsored are designed to promote safety, health, education, cultural, spiritual and social, as well as economic growth. Our client's vision is to empower our community to achieve higher or enriched levels of development and to enhance our community's quality of life.

"To this end, GSCC&BH proposes to open and operate a venue in Prince George's County where activities fostering its philosophy can be showcased. It is anticipated that these activities will include educational seminars, private parties, banquets, weddings and receptions, theatrical stage performances, art exhibitions, poetry readings, graduation ceremonies, youth dance recitals, community and corporate business meetings. The use of the facility will not include activities specifically forbidden by the Prince George's County Zoning Ordinance." (Letter, Whitley to Jesse dated June 11, 2003)

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

North and East— East Capitol Street (MD 214);

South— Old Central Avenue (MD 332); and

West— Southern Avenue (The District of Columbia).

The neighborhood is predominantly residential in character. Nonresidential uses are found along Old Central Avenue, including several car repair businesses, a gas station, a post office, and several churches.

The property is surrounded by the following uses:

North— Across East Capitol Street is a single-family residence and undeveloped land in the R-20 (One-Family Triple-Attached Residential)/D-D-O Zone.

East— A vacant parcel in the C-M/D-D-O Zone.

South— Outdoor storage in the C-M/D-D-O Zone.

West— Undeveloped land in the C-M/D-D-O Zone and single-family residences along Athena Street in the R-T (Townhouse)/D-D-O 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 27-475.06.06 of the Zoning Ordinance only apply to the use when located in industrial zones.

H. **Parking Regulations:** The applicant for this case has not provided the site plans that were required for the referral process. The one site plan that was submitted by the applicant during the pre-acceptance review of this application only included parking calculations for the proposed adult entertainment use only and indicated that 30 parking spaces are required and 17 are provided, a deficit of 13. The applicant acknowledged at the time of submittal that a departure from parking and loading spaces (DPLS) application would have to be approved by the Planning Board in order to waive some of the required parking spaces for this use. However, this application was never pursued. Therefore, the applicant has not demonstrated that the required parking spaces are being provided on the site.

I. **Prince George's County Landscape Manual Requirements:** The application is exempt from the 2010 *Prince George's County Landscape Manual* pursuant to Section 1.1(b) which states:

Existing conditions on a 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.

J. **Zone Standards:** No new construction or increase in gross floor area is being proposed through the subject special exception application. The building and parking were found to be in substantial conformance with the requirements of the C-M/D-D-O Zone at the time of its numerous permit applications. However, site plans were not submitted by the applicant for the special exception process. Therefore, compliance with the C-M/D-D-O zoning standards is unable to be determined at this time.

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;**
- (2) **The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;**
- (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;**
- (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**
- (6) **The proposed site plan is in conformance with an approved Tree Conservation Plan.**
- (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.**

Discussion: As noted previously, the applicant in this case has not submitted the statement of justification and plans necessary to process the application. This places their request in an untenable position, since Section 27-142 of the Zoning Ordinance places the burden of proof in any zoning case squarely on the applicant. It is not staff's responsibility to adduce facts based on our independent understanding of the case. However, Section 27-311 of the Zoning Ordinance requires staff to produce a staff report in a timely manner, and further requires staff to make a recommendation in that report. Based on the applicant's refusal to provide the necessary information, staff is compelled to recommend disapproval of the application.

CONCLUSION

Staff recommends DISAPPROVAL of Special Exception No. 4719.