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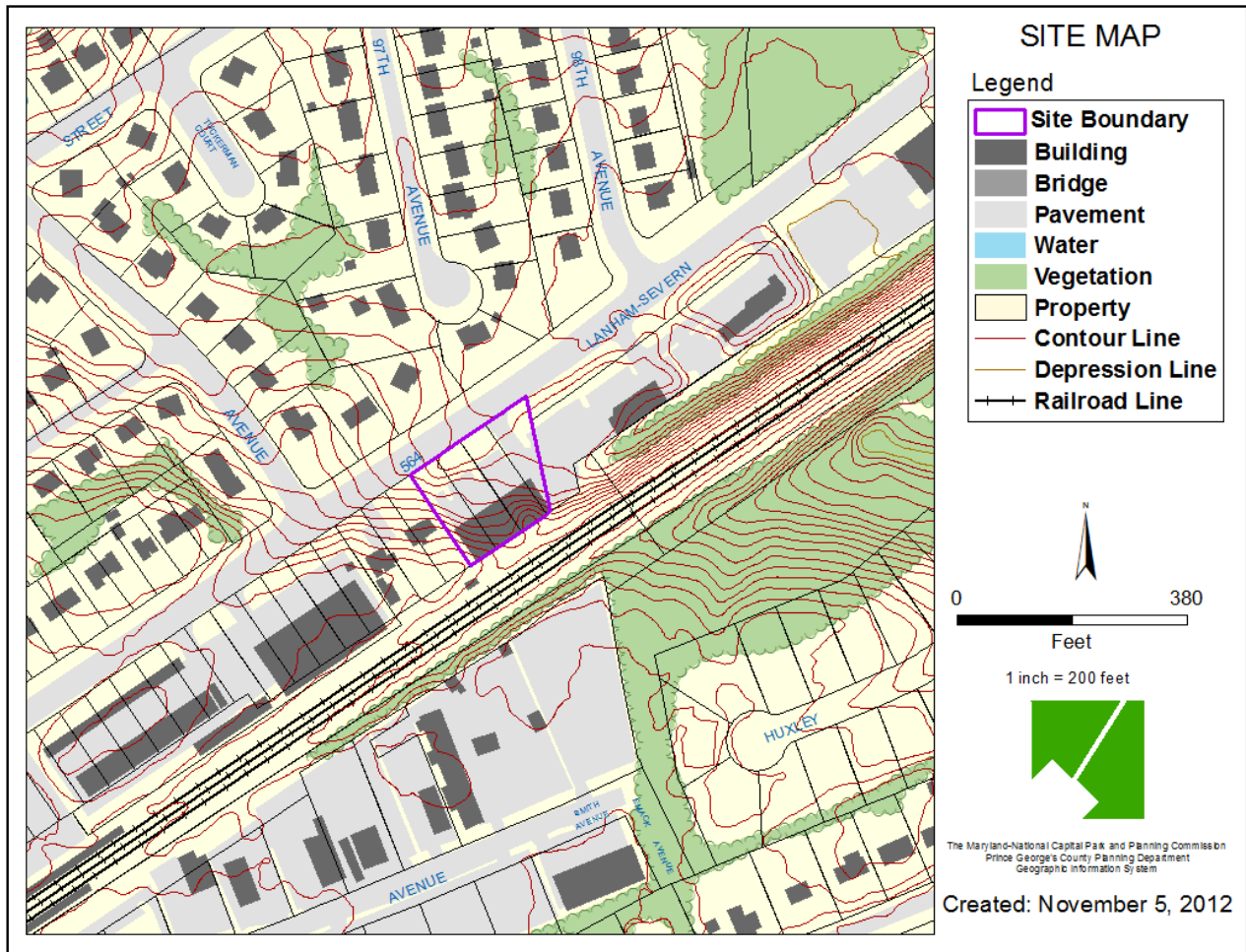
## Special Exception

## SE-4720

Application	General Data	
<b>Project Name:</b> Maages Auditorium d/b/a Sinsaysionals  <b>Location:</b> South of Lanham Severn Road (MD 564), approximately 350 feet west of 98th Avenue.  <b>Applicant/Address:</b> Maages Auditorium 9605-9607 Lanham Severn Road Seabrook, MD 20706  <b>Property Owner:</b> Fortress Emack, LLC 2824 Solomons Island Road Edgewater, MD 21037	Planning Board Hearing Date:	01/10/13
	Staff Report Date:	12/26/12
	Date Accepted:	05/31/12
	Planning Board Action Limit:	N/A
	Plan Acreage:	0.74
	Zone:	C-M
	Gross Floor Area:	2,674 sq. ft.
	Lots:	4
	Parcels:	N/A
	Planning Area:	70
	Tier:	Developing
	Council District:	03
	Election District	20
	Municipality:	N/A
	200-Scale Base Map:	208NE08

Purpose of Application	Notice Dates	
Special exception for adult entertainment in the C-M Zone.	Informational Mailing	04/10/12
	Acceptance Mailing:	Pending
	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>
		X	



December 26, 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-4720**  
**Maages Auditorium d/b/a Sinsaysionals**

REQUEST: **Adult Entertainment in the C-M Zone**

RECOMMENDATION: **DISAPPROVAL**

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NOTE:

The Planning Board has scheduled this application to be reviewed on the agenda date of January 10, 2013. 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 on the southeast side of Lanham Severn Road (MD 564), bearing the address of 9605–9607 Lanham Severn Road. Vehicular access to the property is provided via a driveway which appears to serve the adjoining car wash as well. The property consists of 0.74 acre in the Commercial Miscellaneous (C-M) Zone. The application correctly describes the site as Parts of Lots 1 through 4, Block P, of the Seabrook Subdivision. The adult entertainment club, Sinsaysionals, occupies two units in a strip of seven. The remaining businesses in the center are auto-related. Access is gained through a door in 9605, beyond which is a vestibule where identification is checked and a \$20.00 cover charge collected. The club is divided into two sections, the main stage room and a VIP room (The Boom-Boom Room) where patrons and dancers can, for an additional charge, gain admission. The door at 9607 is blacked-out. There is no exterior sign identifying the club, however, there are several signs and banners within the vestibule which apparently are placed outside while the club is open. According to advertising for the club, it is open most nights with times ranging from 7:00 p.m. to 5:00 a.m. There is no licensed bar, but patrons can apparently bring their own alcohol in plastic containers. Twenty surface parking spaces are provided on the site to serve patrons and employees of all of the uses on the site.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	C-M	C-M
Use(s)	<b>Permitted:</b> Auditorium, Recreational establishment of a commercial nature, Dance Hall <b>Actual:</b> Adult Entertainment	Adult Entertainment
Acreage	0.74	0.74
Lots	Parts of 4	Parts of 4
Parcels	0	0
Square Footage	2,674	2,674
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:

**February 22, 2001—** Permit 8329110-2000-U was approved for a 60-seat auditorium (Sinsaysionals Indoor Theater) at 9607 Lanham Severn Road.

**March 18, 2002—** Permit 6015-2002-U was approved for a recreational establishment of a commercial nature, dance hall, and auditorium with a maximum of 60 seats at 9607 Lanham Severn Road.

**April 17, 2002—** Permit 13039-2002-U was approved for a 20-student automotive repair training center at 9607 Lanham Severn Road.

- April 20, 2002—** Permit 18348-2002-U was approved for a 60-seat auditorium at 9605 Lanham Severn Road.
- May 6, 2002—** Permit 13039-2002-U was revised to remove the training center at 9607 Lanham Severn Road.
- June 26, 2002—** Permit 18348-2002-U was revised to change the number of seats from 60 to 28 at 9605 Lanham Severn Road.
- July 29, 2002—** Permit 18348-2002-U was revised a second time to be a CUW (Commercial Use—Walkthrough) permit for a 60-seat auditorium at 9605 Lanham Severn Road.
- May 31, 2012—** Special Exception SE-4720 for an adult entertainment use in the C-M 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 application for the proposed adult entertainment use is scheduled to be reviewed by the Prince George's County Planning Board on January 10, 2013 (SE-4718 and SE-4720). 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 32365-2012-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 Zone.
- November 26, 2012—** The applicant's attorney submitted a letter to the Planning Board asking that Special Exception SE-4720 be stayed until the nonconforming use application is acted upon.

- D. **Master Plan Recommendation:** The 2002 *Prince George's County Approved General Plan* places this property in the Developing Tier. The vision for the 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.

The property is subject to the recommendation of the 2010 *Glenn Dale–Seabrook–Lanham and Vicinity Approved Sector Plan and Sectional Map Amendment* which recommends a mixed-use land use for the subject property as part of the Seabrook MARC Station focus area. The objective of the plan is to reduce the profusion of auto-oriented uses along the Lanham Severn Road (MD 564) corridor by creating a transit-oriented, mixed-use community center along Lanham Severn Road that focuses on the Seabrook MARC station.

- E. **Request:** The applicant seeks approval of a special exception application to operate an adult entertainment establishment in the C-M Zone.

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 March 18, 2002, Permit 6015-2002-U was approved for a recreational establishment of a commercial nature, dance hall, and auditorium with a maximum of 60 seats at 9607 Lanham Severn Road. When the Permit Review Section asked this applicant to clarify their intended use during the review of the permit, they stated in writing that:

“The proposed use of the space will be to hold Cabarets (public dance night w/ticketed admission) Fashion & Hair Shows, Comedy night, Amateur Night, Poetry Readings, Wedding Receptions & Talent Shows.” (Letter, Holley to Park and Planning dated March 15, 2002)

On July 29, 2002, Permit 18348-2002-02-U was approved as a CUW (Commercial Use—Walkthrough) permit for a 60-seat auditorium at 9605 Lanham Severn Road. Both of these permits remain in effect.

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

**Northwest—** Lanham Severn Road (MD 564) including the residential and commercial properties on the northwest side;

**Northeast—** Santa Cruz Street;

**South—** AMTRAK railroad tracks; and

**West—** Carter Avenue.

The neighborhood coincides with the Seabrook MARC Station focus area, which runs along Lanham Severn Road (MD 564) from Carter Avenue in the west to Santa Cruz Street in the east. The Seabrook MARC station lies at the core of this area. Lanham Severn Road and the railroad tracks run parallel to each other, with a small strip of land placed between them that contain primarily auto-related uses. The Seabrook Station shopping center lies to the north of Lanham Severn Road just southwest of the MARC station. Northwest of the site, directly across Lanham Severn Road, are single-family residences in the large Seabrook Acres subdivision.

The property is surrounded by the following uses:

**North—** Car repair businesses and a car wash in the C-M Zone.

**East—** A vacant parcel in the C-M Zone.

**South—** AMTRAK railroad tracks.

**West—** Across Lanham Severn Road (MD 564) are single-family residences in the R-80 (One-Family Detached Residential) 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 site plan that was submitted by the applicant for the most recent permit only included parking calculations for the proposed adult entertainment use only and indicated that 34 parking spaces are required and 20 are provided, a deficit of 14. 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 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 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 Application No. SE-4720.