



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

Special Exception

SE-4721

Application	General Data	
Project Name: Upscales Location: Along the north side of Bexley Lane, approximately 100 feet east of its intersection with St. Barnabas Road (MD 414). Applicant/Address: Upscales Ballroom and Party Equipment Rental 3900 Bexley Place Suitland, MD 20746 Property Owner: Four Seasons Investment Company, LLC 4 Reservoir Circle Baltimore, MD 21208	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:	2.95
	Zone:	C-S-C
	Gross Floor Area	7,675 sq. ft.
	Lots:	None
	Parcels:	1
	Planning Area:	76A
	Tier:	Developed
	Council District:	07
	Election District	06
	Municipality:	N/A
	200-Scale Base Map:	205SE04

Purpose of Application	Notice Dates	
Adult Entertainment in the C-S-C Zone.	Informational Mailing	04/10/12
	Acceptance Mailing:	Pending
	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	

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

SUBJECT: **Special Exception Application No. SE-4721**
Upscales

REQUEST: **Adult Entertainment**

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 along the north side of Bexley Lane, approximately 100 feet east of its intersection with St. Barnabas Road (MD 414). Vehicular access to the property is provided via Old Branch Avenue. The property consists of 2.95 acres in the Commercial Shopping Center (C-S-C) Zone and is known as the Luskin Branch Plaza. The entire gross floor area of the building consists of approximately 27,200 square feet, and was constructed in 1978 pursuant to Building Permit 10064-77-CGU. One-hundred-thirty surface parking spaces and three loading spaces are provided on the site. The uses in the shopping center consist of a hair salon, two churches, several vacant units, and the proposed adult entertainment establishment. A site inspection was conducted on the property on November 16, 2012.

B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	C-S-C	C-S-C
Use(s)	Auditorium w/218 seats (7,675 sq. ft) & Party Rental Store (750 sq.ft.)	Adult Entertainment (7,675 sq. ft.)
Acreage	2.95	2.95
Lots	None	None
Parcels	1	1
Square Footage of the Shopping Center	27,200	27,200
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:

July 15, 1970—	The Planning Board disapproved Zoning Map Amendment A-8244, requesting the rezoning of the property from the R-10 (Multifamily High Density Residential) Zone to the C-2 Zone (PGCPB Resolution No. 70-241).
October 7, 1970—	The District Council disapproved a request for C-2 Zoning on the subject property, but approved Zoning Map Amendment A-8244 rezoning the subject property from the R-10 Zone to the C-1 Zone, subject to the condition that there will be no drive-in restaurant or service station built on the property (Conditional Zoning Resolution No. 471-1970).
March 24, 1977—	Final Plat of Subdivision, NLP 96@86, was recorded in the Prince George's County Land Records.
May 31, 1977—	Departure from Design Standards DDS-77 was approved by the Planning Board to waive the requirement for the shopping center that access to a loading space not be within 50 feet of residentially-zoned land and that the driveway leading to the loading space is a minimum of 22 feet in width. (PGCPB Resolution No. 88-104).

- June 20, 1977—** Building Permit 10064-77-CGU was approved authorizing the new construction of the shopping center. Information derived from the Maryland Department of Assessments and Taxation indicates that the shopping center was fully constructed some time in 1978.
- November 20, 2003—** Detailed Site Plan DSP-03044 was approved by the Planning Board for a daycare center with up to 224 children to occupy approximately 10,800 square feet in the shopping center. An 8,400-square-foot outdoor play area was also required to be provided on the property (PGCPB Resolution No. 03-252).
- April 26, 2004—** The District Council, after a full review of the administrative record and after a public hearing, approved Detailed Site Plan DSP-03044 and affirmed PGCPB Resolution No. 03-252 for a 10,800-square-foot daycare center to be located in the shopping center. However, the total enrollment of the daycare center was reduced by the District Council to no more than 170 children. Based on a site visit conducted on November 16, 2012, it does not appear that the daycare center is still operating in the shopping center.
- March 17, 2010—** Building/Use and Occupancy Permit 2122-2010-CU was approved by the Maryland-National Capital Park and Planning Commission (M-NCPPC) for a 7,675-square-foot auditorium with 218 seats, a 750-square-foot party equipment rental store, and an exercise class with up to 40 students at any one time; provided the exercise class does not operate at the same time as the auditorium. This approval specifically stated that it did not include adult orientated uses, lap dancing, Go-Go's, or public dances, etc.
- September 22, 2011—** Use and Occupancy Permit 26682-2011-U was placed on hold by the M-NCPPC Permit Review Section and written comments were issued to the applicant. This permit proposed a dance/auditorium/banquet hall, and rental sales and service in the C-S-C Zone for Upscale Ballroom and Salon, LLC. From the documentation in the file, it appears that the applicant applied for this permit because a county inspector did not feel that the prior issued permit included a detailed description of the uses that were being proposed at this location.
- 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 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 e-mail to the applicant's attorney stating that, per their earlier phone conversation that day, they have been advised that Special Exception applications SE-4721 and SE-4719 for the proposed adult entertainment uses are scheduled to be reviewed by the Planning Board on December 6, 2012. Mr. Jones further stated that the required site plans and documents needed to

process the applications are still outstanding and that staff will continue to move forward with their review regardless of their status.

October 16, 2012— Jimi Jones, Supervisor of the Zoning Section, sent an e-mail 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— Use and Occupancy Permit 32363-2012-00 was placed on hold by the M-NCPPC Permit Review Section and written comments were issued to the applicant's attorney. This permit proposed the use of a "nonconforming" auditorium and rental service in the C-S-C Zone for Upscales Ballroom and Party Equipment Rental.

- D. **Master Plan Recommendation:** The April 2008 *Approved Branch Avenue Corridor Sector Plan and Sectional Map Amendment* recommended a commercial land use for the subject property and retained the property's C-S-C Zoning designation.

The property is located in the Developed Tier. The vision for Developed Tier is a network of sustainable transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods.

- 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 Luskin's Branch Plaza Shopping Center which is situated on a 2.95-acre parcel and has a gross floor area consisting of approximately 27,200 square feet. The special exception boundaries for the proposed adult entertainment use are confined to a 7,675-square-foot unit within the shopping center.

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 17, 2010, Building Permit 2122-2010-CU was approved by the Permit Review Section for a 7,675-square-foot auditorium with 218 seats, a 750-square-foot party equipment rental store, and an exercise class with up to 40 students at any one time provided the exercise class did not operate at the same time as the auditorium.

When the Permit Review Section asked this applicant to clarify their intended use during the review of Permit 2122-2010-CU, the applicant stated in writing on March 17, 2010 that no adult-orientated uses were being proposed at this location. As a result, the Permit Review Section’s written approval of this permit specifically stated that the approval did not include adult-orientated uses, lap dancing, Go-Go’s, or public dances.

- F. **Neighborhood and Surrounding Uses:** The property is surrounded by public rights-of-way on three sides that include St. Barnabas Road (MD 414) to the west, Bexley Place to the south, and Old Branch Avenue to the east. The neighborhood contains a mixture of commercial uses within the immediate area of the site, but beyond to the north, south, and east is predominately residential in nature and includes detached single-family dwellings, attached single-family dwellings, and multifamily dwellings that are located in various residential zones.

Staff would submit that the neighborhood boundaries are as follows:

- North—** Silver Hill Road (MD 458)
South— St. Barnabas Road (MD 414)/Branch Avenue (MD 5) interchange
East— Henson Valley Stream Park
West— St. Barnabas Road (MD 414)

The uses that abut the shopping center are as follows:

- North—** A dry cleaning business and a detached single-family dwelling in the C-S-C Zone.
South— Across Bexley Place are single-family dwellings in the C-M (Miscellaneous Commercial) Zone.
East— Across Old Branch Avenue is undeveloped land and an apartment building in the R-10 Zone.
West— Across St. Barnabas Road is a church in the M-X-T (Mixed Use-Transportation Oriented) 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 (Heavy Industrial) Zone.

H. **Parking Regulations:** This shopping center is not an integrated shopping center. Section 27-107.01(208) of the Zoning Ordinance defines an integrated shopping center 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. This shopping center does not contain three retail uses. As a result, the required parking is determined based on the individual uses that make up the shopping center.

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 and did not include the required parking calculations for the entire shopping center. Therefore, the applicant has not demonstrated that the required number of parking spaces for all of the uses on this property is being fully provided on the site.

In reviewing parking schedules that were prepared by the Permit Review Section for the most recent use and occupancy permits for the shopping center, and including the required parking for the proposed adult entertainment establishment (which requires one parking space for every 80 square feet of gross floor area), there would appear to be a significant parking shortage on the property. As a result, it would appear 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.

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 shopping center was found to be in substantial conformance with the requirements of the C-S-C Zone at the time of its construction, and later during the District Council's review and approval of Detailed Site Plan DSP-03044 for a daycare center with up to 170 children. However, site plans were not submitted by the applicant for the special exception process. Therefore, compliance with the C-S-C Zoning standards is unable to be fully 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 this 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 denial of the application.

CONCLUSION

Based on the preceding analysis and findings, staff recommends DISAPPROVAL of Special Exception Application No. SE-4721.