

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF ZONING HEARING EXAMINER**

SPECIAL EXCEPTION

4720

DECISION

Application:	Auditorium with Adult Entertainment
Applicant:	Maages Auditorium d/b/a Sinsaysionals
Opposition:	Woodstream Village HOA, et.al.
Hearing Date:	April 10 and May 9, 2013
Hearing Examiner:	Joyce B. Nichols
Disposition:	Denial

NATURE OF REQUEST

(1) Special Exception 4720 is a request for permission to use approximately 2,674 sq. ft. of an approximately 0.74 acre of land, being Parts of Lots 1 through 4, Block P, of the Seabrook Subdivision, in the C-M (Commercial Miscellaneous) Zone located on the southeast side of Lanham Severn Road (MD 564), also identified as 9605-9607 Lanham Severn Road, Lanham, Maryland, for an Auditorium with Adult Entertainment. As Adult Entertainment is prohibited in the C-M Zone pursuant to § 27-461(b), this Application is being treated as a request for an Auditorium, which is a permitted use in the C-M Zone, with the caveat that an Auditorium with a valid Use and Occupancy permit including activity which meets the definition of Adult Entertainment (§ 27-107.1(a)(7.1)) may continue upon approval of a Special Exception.
§ 27-461 fn 58

(2) As the Applicant essentially failed to file any evidence in support of its Application, the Planning Board did not schedule a public hearing and in lieu thereof, adopted the recommendation of the Technical Staff. (Exhibit 1) The Technical Staff, after review of the information submitted by the Applicant during the evidentiary hearing before the Zoning Hearing Examiner recommended denial of the Application. (Exhibits 8 and 48)

LEGAL ARGUMENTS

Motion to Stay Proceedings

(1) By letter dated August 13, 2013 (Exhibit 60) Appellant requested a Stay of the instant proceedings pending the Applicant's Motion for a Preliminary Injunction (CA No. DKC 13-

1722) filed in the United States District Court for the District of Maryland. On March 5, 2014, Judge Chasanow issued her Memorandum Opinion denying the Applicant's Motion for a Preliminary Injunction/Temporary Restraining Order. (Exhibit 61) Thus this Application is ripe to proceed.

Constitutionality of CB-56-2011

(1) CB-56-2011 must be read pursuant to the general principles of statutory construction. See *Koste v. Town of Oxford*, 431 Md. 14, 17-18 (2013)¹ The District Council is generally authorized by state law to promulgate, adopt and amend local zoning laws. See MD. CODE ANN., Land Use § 22-104. Under the same state law, “[a] person may continue, and appropriate licenses may be issued to the person for, a lawful nonconforming use existing on the effective date of the respective zoning laws in the metropolitan district.” MD. CODE ANN., Land Use § 22-113. When read as a whole, the Land Use Article of the Annotated Code contemplates that the District Council is vested with authority to establish reasonable regulations pertaining to nonconforming uses. This principle was recognized by the Court of Appeals in *County Council of Prince George's County v. E.L. Gardner, Inc.*, 293 Md. 259, 443 A.2d 114 (1982), a case addressing the Regional District Act. CB-56-2011 merely modifies the Table of Uses for the C-M Zone, an act on its face that is not repugnant to the Regional District Act.

No use shall be allowed in the Commercial Zones, except as provided for in the Table of Uses. § 27-461(a). See also *County Comm'rs of Carroll Co. v. Zent*, 86 Md.App. 745, 759 fn. 9, 587 A.2d 1205, 1212 fn.9 (1991) (Permissive zoning ordinances lists the uses permitted and all other uses are prohibited.) Further, § 27-253(a) prohibits the use of any building, structure, or land, or the conversion of any such use, “unless a use and occupancy permit certifying compliance with this Subtitle has been issued for the activity by the Building Inspector.” See also § 27-241. There is no dispute that these provisions predate the enactment of CB-56-2011. Thus, for the Applicant to have a vested right in its alleged nonconforming use it needed to maintain a valid use and occupancy permit that expressly permitted adult entertainment activities. § 27-108.01(a)(15)² These requirements cannot be viewed as constitutionally impermissible restrictions since the use and occupancy permits long predate the enactment of CB-56-2011. See *Mayor and City Council of Baltimore v. Dembo, Inc.*, 123 Md.App. 527, 542, 719 A.2d 1007, 1015 (1998) (“the majority rule follows the view that a nonconforming use business acquires no exception from subsequently enacted licensing requirements, provided such requirements do not effectively preclude continuation of the business”); and, *Powell v. Calvert Co.*, 368 Md. 400, 795 A.2d 96 (2002) (In the absence of a vested right, a board must apply the law in effect at the time the case is heard). Here, the requirements for a valid use and occupancy

¹ (“We...do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute’s plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute. We presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute’s object and scope.” (Internal quotation and citation omitted).

² Nothing in the uses described in Permit Nos.8329110-2000 or 18348-2002, “ok for a 60 seat auditorium,” remotely lends itself to the conclusion that Adult Entertainment activities were permitted, even under a theory that Adult Entertainment was implied because it is of “like kind or character” to the permitted uses.

permit predate the Applicant's alleged "lawful" use, and cannot remotely be construed as a requirement that effectively precludes continuation of the business. CB-56-2011 merely incorporates these longstanding regulations into its update of the Table of Uses.

It is incumbent upon the Applicant to establish in the record of this proceeding that it was operating the property in a "then-lawful manner." *Dembo, supra*. The standard for a non-conforming use holds: *supra*

The law is well established that a nonconforming use exists if a person utilizes property in a certain manner that is **lawful** before and up to the time of the adoption of a zoning ordinance, though the then-adopted zoning ordinance may make that previously lawful use non-permitted.

Purich v. Draper Properties, Inc., 395 Md. 694, 708, 912 A.2d 598, 607 (2006) (Emphasis added). Unfortunately, the Applicant has failed to establish that it was operating lawfully prior to the passage of CB-56-2011. *Infra*. To the extent that the Applicant argues that it has a legal nonconforming use, and that such argument is relevant to the instant proceedings, it has failed to carry the burden of proof to establish those facts in the record. § 27-142.

FINDINGS OF FACT

Subject Property

(1) The Adult Entertainment use, t/a Sinsaysionals, occupies two units in a strip of seven units. The remaining businesses in the commercial center are auto related. Vehicular access to the property is provided via a driveway from Lanham Severn Road which also provides access to the adjoining Car Wash. Access to the interior of the instant use is via a door in 9605 over which a canopy is hung. (Exhibit 19(a))

(2) 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 contains 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.

(3) 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.

(4) The subject 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.

Master Plan and Sectional Map Amendment

(5) The subject 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.

(6) 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.

History

(7) Numerous permit applications have been filed for the property since its initial construction. The following provides a list of permits or approvals that specifically relate to the instant Application:

March 1, 2001— Permit 8329110-2000-U was issued for a 60-seat auditorium (Sinsaysionals Indoor Theater) at 9607 Lanham Severn Road.

March 18, 2002— Permit 6015-2002-U was recommended for approval by the MNCPPC for a recreational establishment of a commercial nature, dance hall, and auditorium with a maximum of 60 seats at 9607 Lanham Severn Road. This Permit was not issued.

April 17, 2002— Permit 13039-2002-U was recommended for approval by the MNCPPC for a 20-student automotive repair training center at 9607 Lanham Severn Road. This Permit was not issued.

- May 6, 2002—** Permit 13039-2002-U was revised to remove the training center at 9607 Lanham Severn Road. This Permit was not issued.
- May 30, 2002—** Permit 18348-2002-U was recommended for approval by the MNCPPC for a 60-seat auditorium at 9605 Lanham Severn Road, referencing Permit 8329110-2000-U.
- June 26, 2002—** Permit 18348-2002-01-U was revised to change the number of seats from 60 to 28 at 9605 Lanham Severn Road and recommended for approval by the MNCPPC.
- July 29, 2002—** Permit 18348-2002-02-U was revised a second time to be a CUW (Commercial Use—Walkthrough) permit for a 60-seat auditorium at 9605 Lanham Severn Road. This Permit was recommended for approval by the MNCPPC.
- June 25, 2003—** Permit 18348-2002-02-U was issued to Maages Auditorium to operate “auditoriums” at 9605 Lanham Severn Road with the express limitation “OK for a 60 seat auditorium per 8329110-2000.”
- May 31, 2012—** Special Exception SE-4720 for an Adult Entertainment use in the C-M Zone was accepted by the Planning Department, MNCPPC. The Applicant was requested to submit additional plans and justification so that the case could 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 had the opportunity to request and process a not yet filed 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, the Applicant has been advised that the Special Exception Application for the proposed Adult Entertainment use was scheduled to be reviewed by the Prince George’s County Planning Board on January 10, 2013. Mr. Jones further stated that the required site plans and documents needed to process the Application were still outstanding and that Staff would continue to move forward with their review regardless of the status.

- October 16, 2012—** Jimi Jones, Supervisor of the Zoning Section, sent an additional email to the Applicant's attorney reminding them that the scheduled hearing date was rapidly approaching and that materials needed for the review and processing of the Special Exception Application had not been submitted to the Planning Department, and that a Staff Report would be issued without this information if need be.
- October 31, 2012—** CNU-32365-2012 was placed on hold by the Permit Review Section and written comments were issued to the Applicant's attorney. This Application for certification of a nonconforming auditorium in the C-M Zone was not pursued by the Applicant.
- November 26, 2012—** The Applicant's attorney submitted a letter to the Planning Board asking that Special Exception SE-4720 be stayed until the Certification Nonconforming Use Application was acted upon.

Applicants Request

- (8) The Applicant is seeking approval of SE 4720 to operate an Auditorium with Adult Entertainment through the validation of an existing Use and Occupancy Permit for an Auditorium. (8329110-2000-U for 9607 Lanham Severn Road and 18348-2002-U for 9605 Lanham Severn Road)

LAW APPLICABLE

- (1) An Auditorium which includes Adult Entertainment is permitted in a Special Exception in the C-M Zone in accordance with § 27-461(b)(5) fn 58 as follows:

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.

- (2) § 27-107.01 (7.1) of the Zoning Ordinance defines Adult Entertainment as:

(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.

(3) § 27-107.01(a)(21.1) defines an Auditorium:

(21.1) **Auditorium:** A room or building used for the gathering of people seated as an audience; open to the general public, with or without an admission charge, and used primarily for public speaking, theatrical production; excluding any form of patron dancing or adult entertainment.

(4) The conditions precedent for all Special Exceptions are provided in § 27-317 as follows:

(a) A Special Exception may be approved if:

(1) The proposed use and site plan are in harmony with the purpose 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 Type 2 Tree Conservation Plan; and

(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 in accordance with the requirement of Subtitle 24-130 (b)(5).

(5) The burden of proof in any zoning case shall be the Applicants. § 27-142

CONCLUSIONS OF LAW

(1) The Applicant submitted the instant Application for Special Exception to the Zoning Section, MNCPPC for processing on May 31, 2012. § 27-461 fn 58 requires “Applications for adult entertainment must be filed and accepted by June 1, 2012.” The submitted Application was not complete and lacked the necessary site plans, statement of justification, and other documents and data required for the referral and review process. § 27-296 details those items required to be submitted in an Application for a Special Exception, the majority of which were not provided until the May 9, 2013 evidentiary hearing, and many of which were not provided at all.

(2) § 27-296 requires in pertinent part:

(a) General

* * * * *

(3) All Applications shall be on forms provided by the Planning Board. All information shall be typed, except for the signatures.

* * * * *

(b) Contents of Application form.

- (1) The following information shall be included on the Application:
- (A) The name, address, and telephone number of the Applicant, and an indication of the Applicant's status as contract purchaser, agent, or owner;
 - (B) The requested use of the property;
 - (C) The street address of the property; name of any municipality the property is in; name and number of the Election District the property is in;
 - (D) The total area of the property (in either acres or square feet);
 - (E) The property's lot and block number, subdivision name, and plat book and page number, if any; or a description of its acreage, with reference to liber and folio numbers.
 - (F) The name, address, and signature of each owner of record of the property. Applications for property owned by a corporation must be signed by those officers empowered to act for the corporation; and
 - (G) The name, address, and telephone number of the correspondent.

(c) Other submission requirements.

- (1) Along with the Application, the Applicant shall submit the following with all plans prepared at the same scale (where feasible):

(A) An accurate plat (prepared, signed, and sealed by a registered engineer or land surveyor) capable of being reproduced on an ozalid or similar dry-copy machine, or six (6) copies of the plat. This plat shall show:

(i) The present configuration of the property, including bearings and distances (in feet).

* * * * *

(ii) The names of the owners of record or subdivision lot and block numbers of adjoining properties;

(iii) The name, location, distance to the center line, and present right-of-way width of all abutting streets. If the property is not located at the intersection of two (2) streets, the distance to, and the name of, the nearest intersecting street shall be indicated;

(iv) The subdivision lot and block numbers of the subject property (if any);

(v) A north arrow and scale (not smaller than one (1) inch equals four hundred (400) feet);

(vi) The total area of the property (in square feet or acres);

(vii) The location of all existing buildings on the property; and

(viii) The subject property outlined in red.

(B) A site plan (drawn to scale) showing all existing and proposed improvements and uses on the subject property, and the use and zoning of adjacent properties. The site plan shall be in sufficient detail so that a determination can be made that the proposed use will be in compliance with all requirements of this Subtitle applicable to it. The site plan must be capable of being reproduced on an ozalid or similar dry-copy machine, or nine (9) copies of the plan must be supplied. In a Chesapeake Bay Critical Area Overlay Zone, the site plan shall be prepared in accordance with Subtitle 5B.

(C) A landscape plan shall be prepared in accordance with the provisions of the Landscape Manual. The landscape plan must be capable of being reproduced on an ozalid or similar dry-copy machine, or nine (9) copies of the plan must be supplied.

(D) Three (3) copies of the appropriate Zoning Map page on which the property is plotted to scale and outlined in red.

(E) A certificate of public convenience and necessity for a public utility power transmission line right-of-way, tower, pole, conduit, pipeline, or similar facility, if:

(i) The actual record owner of the subject property has not signed the Application; and

(ii) A certificate is required by the State or Federal agency having jurisdiction over the public utility operation.

(F) Three (3) copies of a typewritten statement of justification in support of the request. The statement shall address the provisions of this Subtitle applicable to the requested use. The statement shall also set forth the factual reasons showing why approval of the request would not be detrimental to the public health, safety, and welfare. This statement may be accompanied by three (3) copies of any material which (in the Applicant's opinion) is necessary to clarify or emphasize the typewritten statement. This additional material, if not foldable, shall be not larger than eighteen (18) by twenty-four (24) inches.

(G) A statement listing the name, and the business and residential addresses, of all individuals having at least a five percent (5%) financial interest in the property.

(H) If any owner is a corporation, a statement listing the officers of the corporation, their business and residential addresses, and the date on which they assumed their respective offices. This statement shall also list the current Board of Directors, their business and residential addresses, and the dates of each Director's term. An owner that is a corporation listed on a national stock exchange shall be exempt from the requirement to provide residential addresses of its officers and directors.

(I) If the owner is a corporation (except one listed on a national stock exchange), a statement containing the names and residential addresses of those individuals owning at least five percent (5%) of the shares of any class of corporate security (including stocks and serial maturity bonds).

(J) An approved Natural Resource Inventory.

(K) A Type 2 Tree Conservation Plan prepared in conformance with Division 2 of Subtitle 25 and the Woodland and Wildlife Habitat Conservation Technical Manual or a Standard Letter of Exemption.

(L) A statement of justification describing how the proposed design preserves and restores the regulated environmental features to the fullest extent possible; and

(M) All other data or explanatory material deemed necessary by the District Council, Zoning Hearing Examiner, or Planning Board (submitted in triplicate).

(2) For the purposes of (G), (H), and (I) above, the term "owner" shall include not only the owner of record, but also any contract purchaser.

(3) To date, almost 2 years after the Application was required by law to be filed, the Applicant has failed to comply with the requirements of §§ 27-296(c)(1)(A)(i), 27-296(c)(1)(A)(viii), and 27-296(c)(1)(B)-(M).

(4) Upon receipt of the Pre-application Form for SE 4720 (Exhibit 4), the Applicant was provided with the specific Application guidelines and forms. (Exhibit 5) Of the 10 specific submittal requirements for a Special Exception Application, Exhibit 62, the Applicant only provided the first item required: "Application-One typed application form signed by all owners of record," prior to the evidentiary hearing.

(5) By failing to provide the State Ethics Commission Affidavits required by item 10, the Application is in violation of the Prince Georges County Land Use Ethics Law (State

Government Article, §§ 15-829 to 15-835, Ann. Code of Md., “Public Ethics Law”). The Applicant continues to be in violation of the Public Ethics Law.

(6) Exhibit 63 is the MNCPPC, Development Review Division, Zoning, Special Exception and Departures Checklist. Of “I – REVIEW OF BASIC REQUIREMENTS”, “A. DOCUMENTS REQUIRED:”, “B. PROPERTY SURVEY REQUIREMENTS:” and “C. SITE PLAN and LANDSCAPE PLAN REQUIREMENTS:”, A, B, and C are required for Special Exception Applicants. (Exhibit 63, pp1-3) Of this myriad of required documents and information, the Applicant only submitted the first required document under “A” – a typed and signed Application Form, prior to the evidentiary hearing. The Applicant also paid the filing fee required under “C”. (Exhibit 3)

(7) The Application Form (required by § 27-296(b)) and the only document or evidence provided by the Applicant prior to the evidentiary hearing, Exhibit 8, pp26-27, identified those provisions of the Zoning Ordinance which the Applicant was required to satisfy. (Exhibit 8, p27) “II – SITE PLAN REVIEW” and “III – STATEMENT OF JUSTIFICATION REVIEW” of the Checklist, Exhibit 63, could not be performed as required by the Technical Staff as the Applicant refused to provide the required evidence.

(8) § 27-311 requires: “In connection with each application for a Special Exception, the record shall include a report by the Technical Staff. This report shall include the Staff’s recommendation.”

(9) § 27-307 requires: “At least thirty (30) days prior to the public hearing established under Section 27-302(a), the original copy of the application, plans, maps, specifications, Technical Staff Report, and all other data, materials, or record evidence (to date) pertaining to the requested Special Exception shall be sent by the Planning Board to the District Council.”

(10) § 25-202 of the Land Use Article, Annotated Code of Maryland, also requires that the Technical Staff Report be filed at least 30 days prior to the scheduled evidentiary hearing.

(11) § 27-308 requires: “At least thirty (30) days prior to the public hearing, the original Special Exception application file shall be available for public examination in the Office of the Zoning Hearing Examiner, and a copy of the file shall be available for public examination in the Office of the Planning Board. This file may be reviewed by anyone, and copies of any of its contents may be obtained at a reasonable cost.”

(12) The collective purpose of these citations to provide due process and fundamental fairness to all parties. By requiring the Applicant to provide full disclosure of its case 30 days prior to the evidentiary hearing, all parties are provided the opportunity to prepare a meaningful response or rebuttal.

(13) In the instant Application, the MNCPPC accepted an empty shell of an Application, that being merely an Application form containing the property owners putative but illegible signature and the filing fee, on the very last day (May 31, 2012) such an Application could be accepted prior to the June 1, 2012 deadline established by § 24-461(b)(5) fn 58. (Exhibit 3)

(14) Despite repeated phone calls, emails, and offers to work with the Applicant to get the Application completed, the Applicant refused to provide any substantial information to support its Application. (Exhibit 8, pp24-25)

(15) By letters dated July 9, 2012 and November 26, 2012, the Applicant has stated that he intends to pursue an Application for Certification of Non-Conforming Use for the subject property; to date the Applicant merely obtained an Application number, CNU-32365-2012 (filed November 5, 2012), but has failed to provide a substantive Application or to pursue said Application. (Exhibit 8, pp 22-23 and 28)

(16) On December 26, 2012 the Technical Staff issued its required Report in Special Exception 4720 recommending disapproval. In discussing the condition precedent findings of § 27-317 Staff states:

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. (Exhibit 8, p8)

(17) After reviewing the Technical Staff Report and the complete lack of any evidence presented by the Applicant, the Planning Board decided against holding a public hearing and expeditiously adopted the Technical Staff's recommendation of denial. (Exhibit 1)

(18) The proposed Site Plan submitted at the evidentiary hearing, Exhibit 15, concedes that the site is not in conformance with the minimum Parking and Loading Requirements of Part 11 of the Zoning Ordinance but argues that there may be, in the future, ways in which the parking and loading requirements may be met. Such an argument is specious and speculative. The Applicant must meet its burden of proof at this time and concedes that it has failed to do so.

(19) The Technical Staff, in its review of Exhibit 15, noted insufficiencies in both parking and loading spaces, errors in both parking and loading schedules, a violation of the Americans With Disabilities Act by the failure to provide a van accessible parking space for the physically handicapped, and a failure to screen the trash facility. The Staff also noted that 5 parking spaces adjacent to the east property line are off site and do not have adequate access, there is an island adjacent to the east property line which also appears to be off site, and that the existing 12' x 12' waste area adjacent to the east property line appears to be off of the subject property. (Exhibits 48 and 49)

(20) The proposed Site Plan, Exhibit 15, contains an unacceptable disclaimer that certain locations are merely approximate as they are based on an aerial image obtained from Google Earth and are not accurate to a reasonable degree of engineering certainty. (Exhibit 48)

(21) The proposed Site Plan, Exhibit 15, contains the additional disclaimer that “this plan is for a Special Exception for the existing Sinsaysionals Adult Entertainment facility only (Units 9605 & 9607 – 2,675 S.F.)” This is further emphasized by a bold black broken line around a 2675 sq. ft. area designated “Special Exception Area (For 9605 & 9607 Units Only = 2,675 SF[±])” What role does this disclaimer play in the veracity to be credited to the remainder of the information provided on the document?

(22) Indeed, since Exhibit 15 expressly emphasizes that the Special Exception area is for only that area within the bold broken black line, the Applicant is providing no parking, no street frontage or access or any of the myriad of requirements of the Zoning Ordinance.

(23) There is a canopy erected over the entrance of one of the units. This canopy appears to be erected illegally as there is no evidence that it was erected pursuant to a validly issued permit. The canopy is also located off site of the Special Exception area on the Site Plan. (Exhibit 15)

(24) On November 30, 2000, the Applicant applied for Use and Occupancy 8329110-2000 for a “Theater/Dance/Banquet Hall/Auditorium” for 9607 Lanham Severn Road. (Exhibit 34(f)) On February 22, 2001, Mary Hampton, Permit Review Section, MNCPPC, recommended approval of Use and Occupancy 8329110-2000 noting in pertinent part:

- 12/15/00 - Reginald Holley called and went over comments.
- 2/1/01 - Received letter from applicant. The use appears to be an auditorium use and a recreational establishment of a commercial nature.
- 2/22/01 - Mr. Holly submitted a revised letter. The use will operate as an auditorium.
- 2/22/01 - Mr. Holly submitted a revised letter. The use will operate as an auditorium.
- 2/22/01 - Mr. Holly submitted a revised letter describing how his use will operate. He will not operate dance contests/dancing, therefore the use is an auditorium. (Exhibit 58, pp. 31 and 26)

(25) On February 22, 2001, the Applicant submitted written documentation stating “The purpose that I would be using the facility (sic) would be to hold Comedy shows, contests (games), hair shows, fashion shows, model calls, poetry reading nights and sports shows.” (Exhibit 25, undated letter from Holly to Hampton received February 22, 2001)

(26) Use and Occupancy Permit 8329110-2000 was issued for the 9607 Lanham Severn Road on March 1, 2001 for use as an Auditorium to be operated by Sinsaysionals Indoor Theater. (Exhibit 8, p.30)

(27) In the spring of 2002, the Applicant applied for Use and Occupancy Permit 6015-2002 stating:

The proposed use of the space will be to hold Cabarers (public dance night w/ticketed admission) Fashion & Hair Shows, Comedy night, Amateur Night, Poetry Readings, Wedding Receptions, & Talent shows. The facility is 1377 square feet. (Exhibit 8, p. 33 and Exhibit 30)

The Permit Review Section, MNCPPC, recommended approval “OK for recreational establishment of a commercial nature, dance hall, and auditorium, with a maximum of 60 seats.” (Exhibit 8, p. 32) Use and Occupancy Permit 6015-2002 was not issued.

(28) In the summer of 2002, the Applicant applied for Use and Occupancy Permit 18348-2002-00 and a series of revisions, and for a change of occupancy to Maages Auditorium for 9605 Lanham Severn Road. Use and Occupancy Permit 18348-2002-00 (May 30, 2002) was requested for “warehouse-auditorium-dance/Banquet/Auditorium” and was recommended for approval by the Permits Review Division, MNCPPC, “OK for a 60 seat auditorium, reference 8329110-2000.” (Exhibit 34(a))

(29) On June 26, 2002 the Applicant applied for revision 01 (the first revision) to Use and Occupancy 18348-2002-01 identifying the proposal use as an “auditorium”. This proposed revision was recommended for approval by the Permit Review Division “OK for an auditorium with 60 seats”. (Exhibit 34(a)) The proposed revision itself proposed the reduction of seats from 60 to 28 seats. (Exhibit 34(c))

(30) On July 29, 2002 the Applicant applied for revision 02 (the second revision) to Use and Occupancy Permit 18348-2002-02, which the Permits Review Division recommended for approval “OK to change from Use and Occupancy to CUW for 60 seat auditorium reference #8329110-2000”. (Exhibit 34(d))

(31) Use and Occupancy 18348-2002 was issued on June 25, 2003, to Maages Auditorium to operate “auditoriums” with the express limitation “OK for a 60 seat auditorium per 8329110-2000” at 9605 Lanham Severn Road. (Exhibit 24)

(32) The Applicant testified during the evidentiary hearing that the Applicant has used the subject property for Adult Entertainment since 2000. If this is true, the Applicant committed fraud in obtaining Use and Occupancy Permit 8329110-2000 and consequently Use and Occupancy Permit 18348-2002 by specifically misrepresenting his ultimate intentions for the use of the subject property. At no time during the Use and Occupancy Permit Application processes did the Applicant disclose that he intended to have Adult Entertainment (whatever its form or definition) at the subject property. Had the Applicant done so, any Application for a Use and Occupancy Permit for an Auditorium would have been denied. It is obvious that the Applicant’s testimony is based on whatever is most financially advantageous for him at that moment. The Applicant’s current admission that he intended to operate Adult Entertainment when he applied for the Use and Occupancy Permits in 2000 and 2002, and then proceeded to utilize the properties for Adult Entertainment, rendered the Use and Occupancy Permits null and void *ab initio*.

(33) The Use and Occupancy Permits for an Auditorium for the subject property are limited to the uses as set forth by the Applicant in 2001 – comedy shows, contest (games), hair shows, fashion shows, model calls, poetry reading nights and sport shows. The Applicant does not have a valid Use and Occupancy Permit for an auditorium which included activity that meets the definition of Adult Entertainment in order to seek relief pursuant to § 27-461(b)(5) fn 58.

(34) Lt. Sudik, Prince Georges County Fire Department, Office of the Fire Marshal, testified as to the extensive history of repeated violations of the Fire Code, the correction Orders issued, the Uniform Civil Citations, and the violations of the Fire Capacity Certificate, by the Applicant, all at the subject property. (Exhibit 33 (a-k), T. pp. 12-15)

(35) The Capacity Certificate issued pursuant to Subtitle 11 (Fire Safety) of the County Code permits a maximum of 60 persons to occupy the use which is described as an “auditorium”. The property has a history of repeated violations of far exceeding this maximum capacity. (Exhibit 32(a)-(f))

(36) The neighbors testified as to the detrimental effect this adult business operation has had upon their residential neighborhood. (T. pp. 15-61)

(37) The proposed use and Site Plan are not in harmony with the purposes of the Zoning Ordinance. § 27-317(a)(1)

(38) The proposed use is not in conformance with all of the requirements and regulations of the Zoning Ordinance. § 27-317(a)(2)

(39) The proposed use will adversely affect the health, safety and welfare of residents or workers in the area as testified to by the neighbors, citizens and County Police and Fire Officials. (T. passim, Exhibits 8, 15, 19, 31, 32, 33, 34, 36, 38, 48, and 58) § 27-317(a)(4)

(40) The Applicant failed to adduce any evidence to support a finding that Adult Entertainment on the subject property will not be detrimental to the use or development of adjacent properties or the general neighborhood. § 27-317(a)(5)

(41) The Application does not propose the disturbance of any environmentally regulated features. § 27-317(a)(7)

(42) The Application is in violation of the minimum parking and loading requirements of Part 11 of the Zoning Ordinance.

DISPOSITION

Special Exception 4720 is DENIED.