

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

**SPECIAL EXCEPTION
4716**

DECISION

Application:	Club or Lodge, Private with Adult Entertainment
Applicant:	CD#15CL2001, Inc. d/b/a/ Bazz and Crue Group Hall
Opposition:	Margaret White, et. al.
Hearing Dates:	January 15, January 29, and February 6, 2014
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Denial

NATURE OF REQUEST

(1) Special Exception 4716 is a request for permission to use approximately 4000 square feet of an 18.17 acre Shopping Center in the C-S-C(Commercial Shopping Center)/DDO (Development District Overlay) Zone¹, located on the northeast corner of Forestville Road and Marlboro Pike, also identified as 7752 and 7754 Forestville Road, Forestville, Maryland for Adult Entertainment. Adult Entertainment is prohibited in the C-S-C Zone pursuant to Section 27-461(b) of the Zoning Ordinance, unless the following provisions in Footnote 58 apply:

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) The Technical Staff recommended denial and the Planning Board accepted Staff's recommendation as its own. (Exhibits 12 and 13)

(3) Several individuals appeared in opposition to the instant request.

(4) The record was kept open for the submittal of a variety of documents. The last document was received on May 2, 2014 and the record was closed at that time. (Exhibits 60 (a) and (b))

¹ Subsequent to the filing of the Application the District Council rezoned the subject property from the I-1 to the C-S-C Zone.

FINDINGS OF FACT

Subject Property

- (1) The subject property is improved with a one-story, 4,000 square foot building currently used as a Private Club offering Adult Entertainment. It is part of the Forestville Shopping Center that has recently been remodeled.
- (2) The Application does not propose any construction or disturbance and, therefore, is exempt from the requirements of the Tree Canopy Coverage Ordinance. It is also exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance because it contains less than 10,000 square feet of woodland and has no prior Tree Conservation Plan approvals. (Exhibit 12, p. 53) There are no regulated environmental features on site. The subject property does not lie within a Chesapeake Bay Critical Area Overlay Zone.
- (3) The Technical Staff Report includes an excellent history of the various zoning applications and permits that have been issued for the property. (Exhibit 12, pp. 4-5)
- (4) The shopping center was purchased by PMM Enterprises, LLC. (Exhibit 55) This owner did not sign the original Application, as required by the Zoning Ordinance (Exhibit 1) Applicant submitted a revised application with the requisite signature on February 10, 2014. (Exhibit 59)

Neighborhood and Surrounding Use

- (5) The neighborhood is defined by the following boundaries:
 - North - Parston Drive, Fernham Lane, and Cryden Way
 - South - Pennsylvania Avenue (MD 4)
 - East - Capital Beltway (I-95/495); and
 - West - Forestville Road
- (6) The property is surrounded by the following uses:
 - North - Strip commercial, light industrial, and auto-related uses in the I-1/D-D-O Zone.
 - South - A small church, mattress store, and liquor store in the I-1/D-D-O Zone.
 - East - A vacant parcel and light industrial uses in the I-1//D-D-O Zone. Further east on Marlboro Pike are the Forestville Baptist Church and single-family residences in the R-R (Rural Residential) Zone.
 - West - Across Forestville Road is the Forest Memorial United Methodist Church in the R-55 (One-Family Detached Residential) Zone and a gas station in the C-S-C (Commercial Shopping Center) Zone.

Master Plan/Sectional Map Amendment/General Plan

(7) The 2009 Marlboro Pike Sector Plan and Sectional Map Amendment designated the property as Priority Area 7, Forestville Flex Space Company and rezoned it from the C-S-C to the I-1 (Light Industrial)/D-D-O-Z (Development District Overlay Zone). The DDOZ does not permit private clubs with adult entertainment. On October 1, 2013, the District Council approved a Detailed Site Plan (DSP-13014), filed by the present owner of the property, which rezoned the shopping Center from the I-1/D-D-O Zone to the C-S-C/D-D-O Zone. (Exhibits 31(a)-(e)) The conditions of approval in DSP-13014 prohibit "Clubs or private lodges". (Exhibit 31(e))

(8) The 2002 General Plan places the property 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 Plan Prince Georges 2035 General Plan places the property in the Established Communities, and offers the following vision for property therein:

Plan 2035 classifies existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Centers and Local and Suburban Centers, as Established Communities. Established communities are most appropriate for context-sensitive infill and low- to medium-density development. Plan 2035 recommends maintaining and enhancing existing public services (police and fire/EMS), facilities (such as libraries and schools), and infrastructure in these areas (such as sidewalks) to ensure that the needs of existing residents are met.

(Plan Prince Georges 2035 General Plan, p. 16)

(9) The site is also located in Joint Base Andrews airport safety zones APZ I and APZ II. The Joint Land Use Study (JLUS) includes recommendations as to the types of uses permitted in the study area. Private clubs and adult entertainment are not permitted uses.

Applicant's Request

(10) The Applicant is seeking approval of S.E. 4716 to operate a Private Club that offers Adult Entertainment. As noted in the Staff Report, Applicant has received two Use and Occupancy Permits to operate private clubs at 7752 and 7754 Forestville Road. The first was issued on August 17, 2001 to Bazz and Crue Group Hall (Occupant of 7752 Marlboro Pike) to operate "clubs/private rec, office, no sales or storage." (Exhibits 5 and 52) The second was issued on April 27, 2007 to CD #15 CL2001, Inc., Masonic Hall t/a/ Bazz and Crue Group Hall F.A.M II (occupant of 7754 Marlboro Pike), to operate a club. (Exhibits 6 and 53) The two addresses essentially operate as one facility.

(11) The Private Club is open to members of Applicant's Masonic organization as well as individuals who decide to become members in order to partake of the adult entertainment. (February 6, 2014 T. 11-13, 39-40) Mr. Darnaby, a member of the Masonic Lodge, offered the following explanation of the members of the Charles Datcher (Masonic) Lodge's use of the facility:

Mr. Lockard: My question really is where, does the fraternal organization known as the Charles Datcher Lodge number 15, does it have regularly scheduled meetings? ...

Mr. Darnaby: We have a, we have a monthly meeting where all the brothers come together formally in our suits and our aprons, that's in one spot, and that's always going to be there... It's at the Tenth and U [Washington, D.C.].... In preparation, preparation for that ritualistic work that we do there we, we meet here, or any, any space that gives us the room to do what we need to do.... Being a member of Charles Datcher Lodge number 15 we can say we can get together outside of the Tenth and U Washington, D.C. location and interact with each other, that's what we do here.... Being that the lodge, okay, does not run this, does not do this, the members of it chose to come together and do this. Every single person through all of the Trestleboards²,...have been there for some function or event or another. It's no secret as to what we do when we come there, we meet there, we have fun there, we go home. Okay?

(February 6, 2014 T. 133-137)

(12) In response to a question from his attorney, Mr. Darnaby offered the following explanation as to why the members of the Lodge decided to start Bazz and Crue:

Mr. Whitley: [S]o once they become a member of the private club they are encouraged ... to try to join the other Masonic lodges and....

Mr. Darnaby: Yes, that's one of the things that we pride ourselves on because ... in order to go fishing you have to go when, when ... the fish, when it's full, so an individual may be in need of guidance, and if I don't know where you are I can't come to you. But if we can get young men in an environment that they're comfortable in, we can prompt a conversation....

(February 6, 2014 T. 31-32)

(13) The Adult Entertainment occurs daily from 10:00 p.m. until 3:00 a.m. (February 6, 2014 T. 96-97) A witness for the Applicant noted that the Technical Staff Report incorrectly listed its closing as 7:00 a.m. (Exhibit 12, p. 4; February 6, 2014, T. 121) Applicant submitted copies of the membership rolls for the club as well as a blank member application/agreement. (Exhibits 48(a) – (z), 43, 48, and 49)

² A "trestleboard" is a listing of the officers for the year as well as the functions each officer is assigned. (Exhibit 45; February 6, 2014 T. 13-14)

(14) The member pays a fee (dues) and is given a membership card. All members must be 21 or older. (February 6, 2014 T. 16) Pursuant to Applicant's bylaws, the annual dues are \$240. (Exhibit 47; February 6, 2014 T. 26) Applicant accepts partial payment of dues, and the initial payment is usually \$20. (February 6, 2014 T. 27) The \$240 fee allows members to enter the subject property as well as another private club run by Applicant offering adult entertainment.³

(15) Applicant has utilized the facility as a private club since 2001. They have had birthday parties, wedding receptions, bachelor parties, and other events. They have also had dancing that satisfies the definition of adult entertainment – women dressed in bikini wear, or fully nude dancing on stage, or lap dancing. (February 6, 2014 T. 48-49)

(16) The Private Club includes a DJ booth, 3-4 stage areas, and seating (approximately 100-200 seats) throughout. (February 6, 2014 T. 122) There are 15-20 security cameras inside and approximately 10 outside of the club. Applicants hire a security team of 3-4 guards, who are independent contractors that patrol inside and outside of the facility. More are utilized if there are more people in the club.

(February 6, 2014 T. 52-53)

(17) The dancers who “perform” at the club receive their money from members in attendance. They do not pay a fee to, nor are they paid by, the Applicant. (February 6, 2014 T. 94, 118) The dancers may be nude when dancing on stage but are clothed “once they come off the stage”. (February 6, 2014 T. 110)

(18) Reggie Baxter, accepted as an expert in land use planning, provided the following testimony, germane to the disposition of the Application:

As CB-56 was written, including the C-S-C DDO under this Detailed Site Plan, the uses there, the existing permitted club is simply no longer a permitted use as in this case where the adult entertainment activities occur. The existing use has no chance of being approved as a Special Exception pursuant to CB-56 ... because the new DDO under the Detailed Site Plan approved ... simply overrides that permission given by footnote 58 in CB-56 that would allow them to pursue the Special Exception....

It prohibits it. So, if it's prohibited it can't be found in conformance with the purposes of the Zoning Ordinance, can't be found to be compatible with the regulations and requirements in the ordinance....

(February 6, 2014 T. 154-155)

(19) Mr. Baxter was unsure as to whether the subject property has sufficient parking spaces for adult entertainment if the request is approved. (February 6, 2014 T. 199-200)

³ That private club is the subject of SE 4717.

Procedural Issue - Constitutionality of Special Exception Process

(20) Applicant initially argues that CB-56-2011 is unconstitutional because the District Council required that it first seek special exception approval before it is allowed to continue to operate what was a legal use, that has become a nonconforming use, at the subject property. Applicant believes the District Council must either phase the use out via amortization or grandfather it (allow it to continue “as is”). (Exhibit 32; January 15, 2014, T. 4-5) Applicant also argues that a special exception is not required because as a private club it may entertain its guests with “any First Amendment type of entertainment” that it chooses. (January 15, 2014, T. 17)

(21) Courts have generally held that “an ordinance is presumed to be constitutional and the burden is upon the one attacking it to establish clearly” that it is not. Lucky Stores, Inc. v. Board of Appeals, 270 Md. 513, 526, 312 A.2d 758 (1973). See, also: Attorney General v. Johnson, 282 Md. 274, 385 A.2d 57(1978); State v. Smith, 374 Md. 527, 823 A.2d 664 (2003) It is also beyond cavil that the District Council is empowered to determine which uses are allowed in a zone and whether the uses will be permitted by right or upon approval of a special exception, since it is the exclusive source of all zoning authority within its portion of the Regional District. (Maryland Land Use Code Annotated, Sections 22-104, 22- 201 and 22-206) The special exception provision thus bears the cloak of constitutionality.⁴ The District Council may decide that “adult entertainment” cannot be one of the events offered by a Private Club by right.

(22) Although the instant request is one seeking approval of a special exception to continue the newly-defined “adult entertainment” use at the subject property, Applicant has also filed for certification of its nonconforming use. This is proper since it has been held that where there was a valid use of property and a subsequent change in zoning invalidated such use, the change does not apply to the legal nonconforming use. Maages Auditorium v. Prince George’s County, 2014 U.S. Dist. LEXIS 27849 (March 5, 2014)

(23) Accordingly, if the instant application is denied, Applicant may likely prevail on its request for a certified nonconforming use (assuming, arguendo, it satisfies all criteria for approval). I, therefore, believe Applicant’s constitutional arguments are premature at this time.

Oppositions Comment

(24) Several individuals appeared in opposition to the request.

(25) Ms. Margaret White opined that adult entertainment uses run counter to the current effort of many citizens to “improve Prince George’s County” and to bring quality development inside the Beltway. (February 6, 2014 T. 182-183)

⁴ I would also note that Applicant is appealing the constitutionality of these special exception provisions in federal court, and that esteemed body will fully address the “facial” and “as applied” legality of said provisions.

(26) Mr. Mallory Johnson objected to the hours of operation of the use (5:00 p.m. - 3:00 a.m.) since it is open while citizens are shopping:

We have some number of concerns [O]ne is basically the time the clubs can open, the club can open from 5:00 to 3:00, that's normally a heavy shopping area for the people in that area. We are concerned that the possibility of dancers being out in the parking lot in their costumes. We're also concerned about the members of the club might be soliciting people who are there for the purpose of shopping. We believe that this is a family oriented shopping center and children do not need to be exposed to adult entertainment. We also are concerned that since the dancers are not employed by the club they have no control over the dancers....

(February 6, 2014 T. 185)

Agency Comment

(27) An Inspector with the Department of Permits, Inspections and Enforcement provided a copy of a flyer that he retrieved from Facebook advertising a strip club and exotic dancing at the subject property. (Exhibit 51) The ad did include a disclaimer that it was "a METROMAC Event who [is] solely responsible for content expressions...." Applicant's witness testified that he has no knowledge of this entity. (February 6, 2014 T. 103)

(28) The Technical Staff and Planning Board opined that the request must be denied because subsequent to its adoption of CB-56-2011 the District Council imposed a D-D-O Zone over the property and the uses allowed pursuant to this overlay zone do not include private clubs or adult entertainment. Staff also opined that the Applicant may not qualify as a "Club or Lodge, Private" as defined in the Zoning Ordinance, reasoning as follows:

At the time they applied for their use and occupancy permits, the applicant, CD#15CL2001, Inc., established they were a nonprofit corporation. According to a letter from the Internal Revenue Service, dated March 23, 2005 (Lerner to CD#15CL2001, Inc.), they are a public charity, exempt from federal income taxes since 2001....

The applicant has claimed an affiliation with a bona fide nonprofit and charitable fraternal organization, the Prince Hall Masons, in order to obtain a permit for a private club. .. Given the true nature of the club, it seems dubious at best that such an affiliation now exists or indeed ever existed. The applicant now makes no such claims in their statement of justification. While staff cannot categorically state that elder members of the fraternity have never visited Bazz and Crue, we do feel absolutely secure in stating that the club has not been used for their classes, receptions, and official gatherings. Given the evidence presented, it is

very difficult to conclude that the permits obtained by the applicant for a private club are valid.

(Exhibit 12, pp. 7-8)

(29) In its supplemental Staff Report, the zoning section noted that the District Council approved a Detailed Site Plan (DSP-13014) at the request of the present owner of the shopping center which changed the zoning from the I-1/D-D-O Zone to the C-S-C/D-D-O Zone. (Exhibit 31(a)) This change in zoning obviates a need for a variance since there are no setback requirements for the use in the C-S-C Zone. However, Staff did not change its recommendation that the request be denied.

The District Council could have chosen to add the C-S-C/D-D-O Zone to CB-56-2011, but did not. The presumption is that the Council, relying on Section 27.548.22(b) of the Zoning Ordinance, found that such uses "... **are incompatible with, or detrimental to, the goals of the Development District and purposes of the D-D-O Zone.**" It should also be noted that the District Council's order approving DSP-13014 lists auditoriums and clubs or private lodges as prohibited uses for the site, although these uses are already prohibited in the C-S-C/D-D-O Zone within the Low-Intensity Business Park Character Area
....

Staff would also reiterate our belief that the applicant has failed to produce a valid use and occupancy permit. It seems clear from the evidence submitted that the permits issued to the applicant were the result of obfuscation (at best) and misrepresentation. In short, these 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

(Exhibit 31(a), p. 2), emphasis in the original)

LAW APPLICABLE

(1) The requested Special Exception may be reviewed if the use of the subject property satisfies Footnote 58, *supra*. Applicant must also satisfy the strictures found in Sections 27-317 of the Zoning Ordinance.

(2) Section 27-317 provides 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).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

(1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or

(2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) The requested use should also satisfy the following general purposes of the commercial zones, and the specific purposes of the C-S-C Zone:

Sec. 27-446. General purposes of Commercial Zones.

(a) The purposes of Commercial Zones are:

(1) To implement the general purposes of this Subtitle;

(2) To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;

(3) To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;

(4) To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;

(5) To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;

(6) To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;

(7) To increase the stability of commercial areas;

(8) To protect the character of desirable development in each area;

(9) To conserve the aggregate value of land and improvements in the County; and

(10) To enhance the economic base of the County.

Sec. 27-454. C-S-C Zone (Commercial Shopping Center).

(a) **Purposes.**

(1) The purposes of the C-S-C Zone are:

(A) To provide locations for predominantly retail commercial shopping facilities;

(B) To provide locations for compatible institutional, recreational, and service uses;

(C) To exclude uses incompatible with general retail shopping centers and institutions; and

(D) For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.

(b) **Landscaping and screening.**

(1) Landscaping and screening shall be provided in accordance with Section 27-450.

(c) **Uses.**

(1) The uses allowed in the C-S-C Zone are as provided for in Table of Uses I (Division 3 of this Part).

(d) **Regulations.**

(1) Additional regulations concerning the location, size, and other provisions for all buildings and structures in the C-S-C Zone are as provided for in Divisions 1 and 5 of this Part, the Regulations Table (Division 4 of this Part), General (Part 2), Off-Street Parking and Loading (Part 11), Signs (Part 12), and the Landscape Manual.

(4) Section 27-107.01(a)(7.1) and (49) defines “Adult Entertainment” and “Club or Lodge, Private” as follows:

(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.

(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, excluding adult entertainment.

(5) Pursuant to Section 27-142 of the Zoning Ordinance, the burden of proof in any zoning case shall be the Applicants.

(6) The Court of Appeals provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course,

material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

CONCLUSIONS OF LAW

(1) The proposed use will not adversely affect the health, safety and welfare of residents or workers in the area as it is primarily surrounded by commercial and industrial uses, and it has generally coexisted without incident at the site since 2001. (Section 27-317 (a)(4)) For the same reason one can find that Adult Entertainment on the subject property will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))

(2) The Applicant has obtained a Letter of Exemption from the Woodland Conservation Ordinance and does not have a Type II Tree Conservation Plan. (Section 27-317(a)(6))

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

(4) The Subject property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

(5) The Applicant does not propose 1,500 square feet or greater tree canopy disturbance and is, therefore, not subject to the requirement of the Tree Canopy Coverage Ordinance.

(6) Applicant alleges that activity that meets the definition of Adult Entertainment has been offered at the subject property since 2001, pursuant to the Use and Occupancy permits that allowed it to operate a Private Club therein. Staff challenges the validity of these permits, alleging there was fraud/misrepresentation on Applicant's part in the issuance thereof. Clearly the Use and Occupancy permits were issued by DER, and until they are revoked by DPIE (the new agency charged with issuance and enforcement of permits) pursuant to Sections 27-263 and 264 of the Zoning Ordinance and Subtitle 28 of the Prince George's County Code, I must assume the validity of said permits. Accordingly, I find that Applicant has operated a Private Club at the site pursuant to the Use and Occupancy permits.

(7) The zoning history reveals a conflict between two laws adopted by the District Council concerning the subject property. CB-56-2011 granted Applicant the right to seek the instant Special Exception. However, the District Council's October, 2013 approval of the Detailed Site Plan (requested by the owner of the subject property) expressly prohibits the operation of a Private Club at the site.

(8) The primary tenet of statutory construction is to determine the intent of the legislative body:

The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature. A court's primary goal in interpreting statutory language is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision under scrutiny....

To ascertain the intent of the General Assembly, we begin with the normal, plain meaning of the language of the statute. If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction. We neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and we do not construe a statute with "forced or subtle interpretations" that limit or extend its application.

We, however, 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....

Where the words of a statute are ambiguous and subject to more than one reasonable interpretation, or where the words are clear and unambiguous when viewed in isolation, but become ambiguous when read as part of a larger statutory scheme, a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process. In resolving ambiguities, a court considers the structure of the statute, how it relates to other laws, its general purpose, and the relative rationality and legal effect of various competing constructions....

(Lockshin v. Semsler, 412 Md. 257, 275-277, 987 A. 2d 18 (2010), citations omitted;
See, also: Bush v. PSC, 212 Md. App. 127, 66 A.3d 1123 (2013))

(9) The District Council approved the Detailed Site Plan subsequent to its adoption of CB-56-2011, and I must conclude that it was aware of the prior ordinance and chose not to have it apply to the subject property. This conclusion is also required after review of two other provisions of the Zoning Ordinance pertaining to D-D-O Z Zones.

(10) Pursuant to Section 27-548.19 of the Zoning Ordinance, the D-D-O-Z adopted by the District Council may supersede the provisions governing adult entertainment at issue:

The Development District Overlay Zone is intended to ensure that the development of land in a designated development district meets the goals established for the district in a Master Plan, Master Plan Amendment, or Sector Plan, and takes advantage of unique opportunities presented by the district. Development districts may be designated for town centers, Metro areas, commercial corridors, employment centers, revitalization areas, historic areas, and other special areas which are the subject of development recommendations in a Master Plan, Master Plan Amendment, or Sector Plan. The D-D-O Zone is a mapped zone which is superimposed by a Sectional Map Amendment (SMA) over other zones in a designated development district, and may modify development requirements within the underlying zones. In the Development District Overlay Zone, new development is generally subject to the approval of a Detailed Site Plan by the Planning Board. Detailed Site Plans are reviewed for compliance with development standards approved by the District Council, in a Sectional Map Amendment, or in a later amendment of adopted standards.

(11) Moreover, Section 27-548. 25 (d) of the Zoning Ordinance notes that uses permitted by Special Exception in the underlying zone may be prohibited:

(d) Special Exception procedures shall apply to uses within a Development District as provided herein. Uses which would normally require a Special Exception in the underlying zone shall be permitted uses only if the Development District Standards so provide within a table of uses, and such uses shall instead be subject to site plan review by the Planning Board. Development District Standards may restrict or prohibit any such uses. The Planning Board shall find in its approval of the site plan that the use complies with all applicable Development District Standards, meets the general Special Exception standards in Section 27-317 (a)(1), (4), (5), and (6), and conforms to the recommendations in the Master Plan, Master Plan Amendment, or Sector Plan.

(12) Since the requested use does not conform to the requirements of the approved Detailed Site Plan, and therefore, does not satisfy the purposes of the Zoning Ordinance, I cannot find that the strictures of 27 27-317(a)(1) and (a)(2) are met.

DISPOSITION

Due to the language utilized in the 2009 Marlboro Pike Sector Plan, SMA and D-D-O-Z, and Detailed Site Plan 13014 ("DSP-13014), it appears that it is the District Council's intent to prohibit approval of a special exception for a Private Club and/or Adult Entertainment at the subject property. Accordingly, Special Exception 4716 is Denied.