

Planning Board Public Meeting

Wednesday, October 06, 2004

Judge Welsh Hearing Room, Town Hall, Provincetown, MA 02657

Members Present: Anne Howard, Chair, Barnett Adler, Howard Burchman and Ginny Binder. **Absent:** Ellen Battaglini

Meeting was called to order at 6:45 PM

Public Meeting

6:45 p.m.

BSC Group on behalf of Village at the Moors Condominium, for an Administrative Amendment to an approved Site Plan for 5-15 Bradford Street Extension – Plan #4-8649.00 Revised 9/01/04

The Board members considered the plan as an administrative amendment and required a final as built be submitted before all necessary certificate of occupancies are signed off on.

Motion by Barnett Adler to approve the amended site plan for an administrative amendment only.

Seconded by Regina Binder.

Voted four in favor, zero opposed.

Public Haring on Adult Entertainment By-law

Article A. Zoning Amendment: Adult Entertainment: To see if the Town will vote to amend the Zoning By-laws as follows:

1. By amending the Adult Entertainment by-law, as passed at the April 2004, Annual Town Meeting as Article 19, making the following changes to Section 2440(B9) in the table of Permitted Principal Uses, which shall provide as follows:

		Res1	Res2	Res3 Res B	TCC	GC	S	M
B9	Adult Entertainment ¹							
	a. Establishment which displays live nudity for its patrons	No	No	No	Yes No	Yes No	No	No
	b. Other adult entertainment	No	No	No	Yes	Yes No	No	No

[1][1] All adult entertainment uses must be located at least 300 feet from any library, school or playground. Said setbacks are to be measured from the nearest points on the property lines of the lots hosting the proposed adult entertainment use and the use triggering the setback requirement.

And 2. By amending Section 2450(G15) in the table of Permitted Accessory Uses, which shall provide as follows:

		Res1	Res2	Res3 ResB	TCC	GC	S	M
G15	Adult Entertainment ²							
	a. Establishment which displays live nudity for its patrons	Yes No	Yes No	Yes No	Yes No ³	Yes No	Yes No	Yes No
	b. Other adult	No	No	No	Yes	Yes	No	No

² Accessory adult entertainment uses are permitted, as indicated in the above table, where the adult entertainment use is accessory to a non-residential use that is either a permitted use or a legally preexisting nonconforming use. All such adult entertainment uses must be located at least 300 feet from any library, school or playground. Said setbacks are to be measured from the nearest points on the property lines of the lots hosting the proposed adult entertainment use and the use triggering the setback requirement.

³ **Unless approval is granted by the Board of Selectmen after a public hearing is held before said Board, in which case the Board of Selectmen may grant approval on an event-by-event basis. Such approval shall be granted only for a particular performance for the range of dates of that performance, and shall never extend beyond the end of the calendar year. A blanket approval for all performances of different revues involving live nudity, or of different stage acts involving live nudity, to be held in the same location or different locations, or under the same sponsorship or under different sponsorships, may not be granted. In addition to being limited to accessory uses in the Town Center Commercial District, displays of live nudity must be held indoors, and may not be visible by any member of the public from the outdoors, and may not be visible by any member of the public from any other property.**

Or to take any other action relative thereto.

[Requested by Terese Nelson, Deb Trovato, and others]

John Nelson presenting Article A was concerned about adult entertainment outdoors in residential neighborhoods.

Article A allows as accessory use with footnote 3. Board of Selectmen would have control.

Article B allows as principle and accessory without any “control”.

Jonathan Silverstein of Kopelman & Paige believes Article A to be unconstitutional prohibiting free speech.

- ◆ does not provide for criteria for Board of Selectmen to approve or a timeline
- ◆ unlikely to withstand court scrutiny

Can regulate if major adverse concerns – secondary affects.

Article B. Zoning Amendment: Adult Entertainment: To see if the Town will vote to amend the Zoning By-laws as follows:

1. By amending the Adult Entertainment by-law, as passed at the April 2004, Annual Town Meeting as Article 19, making the following changes to Section 2440(B9) in the table of Permitted Principal Uses, which shall provide as follows:

		Res1	Res2	Res3 ResB	TCC	GC	S	M
B9	Adult Entertainment ¹							
	a. Establishment which displays live nudity for its patrons	No	No	No	Yes	Yes No	No	No
	b. Other adult entertainment	No	No	No	Yes	Yes No	No	No

[1][1] All adult entertainment uses must be located at least 300 feet from any library, school or playground. Said setbacks are to be measured from the nearest points on the property lines of the lots hosting the proposed adult entertainment use and the use triggering the setback requirement.

And 2. By amending Section 2450(G15) in the table of Permitted Accessory Uses, which shall provide as follows:

		Res1	Res2	Res3 ResB	TCC	GC	S	M
G15	Adult Entertainment ²							
	a. Establishment which displays live nudity for	Yes No	Yes No	Yes No ³	Yes	Yes No	Yes No	Yes No

	its patrons							
	b. Other adult entertainment	No	No	No	Yes	Yes No	No	No

² Accessory adult entertainment uses are permitted, as indicated in the above table, where the adult entertainment use is accessory to a non-residential use that is either a permitted use or a legally preexisting nonconforming use. All such adult entertainment uses must be located at least 300 feet from any library, school or playground. Said setbacks are to be measured from the nearest points on the property lines of the lots hosting the proposed adult entertainment use and the use triggering the setback requirement.

³ **Except "Yes" in Res3 when the principal use is a theater, in which case, such theaters may display live nudity for their patrons as a permitted accessory use, as long as the displays of live nudity are indoors and not visible by any member of the public from any other property.**

Or to take any other action relative thereto.

[Requested by Terese Nelson, Deb Trovato, and others]

A Court would not view this as overly restrictive. Eliminates live adult entertainment in GC. Reduces available area for adult entertainment uses and could be a potential court challenge. This might be considered a fine turning point of the approved ('03) bylaw.

Jonathan Silverstein asked why the bylaw would need to be for indoors only when there are bylaws for indecent exposure and lewd and lascivious activities.

Dr. Murray suggested that the Planning Board not recommend either A or B. He would rather have Board of Appeals amendment to the bylaw approved at the Annual Town Meeting of 03. He feels the Board of Selectmen erred in not protecting the residents.

Jonathan Silverstein said the 155 days has been viewed as too long to wait. Scope of review not sufficiently expedited. Perhaps 30 days from filing and act within 30/30 total is sufficient. 30 days from filing and act within 30 days following the public hearing.

Terese Nelson expressed concern with the nudity in the potential of her back yard. She does not want to put the children at risk. She does not feel the Annual Town Meeting 03 bylaw was right for Provincetown.

John Nelson said the fundamental concern of the proponents of A & B was outdoor nudity.

Jonathan Silverstein said there was avenues to develop special permit criteria.

Article A

Motion by Howard Burchman not to recommend this article as presented.

Seconded by Barnett Adler.

Voted four in favor with zero opposed.

Article B

Motion by Barnett Adler to continue to October 13, 2004 meeting.

Seconded by Regina Binder.

Voted three in favor with Howard Burchman opposed.

Article C

This article as written could potentially regulate retail display. Motion to continue to Oct. 13, 2004.

Motion by Regina Binder to recommend Article C with the substitution of all adult entertainment uses with establishments which displays have nudity for its patrons

Seconded by Barnett Adler.

Voted three in favor with Howard Burchman opposed.

Case# 2004-14

Request for Approval Not Required Pre-Application

Pre-Application by Robert J. Freeman, P.L.S. of Schofield Brothers of Cape Cod, on behalf of William C.H. Prentice. The applicant seeks approval to combine two lots into one parcel of land at the property located at **54 Commercial Street**, (Res 2 Zoning District), Provincetown, MA.

Motion by Barnett Adler to recommend applicant go forward with ANR filing.

Seconded by Regina Binder.

Voted unanimously.

Meeting was adjourned at 9: 15 p.m.

Respectfully submitted,

Maxine Notaro, Permit Coordinator

For Anne Howard