

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL

1996 Legislative Session

Bill No. _____ CB-53-1996

Chapter No.

46

Proposed and Presented by _____ Council Member Maloney

Introduced by _____ Council Member Maloney

Co-Sponsors

Date of Introduction _____ July 30, 1996

ZONING BILL

AN ORDINANCE concerning

Adult Book Stores

For the purpose of permitting adult book stores by right in the I-2 Zone, under certain circumstances; prohibiting this use in the I-1, C-M and C-S-C Zones; prohibiting the Board of Appeals from granting a variance from any provision concerning adult book stores; and extending the time period that adult book stores may continue in operation.

BY repealing and reenacting with amendments:

Sections 27-229,

27-248,

27-461,

27-473,

27-901,

27-902,

27-903, and

27-904,

The Zoning Ordinance of Prince George's County, Maryland,
being also

SUBTITLE 27. ZONING.

The Prince George's County Code
(1995 Edition).

BY repealing:

Sections 27-331,
27-904.01, and
27-905,
The Zoning Ordinance of Prince George's County, Maryland,
being also
SUBTITLE 27. ZONING.
The Prince George's County Code
(1995 Edition).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, sitting as the District Council for that part of the Maryland-Washington Regional District in Prince George's County, Maryland, that Sections 27-229, 27-248, 27-461, 27-473, 27-901, 27-902, 27-903, and 27-904, of the Zoning Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's County Code, be and the same are hereby repealed and reenacted with the following amendments:

SUBTITLE 27. ZONING.

PART 2. ADMINISTRATION

DIVISION 5. APPEALS AND VARIANCES.

Subdivision 1. Board of Zoning Appeals.

Sec. 27-229. Powers and duties.

* * * * *

(b) The Board of Zoning Appeals shall not have the power or duty to:

* * * * *

(35) Consider any application requesting additional time to cease a violation involving a transfer station[.];

(36) Grant a variance from any provision of this Subtitle applicable to, required by, or concerning an Adult Book Store.

Subdivision 2. Additional Requirements for Specific Nonconforming Uses.

Sec. 27-248. Adult book stores.

(a) In order for a certified nonconforming adult book store to continue, the requirements of this section shall be met (in addition to any other applicable requirements of this Division).

(b) The purposes of this section are:

- (1) To protect children, who may be attracted to these establishments; and
- (2) To prevent or control detrimental effects upon neighboring properties, and existing and proposed land uses in the general area.

(c) All certified nonconforming adult book stores shall meet the following requirements:

- (1) All windows, doors, and other apertures shall be blackened or obstructed so as to prevent anyone outside the establishment from viewing its interior;
- (2) Advertising shall be limited to one (1) business sign, as provided for in Section 27-615;
- (3) The proprietor, owner, or personnel of the establishment shall prohibit access to the premises by any person who is under eighteen (18) years old.

(d) In order to provide for a reasonable standard of amortization and to prevent an unreasonable loss, all certified nonconforming adult books stores may continue in operation until [July 1, 1985] July, 1, 1997, in accordance with the provisions of this Subtitle. [On or after that date, an adult book store may only continue in operation if a Special Exception for an adult book store is approved in accordance with Part 4 of this Subtitle.]

PART 6. COMMERCIAL ZONES.

DIVISION 3. USES PERMITTED.

Sec. 27-461. Uses permitted.

* * * * *

(b) TABLE OF USES I

USE	ZONE						C-M	C-R-C
	C-O	C-A	C-S-C	C-W				
(1) COMMERCIAL:								
* * * * *	*	*	*	*	*	*	*	*
*								
(E) Trade (Generally Retail):								
Adult book store	X	X	[SE] <u>X</u>	X			[SE] <u>X</u>	X
* * * * *	*	*	*	*	*	*	*	*
*								

PART 7. INDUSTRIAL ZONES.

Sec. 27-473. Uses permitted.

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(b) TABLE OF USES

<i>USE</i>						<i>I-1</i>	<i>I-2</i>	<i>ZONE</i> <i>I-3</i>	<i>I-4</i>	<i>U-L-I</i>
(1) COMMERCIAL:										
* * * * *										
(E) Trade (Generally Retail):										
Adult book store						[SE]<u>X</u>	[SE]<u>P</u>³²	X	X	X
* * * * *										

32 In accordance with the provisions of Part 16.

PART 16. ADULT BOOK STORES.

Sec. 27-901. Findings.

(a) The District Council has reviewed the legislative records for all prior legislation and for the present legislation on the subject of adult book stores. The evidence in these legislative records includes studies of adult businesses and comments on the subject of adult book stores from government and community leaders in Prince George's County and in other jurisdictions in the United States.

(b) From the evidence in the legislative records for the present and prior legislation, the District Council makes the following legislative findings:

(1) The location of present and future adult book stores in that part of the Maryland-Washington Regional District in Prince George's County should be controlled through zoning regulations, to lessen or control the adverse secondary effects of such stores on their surrounding neighborhoods.

(2) Testimony in the legislative records and certain findings from other jurisdictions indicate that adult businesses, including adult book stores, have a strong tendency to affect neighborhood character and may be associated with neighborhood deterioration or depreciation of property values.

(3) Prince George's County has an additional interest in controlling the location of adult book stores, to prevent access to such stores by children, who may be adversely influenced by the materials sold in such stores.

(4) There are real and substantial governmental interests promoted by zoning regulations which control the location of adult book stores in that part of the Maryland-Washington Regional District in Prince George's County.

Sec. 27-902. Definitions.

(a) [While Part 16 of Subtitle 27 is in effect, the terms "adult book store," "sodomasochistic abuse," "sexual conduct," "sexual excitement," and "value" shall have the meanings stated in this Section.]

[(b)] An adult book store is any commercial establishment which does not otherwise qualify as a theater or nonprofit, free-lending library and which either:

(1) Has ten percent (10%) or more of the value of its stock on the premises, or has ten percent (10%) or more of the value of its stock on display, in books, periodicals, photographs, drawings, sculptures, motion pictures, films, or other visual representations which depict sadomasochistic abuse, sexual conduct, or sexual excitement; or

(2) Has on the premises one (1) or more mechanical devices specifically for the purpose, in whole or in part, of viewing such materials.

[(c)](b) Sadomasochistic abuse means flagellation or torture by or upon a human who is nude, or clad in undergarments, or in a revealing or bizarre costume, or the condition of one who is nude or so clothed and is being fettered, bound, or otherwise physically restrained.

[(d)](c) Sexual conduct means human masturbation, sexual intercourse, or any touching of or contact with the genitals, pubic areas, or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex, or between humans and animals.

[(e)](d) Sexual excitement means the condition of human male or female genitals, or the breasts of the female, when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

[(f)](e) Value means the full retail price at which the stock is offered for sale on the premises.

Sec. 27-903. Nonconforming adult book stores.

(a) A certified nonconforming adult book store may not continue to be operated unless the requirements of this Section are met. These requirements are in addition to any other applicable requirements in this Subtitle.

(b) All certified nonconforming adult book stores shall meet the following requirements:

(1) All windows, doors, and other apertures shall be blackened or obstructed, to prevent anyone outside the establishment from viewing its interior;

(2) Advertising shall be limited to one (1) business sign, as provided for in Section 27-615; and

(3) The proprietor, owner, or personnel of the establishment shall prohibit access

to the premises by any person who is under eighteen (18) years of age.

(c) In order to provide for a reasonable standard of amortization and to prevent an unreasonable loss, all certified nonconforming adult book stores may continue in operation until July 1, [1993]1997, in accordance with the provisions of this Subtitle. [On or after that date, an adult book store may continue in operation only if a special exception for an adult book store is approved in accordance with Parts 4 and 16 of this Subtitle.]

Sec. 27-904. [Required findings for Special Exception] Additional requirements for Adult Book Stores.

(a) [All application and review procedures given in this Subtitle for Special Exceptions generally shall apply to Special Exceptions for adult book stores, except that the findings given in this Section shall be the only ones required for adult book stores.

(b) No special exception for an adult book store shall be granted unless the District Council finds in each specific case that the establishment, maintenance, or operation of the use from the evidence in the record meets the standards set forth in this Section. The applicant for a Special Exception for an adult book store shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the District Council. The Council shall give consideration to the following, where appropriate:

(1) The nature of the proposed site, including its size and shape and the proposed size, shape, and arrangement of structures;

(2) Traffic conditions, including the resulting traffic patterns;

(3) The nature of the surrounding area and the extent to which the proposed use might impair its present and future development;

(4) The proximity of dwellings, churches, schools, public structures, and other places of public gatherings;

(5) The probable effect of the proposed use on the peace and enjoyment of people in their homes;

(6) Facilities for sewers, water, schools, transportation, and other services, and the ability of the County to supply such services;

(7) The limitations of fire and rescue equipment and the means of access for fire and police protection;

(8) The preservation of cultural and historical landmarks and trees;

(9) The probable effect of noise, vibrations, smoke and particulate matter, toxic matter, odorous matter, fire and explosion hazards, and glare upon the uses of surrounding properties;

(10) The purpose and intent of this Subtitle, as set forth in its other sections;

(11) The most appropriate use of land and structures;

(12) The conservation of property values; and

(13) The contribution, if any, such proposed use, building, or addition would make toward the deterioration of areas and neighborhoods.

(c) The following additional requirements shall apply to all adult book stores:

(1)] The subject structure shall be located at least one thousand (1,000) feet from any property in a Residential Zone; property proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, an approved Official Plan for an R-P-C Zone, or an approved Conceptual or Detailed Site Plan; or property on which a school, library, park, playground, recreational facility, day care center for children, or church has been built, and at least five hundred (500) feet from another adult book store.

[(2)](b) The distance stated in [paragraph (1)] (a) shall be measured as follows:

[(A)](1) If the property with the adult book store adjoins or is in the vicinity of any property on which a residence, school, library, park, playground, recreational facility, day care center for children, [or] church, or another adult book store has been built, then the distance shall be measured along street or right-of-way lines from the front door or main entrance of the structure used for adult book store purposes to the front door or main entrance of the residence, school, library, or other use, as just stated.

[(B)](2) If the property with the adult book store adjoins or is in the vicinity of undeveloped property which is in a Residential Zone or is proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, an approved Official Plan for an R-P-C Zone, or an approved Conceptual or Detailed Site Plan,

then the distance shall be measured in a straight line from the front door or main entrance of the structure used for adult book store purposes to the nearest point of the boundary line of the undeveloped property in a Residential Zone or proposed for residential purposes on an approved Basic Plan, Official Plan, or Conceptual or Detailed Site Plan, as just stated.

[(3) As a part of the Special Exception approval, the Council may restrict advertisement, outdoor display, and the location of merchandise] (c) Outdoor display of merchandise is prohibited.

[(4)] (d) The proprietor, owner, or personnel of the adult book store shall prohibit access to the premises by any person who is under eighteen (18) years of age.

(e) All windows, doors, and other apertures shall be blackened or obstructed, to prevent anyone outside the establishment from viewing its interior.

(f) Advertising shall be limited to one business sign, as provided for in Section 27-615 of this Subtitle.

(g) The hours of operation of the adult book store shall not extend beyond 12:00 a.m. and shall not begin before 9:00 a.m.

SECTION 2. BE IT FURTHER ENACTED by the County Council of Prince George's County, Maryland, sitting as the District Council for that part of the Maryland-Washington Regional District in Prince George's County, Maryland, that Sections 27-331, 27-904.01 and 27-905 be and the same are hereby repealed:

SUBTITLE 27. ZONING.

PART 4. SPECIAL EXCEPTIONS.

DIVISION 3. ADDITIONAL REQUIREMENTS FOR SPECIFIC SPECIAL EXCEPTIONS

Sec. 27-331. [Adult book store.

(a) An adult book store may be permitted, subject to the following:

(1) The subject structure shall be located at least one thousand (1,000) feet from any Residential Zone, land proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, approved Official Plan for an R-P-C Zone, or any approved Conceptual or Detailed Site Plan, or property associated with any of the following:

school, library, park, playground, recreational facility, church, convent, or monastery.

(2) As a part of the Special Exception approval, the Council may restrict advertisement, outdoor display, and the location of merchandise, and may impose other reasonable requirements deemed necessary to safeguard the health, safety, morals, and general welfare of the community.

(3) The proprietor, owner, or personnel of the establishment shall prohibit access to the premises by any person who is under eighteen (18) years old.] **Reserved.**

PART 16. ADULT BOOK STORES.

[Sec. 27-904.01. Time Requirements for Special Exception.

(a) An application for a Special Exception for an adult bookstore shall be delivered to the Technical Staff upon completion.

(b) The Technical Staff shall accept only those applications which are completely and properly filled out, and shall render a decision on whether to accept an application within three (3) working days of receipt of said application.

(c) An accepted application and all corresponding documentation shall be transmitted to the Planning Board for posting. Posting shall take place within fifteen (15) days from the date the application is accepted and shall be done in accordance with Section 27-305.

(d) Within forty-five (45) days from the date an application is accepted, the Technical Staff shall issue a written report regarding the application for Special Exception for review and consideration by the Zoning Hearing Examiner.

(e) A hearing on the application for Special Exception shall be scheduled before the Zoning Hearing Examiner and publication of the hearing in accordance with Section 27-304 shall take place within forty-five (45) days from the date the application is accepted.

(f) Hearings conducted before the Zoning Hearing Examiner shall be conducted in a prompt and efficient manner which allows all parties concerned to present evidence within a reasonable length of time. The Zoning Hearing Examiner shall issue its written decision within ninety (90) days from the date the application is accepted.

(g) The Zoning Hearing Examiner's written decision may be appealed to the District Council. A Notice of Appeal to the District Council shall be filed with the Clerk to the

Council within one hundred five (105) days from the date the application is accepted.

(h) Upon receiving a timely Notice of Appeal from the Zoning Hearing Examiner's decision, the District Council shall conduct an oral argument within one hundred thirty-five (135) days from the date the application is accepted.

(i) A decision on appeal shall be rendered by the District Council no later than one hundred fifty (150) days from the date the application for a Special Exception is accepted. If the District Council fails to render its decision within one hundred fifty (150) days, the application shall be considered to have been denied.

(j) The provisions of this Section are to be read in conformity with all other applicable laws and requirements, to the extent possible. In the event they conflict with other applicable provisions, the provisions of this Section shall take precedence.]**Reserved.**

Sec. 27-905. [Effective dates.

(a) From and after the effective date of this Section, this Part 16 shall supersede the provisions for adult book stores in Sections 27-107.1(a)(6), 27-248, 27-317, and 27-331. The provisions in Part 16 shall remain in effect until they are repealed or modified by the District Council.

(b) Sections 27-107.1(a)(6), 27-248, 27-317, and 27-331 are not repealed by the provisions in this Part 16.] **Reserved.**

SECTION 3. BE IT FURTHER ENACTED that the provisions of this Act are hereby declared to be severable, and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not effect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Act, since the same would have been enacted without unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

SECTION 4. BE IT FURTHER ENACTED that this Ordinance shall take effect forty-five (45) calendar days after its adoption.

Adopted this 10th day of September, 1996.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART
OF THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE
GEORGE'S COUNTY, MARYLAND

BY:

Stephen J. Del Giudice
Chairman

ATTEST:

Joyce T. Sweeney
Clerk of the Council

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.