



**Board of Adjustment
Agenda Packet**

January 28, 2016

Call to Order

- A) Approval of Agenda
- B) Ask for Disqualifications
- C) Announce Quorum Being Met

Old Business

- A) **Public Hearing and Action: BOA 16-01 R.F. London, Inc.:** Special Use Permit request for an adult and sexually oriented business (presently adult entertainment.)

New Business

Announcements

Adjournment



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1412)

Agenda Item Title

Public Hearing and Action: BOA 16-01 R.F. London, Inc.:

Brief Description of Agenda Item:

Special Use Permit request for an adult and sexually oriented business (presently adult entertainment.)

Board Action Requested

Action

Person Submitting Agenda Item

Susan Tanner, Administrative Assistant

Presenter of Agenda Item

Ben Woody

CASE ANALYSIS FOR THE
Board of Adjustment
DATE: January 14, 2016
BOA 16-01 R.F. London, Inc.

ITEM: BOA 16-01 R.F. London, Inc. special use permit request for an adult and sexually oriented business (presently adult entertainment).
LOCATION: 9098 Caratoke Highway, Point Harbor, Poplar Branch Township
TAX ID: 0132-000-133A-0000
ZONING DISTRICT: General Business (GB)
PRESENT USE: Adult entertainment (Headlights)
OWNER: Robert F. London
Mermaids, Inc.
134 Albetuck Road
Point Harbor, NC 27964
APPLICANT: Robert F. London, Inc.

LAND USE/ZONING OF SURROUNDING PROPERTY:

	Land Use	Zoning
NORTH:	Warehousing	General Business
SOUTH	Single Family Dwellings	Residential
EAST:	Warehousing/Office	General Business
WEST:	Single Family Dwellings	Residential

SIZE OF SITE: 1.5 acres.

I. NARRATIVE OF REQUEST:

The applicant is proposing to operate an adult and sexually oriented business consisting of a "Nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses or groups."

II. QUESTION(S) BEFORE THE BOARD:

Special Use Permit Criteria and Staff Findings:

As required in an Order issued by the Honorable Jerry R. Tillett dated May 24, 1999, the staff recommends pursuant to Unified Development Ordinance (UDO) Section 808 and Section 1304 the following specific findings of fact and conclusions of law:

1. Completeness of application.

Preliminary Findings:

- a. The completed application for the amended use of an adult and sexually oriented business was submitted on February 7, 2000.

2. The proposed use is among those listed in the Table of Permissible Uses as a special use indicated with a "S".

Preliminary Findings: The proposed amended use **is not** among those listed in the Table of Permissible Uses as a special use indicated with an "S".

- a. The amended use, an adult and sexually oriented business, is not within the jurisdiction of the Board of Adjustment to issue a special use permit.
- b. The amended use, an adult and sexually oriented business, is within the jurisdiction of the Board of Commissioners according to Section 1310, use number 37.000.
- c. An adult and sexually oriented business is allowed in the Heavy Manufacturing (HM) zoning district, not in the General Business (GB) zoning district. The subject property is zoned General Business (GB) and the applicant has not applied for a zoning map amendment.

3. The conditions proposed meet or exceed the minimum requirements of this ordinance.

Preliminary Findings: The conditions proposed **do not** meet or exceed the minimum requirements of this ordinance.

- a. Sections 808 and 1310 of the Unified Development Ordinance, adopted September 19, 1994, classifies topless nightclubs as "Adult and Sexually Oriented Business" which requires such businesses to locate in a Heavy Manufacturing zoning district with a special use permit and be located a minimum of 1,000 feet from any dwelling or R and RA zoning district, among other things.
- b. The property on which Mermaids (Headlights) is located, US Highway 158, Point Harbor, Tax Map 132, Lot 133A, Poplar Branch Township, is zoned General Business. Further, the building in which Mermaids (Headlights) is located is within 1,000 feet of 17 residential dwellings (in the year 2000) and immediately adjacent to an R zoning district.

4. The special use will not endanger the public health or safety.

Preliminary Findings: The proposed use **will** materially endanger the public health or safety for the following reasons:

- a. The amended use, an adult and sexually oriented business, is immediately adjacent to a residential subdivision known as Old Oak Estates, which contains 14 dwellings (in the year 2000). Old Oak Estates is zoned R "Residential".
- b. With the enactment of N.C. Gen. Stat. 160A-181.1 the North Carolina General Assembly has found and determined that: sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulations of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.
- c. Based on the North Carolina General Assembly's findings and determination and evidence concerning the adverse secondary effects of sexually oriented business on the community and findings incorporated in the cases *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), and *Barnes v. Glenn Theater, Inc.*, 501 U.S. 560 (1991), and on studies in other

- communities including, but not limited to, Dallas/Fort Worth, Texas; Denver, Colorado; Ellicottville, New York; Newport News, Virginia; Indianapolis, Indiana; Los Angeles, California; St. Paul, Minnesota; and Austin, Texas; the findings in Article IV, Chapter 12 of the Town of Nags Head, North Carolina Code of Ordinances; and the findings of Chapter 112 of the Dare County, North Carolina Code of Ordinances; David W. Owens, "Regulating Sexually Oriented Businesses", Special Series No. 15, January, 1997; and David W. Owens, "Recent Developments Regarding Local Regulation of Sexually Oriented Businesses", Planning and Zoning No. 10, August, 1998, the Board of Adjustment for the County of Currituck further finds that:
- i. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments and that without reasonable regulation there is no mechanism to make owners of such establishments responsible for activities that occur on their premises.
 - ii. Employees of certain sexually oriented businesses engage in higher incidences of certain types of illicit sexual behavior than employees of other commercial establishments.
 - iii. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency infection, genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
 - iv. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy and, in part, because of the unregulated nature of the activities and the failure of owners and operators of the facilities to self-regulate those activities and maintain those facilities.
 - v. Numerous studies and reports have demonstrated that the consumption of alcohol or alcoholic beverages at a sexually oriented business increases the potential for illicit sexual activity, violence, acts characterized as disturbing the peace, and other identified nuisances to occur.
 - vi. Studies have demonstrated that where sexually oriented businesses are located, other activities that are illegal or unhealthy tend to accompany them, around them, and be aggravated by them. Such other activities include but are limited to prostitution; solicitation for prostitution; lewd and lascivious behavior; possession, distribution, and transportation of obscene materials; sale or possession of controlled substances; and violent crimes against persons and property.
 - vii. The public health and safety of the citizens and visitors of the county will be materially endangered by the establishment of the proposed use.
- d. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the Ordinance remains at all times on the applicant. The special use permit application does not address the public health or safety impacts that may occur outside of the building (as enumerated above). It is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary staff findings that the proposed use will materially endanger the public health or safety.
5. The special use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located.

Preliminary Findings: The proposed use will substantially injure the value of adjoining or abutting property and will not be in harmony with the particular neighborhood or area in which it is to be located for the following reasons:

- a. The amended use, an adult and sexually oriented business, is immediately adjacent to a residential subdivision known as Old Oak Estates, which contains 14 dwellings (in the year 2000). Old Oak Estates is zoned R "Residential".
- b. The amended use, an adult and sexually oriented business, does not meet the locational, nor the spacing requirements of Section 808 established for adult and sexually oriented businesses.
- c. A review of county tax office property valuations histories between 1990 and 2000 for 27 lots in Old Oak Estates shows 24 properties decreased in value a total of \$88,895.00 and 3 properties increased in value a total of \$5,321.00. The net decrease in tax base for Old Oak Estates between 1990 and 2000 is \$83,574.00. Mermaids (Headlights) Nightclub began offering topless dancing in the summer of 1994.
- d. With the enactment of N.C. Gen. Stat. 160A-181.1 the North Carolina General Assembly has found and determined that: sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulations of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.
- e. Based on the North Carolina General Assembly's findings and determination and evidence concerning the adverse secondary effects of sexually oriented business on the community and findings incorporated in the cases *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), and *Barnes v. Glenn Theater, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Dallas/Fort Worth, Texas; Denver, Colorado; Ellicottville, New York; Newport News, Virginia; Indianapolis, Indiana; Los Angeles, California; St. Paul, Minnesota; and Austin, Texas; the findings in Article IV, Chapter 12 of the Town of Nags Head, North Carolina Code of Ordinances; and the findings of Chapter 112 of the Dare County, North Carolina Code of Ordinances; David W. Owens, "Regulating Sexually Oriented Businesses", Special Series No. 15, January, 1997; and David W. Owens, "Recent Developments Regarding Local Regulation of Sexually Oriented Businesses", Planning and Zoning No. 10, August, 1998, the Board of Adjustment for the County of Currituck further finds that:
 - i. Studies have demonstrated that sexually oriented businesses are regional businesses and as such have a regional draw.
 - ii. Small towns, and by extension rural areas, do not have sufficient target populations to support sexually oriented businesses as has been demonstrated in numerous trade area studies.
 - iii. Studies have demonstrated that a sexually oriented business in a small town, and by extension rural areas, will draw in a regional population consisting largely adult males in their twenties whose interests and activities are different from of the older adults or families in the community.
 - iv. Sexually oriented businesses tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere that

- promotes crime, and ultimately lead other residents and commercial establishments to relocate.
- v. By establishing location criteria to keep sexually oriented businesses away from sensitive uses, such as residential districts, schools, day care centers, religious facilities, playgrounds and parks the potential for the identified secondary impacts to be felt by the sensitive uses is lessened.
 - vi. Those individuals who desire to purchase, lease, or sell those items or services provided by sexually oriented businesses or who wish to participate in services provided by sexually oriented businesses have additional reasonable avenues available to do so including but not limited to:
 - (1) Access to sexually oriented items and services within the county which are permitted to sell and distribute sexually oriented items and services;
 - (2) Access to sexually oriented items and services within the regional vicinity of the county, including locations in Dare County municipalities, Elizabeth City, North Carolina, and the incorporated portions of Virginia;
 - (3) Access to cable television, including premium channels, pay-per-view channels and adult channels, access to satellite dish transmissions, internet access, telephone access, on-line computer services and access to oriented material via mail and other delivery services.
 - vii. The value of adjoining or abutting property and harmony with the surrounding neighborhood and area will be injured by the establishment of the proposed use.
- f. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the Ordinance remains at all times on the applicant. The special use permit application states that lots behind the property have been sold for building purposes and concludes that because of this there has not been a substantial injury to adjoining properties. This statement does not provide the rate and value of comparable building activity on lots not adjoining the subject property and therefore does not provide a basis to support the statement. It is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary staff findings that the proposed use **will** substantially injure the value of adjoining or abutting property and **will not** be in harmony with the particular neighborhood or area.
6. The special use will be in conformity with the Land Use Plan or other officially adopted plan.

Preliminary Findings:

- a. The proposed use **is not** consistent with the 1990 Land Use Plan because the establishment of an adult and sexually oriented business will detract from the quality of life in Currituck County (Goal 6.1) and the Limited Transition classification of the subject property is characterized by residential development which is not compatible with an adult and sexually oriented business.
- b. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the Ordinance remains at all times on the applicant. The special use permit application does not reference a policy from a county plan and therefore has not demonstrated general conformity with a plan adopted by the Board of Commissioners.

7. The special use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate. Such facilities must be in place or programmed to be in place within two years after the initial approval of the plan (sketch plan in the case of major subdivisions).

Preliminary Findings:

- a. The proposed use is commercial and will not exceed the county's ability to provide other public facilities.

III. Special Findings Pursuant to Section 808 (Judge Jerry R. Tillett's Order):

As further required in an Order issued by the Honorable Jerry R. Tillett dated May 24, 1999, the staff recommends pursuant to Unified Development Ordinance (UDO) Section 808 the following specific findings of fact and conclusions of law to address the following:

1. The initial intended use;

Preliminary Findings:

- a. The applicant's initial intended use was a nightclub and billiards/game room. A completed application to appear before the Board of Adjustment for a special use permit was submitted on August 4, 1993.
- b. R. F. London, Inc. was granted a special use permit on January 26, 1994 to operate a nightclub and billiards/game room on US 158, Point Harbor Township, Tax Map 132, Lot 133A, by the Board of Adjustment based on hearings held August 25, 1993 and January 26, 1994. During hearings, Mr. London testifies that the nightclub will not feature topless dancing.

2. The secondary effects of the initial use;

Preliminary Findings:

- a. Section 1310 of the Unified Development Ordinance established the nightclub and billiards/game room use as a special use in the General Business (GB) zoning district.
- b. The initial intended use, a nightclub and billiards/game room, was located on a properly zoned parcel of land and met the requirements of the Unified Development Ordinance. Therefore, the initial intended use did not endanger the public health or safety, was in harmony with surrounding area, and did not injure the value of adjoining or abutting property.

3. The amended use;

Preliminary Findings:

- a. On February 7, 2000, Robert F. London, Inc. submitted a special use permit application to operate an adult and sexually oriented business consisting of a "Nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses or groups."
- b. On May 1, 2000 the Board of Commissioners held a public hearing for the special use permit application to operate an adult and sexually oriented business on US 158, Point Harbor, Tax Map 132, Lot 133A, Poplar Branch Township, in the building now occupied by Headlights Nightclub. The application was denied by the Board of Commissioners because it did not comply with the applicable requirements of the Unified Development Ordinance.

- c. Specifically, the amended use, an adult and sexually oriented business, does not meet the locational or the spacing requirements of Section 808 of the Unified Development Ordinance.

4. The secondary effects of the amended use; and

Preliminary Findings:

- a. The amended use, an adult and sexually oriented business, is immediately adjacent to a residential subdivision known as Old Oak Estates, which contains 14 dwellings (in the year 2000). Old Oak Estates is zoned R "Residential".
- b. The amended use, an adult and sexually oriented business, does not meet the locational, nor the spacing requirements of Section 808 established for adult and sexually oriented businesses.
- c. A review of county tax office property valuations histories between 1990 and 2000 for 27 lots in Old Oak Estates shows 24 properties decreased in value a total of \$88,895.00 and 3 properties increased in value a total of \$5,321.00. The net decrease in tax base for Old Oak Estates between 1990 and 2000 is \$83,574.00. Mermaids (Headlights) Nightclub began offering topless dancing in the summer of 1994.
- d. With the enactment of N.C. Gen. Stat. 160A-181.1 the North Carolina General Assembly has found and determined that: sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulations of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.
- e. Based on the North Carolina General Assembly's findings and determination and evidence concerning the adverse secondary effects of sexually oriented business on the community and findings incorporated in the cases *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), and *Barnes v. Glenn Theater, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Dallas/Fort Worth, Texas; Denver, Colorado; Ellicottville, New York; Newport News, Virginia; Indianapolis, Indiana; Los Angeles, California; St. Paul, Minnesota; and Austin, Texas; the findings in Article IV, Chapter 12 of the Town of Nags Head, North Carolina Code of Ordinances; and the findings of Chapter 112 of the Dare County, North Carolina Code of Ordinances; David W. Owens, "Regulating Sexually Oriented Businesses", Special Series No. 15, January, 1997; and David W. Owens, "Recent Developments Regarding Local Regulation of Sexually Oriented Businesses", Planning and Zoning No. 10, August, 1998, the Board of Adjustment for the County of Currituck further finds that:
 - i. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments and that without reasonable regulation there is no mechanism to make owners of such establishments responsible for activities that occur on their premises.
 - ii. Employees of certain sexually oriented businesses engage in higher incidences of certain types of illicit sexual behavior than employees of other commercial establishments.

- iii. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency infection, genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
- iv. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy and, in part, because of the unregulated nature of the activities and the failure of owners and operators of the facilities to self-regulate those activities and maintain those facilities.
- v. Numerous studies and reports have demonstrated that the consumption of alcohol or alcoholic beverages at a sexually oriented business increases the potential for illicit sexual activity, violence, acts characterized as disturbing the peace, and other identified nuisances to occur.
- vi. Studies have demonstrated that sexually oriented businesses are regional businesses and as such have a regional draw.
- vii. Small towns, and by extension rural areas, do not have sufficient target populations to support sexually oriented businesses as has been demonstrated in numerous trade area studies.
- viii. Studies have demonstrated that a sexually oriented business in a small town, and by extension rural areas, will draw in a regional population consisting largely adult males in their twenties whose interests and activities are different from of the older adults or families in the community.
- ix. Studies have demonstrated that where sexually oriented businesses are located, other activities that are illegal or unhealthy tend to accompany them, around them, and be aggravated by them. Such other activities include but are limited to prostitution; solicitation for prostitution; lewd and lascivious behavior; possession, distribution, and transportation of obscene materials; sale or possession of controlled substances; and violent crimes against persons and property.
- x. Sexually oriented businesses tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere that promotes crime, and ultimately lead other residents and commercial establishments to relocate.
- xi. By establishing location criteria to keep sexually oriented businesses away from sensitive uses, such as residential districts, schools, day care centers, religious facilities, playgrounds and parks the potential for the identified secondary to be felt by the sensitive uses is lessened.
- xii. Those individuals who desire to purchase, lease, or sell those items or services provided by sexually oriented businesses or who wish to participate in provided by sexually oriented businesses have additional reasonable avenues available to do so including but not limited to:
 - (1) Access to sexually oriented items and services within the county which are permitted to sell and distribute sexually oriented items and services;
 - (2) Access to sexually oriented items and services within the regional vicinity of the county, including locations in Dare County municipalities, Elizabeth City, North Carolina, and the incorporated portions of Virginia;
 - (3) Access to cable television, including premium channels, pay-per-view channels and adult channels, access to satellite dish transmissions, internet

access, telephone access, on-line computer services and access to oriented material via mail and other delivery services.

- xiii. The public health and safety of the citizens and visitors of the county will be materially endangered by the establishment of the proposed use.
 - xiv. The value of adjoining or abutting property and harmony with the surrounding neighborhood and area will be injured by the establishment of the proposed use.
5. How the secondary effects are affected by the different intended uses.

Preliminary Findings:

- a. The secondary effects of the amended use, an adult and sexually oriented business, are substantial because the use does not meet the locational or the spacing requirements of Section 808 of the Unified Development Ordinance. Further, the amended use endangers the public health or safety, is not in harmony with surrounding area, and injures the value of adjoining or abutting property.
- b. The secondary effects of the initial intended use, a nightclub and billiards/game room, are not present because that use was located on a properly zoned parcel of land and met the requirements of the Unified Development Ordinance. Therefore, the initial intended use did not endanger the public health or safety, was in harmony with surrounding area, and did not injure the value of adjoining or abutting property.

IV. Special Findings Pursuant to Section 1304 (Judge Jerry R. Tillett's Order):

As further required in an Order issued by the Honorable Jerry R. Tillett dated May 24, 1999, the staff recommends pursuant to Unified Development Ordinance (UDO) Section 1304 the following specific findings of fact and conclusions of law to address the following:

1. The initial intended use;

Preliminary Findings:

- a. The applicant's initial intended use was a nightclub and billiards/game room. A completed application to appear before the Board of Adjustment for a special use permit was submitted on August 4, 1993.
- b. Under Section 1304 of the Unified Development Ordinance, the initial intended use is a legitimate permissible use in the General Business (GB) zoning district.
- c. R. F. London, Inc. was granted a special use permit on January 26, 1994 to operate a nightclub and billiards/game room on US 158, Point Harbor Township, Tax Map 132, Lot 133A, by the Board of Adjustment based on hearings held August 25, 1993 and January 26, 1994. During hearings, Mr. London testifies that the nightclub will not feature topless dancing.

2. The secondary effects of the initial use;

Preliminary Findings:

- a. Section 1310 of the Unified Development Ordinance established the nightclub and billiards/game room use as a special use in the General Business (GB) zoning district.
 - b. The initial intended use, a nightclub and billiards/game room, was located on a properly zoned parcel of land and met the requirements of the Unified Development Ordinance. Therefore, the initial intended use did not endanger the public health or safety, was in harmony with surrounding area, and did not injure the value of adjoining or abutting property.
3. The amended use;
- Preliminary Findings:**
- a. On February 7, 2000, Robert F. London, Inc. submitted a special use permit application to operate an adult and sexually oriented business consisting of a "Nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses or groups."
 - b. Under Section 1304 of the Unified Development Ordinance, the amended use is not a legitimate permissible use in the General Business (GB) zoning district. The amended use is only permitted in the Heavy Manufacturing (HM) zoning district with a special use permit and must be located a minimum of 1,000 feet from any dwelling or R and RA zoning district.
 - c. On May 1, 2000 the Board of Commissioners held a public hearing for the special use permit application to operate an adult and sexually oriented business on US 158, Point Harbor, Tax Map 132, Lot 133A, Poplar Branch Township, in the building now occupied by Headlights Nightclub. The application was denied by the Board of Commissioners because it did not comply with the applicable requirements of the Unified Development Ordinance.
4. The secondary effects of the amended use; and
- Preliminary Findings:**
- a. The amended use, an adult and sexually oriented business, is immediately adjacent to a residential subdivision known as Old Oak Estates, which contains 14 dwellings (in the year 2000). Old Oak Estates is zoned R "Residential".
 - b. The amended use, an adult and sexually oriented business, does not meet the locational, nor the spacing requirements of Section 808 established for adult and sexually oriented businesses.
 - c. A review of county tax office property valuations histories between 1990 and 2000 for 27 lots in Old Oak Estates shows 24 properties decreased in value a total of \$88,895.00 and 3 properties increased in value a total of \$5,321.00. The net decrease in tax base for Old Oak Estates between 1990 and 2000 is \$83,574.00. Mermaids (Headlights) Nightclub began offering topless dancing in the summer of 1994.
 - d. With the enactment of N.C. Gen. Stat. 160A-181.1 the North Carolina General Assembly has found and determined that: sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulations of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

- e. Based on the North Carolina General Assembly's findings and determination and evidence concerning the adverse secondary effects of sexually oriented business on the community and findings incorporated in the cases *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), and *Barnes v. Glenn Theater, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Dallas/Fort Worth, Texas; Denver, Colorado; Ellicottville, New York; Newport News, Virginia; Indianapolis, Indiana; Los Angeles, California; St. Paul, Minnesota; and Austin, Texas; the findings in Article IV, Chapter 12 of the Town of Nags Head, North Carolina Code of Ordinances; and the findings of Chapter 112 of the Dare County, North Carolina Code of Ordinances; David W. Owens, "Regulating Sexually Oriented Businesses", Special Series No. 15, January, 1997; and David W. Owens, "Recent Developments Regarding Local Regulation of Sexually Oriented Businesses", Planning and Zoning No. 10, August, 1998, the Board of Adjustment for the County of Currituck further finds that:
- i. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments and that without reasonable regulation there is no mechanism to make owners of such establishments responsible for activities that occur on their premises.
 - ii. Employees of certain sexually oriented businesses engage in higher incidences of certain types of illicit sexual behavior than employees of other commercial establishments.
 - iii. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency infection, genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
 - iv. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy and, in part, because of the unregulated nature of the activities and the failure of owners and operators of the facilities to self-regulate those activities and maintain those facilities.
 - v. Numerous studies and reports have demonstrated that the consumption of alcohol or alcoholic beverages at a sexually oriented business increases the potential for illicit sexual activity, violence, acts characterized as disturbing the peace, and other identified nuisances to occur.
 - vi. Studies have demonstrated that sexually oriented businesses are regional businesses and as such have a regional draw.
 - vii. Small towns, and by extension rural areas, do not have sufficient target populations to support sexually oriented businesses as has been demonstrated in numerous trade area studies.
 - viii. Studies have demonstrated that a sexually oriented business in a small town, and by extension rural areas, will draw in a regional population consisting largely adult males in their twenties whose interests and activities are different from of the older adults or families in the community.
 - ix. Studies have demonstrated that where sexually oriented businesses are located, other activities that are illegal or unhealthy tend to accompany them, around them, and be aggravated by them. Such other activities include but are limited to prostitution; solicitation for prostitution; lewd and lascivious behavior; possession, distribution, and transportation of obscene materials;

- sale or possession of controlled substances; and violent crimes against persons and property.
- x. Sexually oriented businesses tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere that promotes crime, and ultimately lead other residents and commercial establishments to relocate.
 - xi. By establishing location criteria to keep sexually oriented businesses away from sensitive uses, such as residential districts, schools, day care centers, religious facilities, playgrounds and parks the potential for the identified secondary to be felt by the sensitive uses is lessened.
 - xii. Those individuals who desire to purchase, lease, or sell those items or services provided by sexually oriented businesses or who wish to participate in provided by sexually oriented businesses have additional reasonable avenues available to do so including but not limited to:
 - (4) Access to sexually oriented items and services within the county which are permitted to sell and distribute sexually oriented items and services;
 - (5) Access to sexually oriented items and services within the regional vicinity of the county, including locations in Dare County municipalities, Elizabeth City, North Carolina, and the incorporated portions of Virginia;
 - (6) Access to cable television, including premium channels, pay-per-view channels and adult channels, access to satellite dish transmissions, internet access, telephone access, on-line computer services and access to oriented material via mail and other delivery services.
 - xv. The public health and safety of the citizens and visitors of the county will be materially endangered by the establishment of the proposed use.
 - xvi. The value of adjoining or abutting property and harmony with the surrounding neighborhood and area will be injured by the establishment of the proposed use.
5. How the secondary effects are affected by the different intended uses.
- Preliminary Findings:**
- a. The secondary effects of the amended use, an adult and sexually oriented business, are substantial because under Section 1304 of the Unified Development Ordinance, the amended use is not a legitimate permissible use in the General Business (GB) zoning district. The amended use is only permitted in the Heavy Manufacturing (HM) zoning district. The amended use also does not meet the other requirements of the Unified Development Ordinance. Further, the amended use endangers the public health or safety, is not in harmony with surrounding area, and injures the value of adjoining or abutting property.
 - b. The secondary effects of the initial intended use, a nightclub and billiards/game room, are not present because under Section 1304 of the Unified Development Ordinance, the initial intended use is a legitimate permissible use in the General Business (GB) zoning district. The initial use also met the other requirements of the Unified Development Ordinance. Therefore, the initial intended use did not endanger the public health or safety, was in harmony with surrounding area, and did not injure the value of adjoining or abutting property.

V. STAFF RECOMMENDATION:

Staff recommends **denial** of the special use permit application because:

- the proposed use does not meet the requirements of the Unified Development Ordinance, a required finding under Section 1402(1)(c) and Section 2009(3)(c);
- because the subject property is not zoned correctly;
- the adult business building is within 1,000 feet of a residential zoning district and within 1,000 feet of buildings used as residential dwellings; and
- it is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary staff findings that the information presented by the applicant does not meet his burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the Ordinance.

A

**COUNTY OF CURRITUCK
REQUEST FOR A SPECIAL USE PERMIT**

APPLICANT:	OWNER:
Name: <u>Robert F. London, Inc.</u>	Name: <u>Robert F. London</u>
Address: <u>P.O. Box 164</u> <u>Point Harbor, NC 27964</u>	Address: <u>P.O. Box 164</u> <u>Point Harbor, NC 27964</u>
Telephone: <u>(252) 491-8581</u>	Telephone: <u>(252) 491-8581</u>

LEGAL RELATIONSHIP OF APPLICANT TO THE PROPERTY OWNER: Applicant is the lessee of the property that is owned by Robert F. London, an individual.
PROPERTY INFORMATION:

Location: U.S. Hwy 158 South, (9098 Caratoka Hwy.)
 Tax Map: 0132 Block: 000 Section: 0133A Parcel: 0000
 Current Zoning: GB Total Acreage: 1.5 acres +/-

Purpose of Special Use: Nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses or groups.

The applicant should respond to the following issues that the Board of Commissioners must find are met in order to issue a Special Use Permit. Answers should be supported by facts.

- a. The use will not materially endanger the public health or safety;
The nightclub will not materially endanger the public health or safety as a natural buffer exists between adjacent property.
Further, no noise or light originates from inside the building such that neighboring properties would be affected. A nine (9) foot wooden fence also runs the length of the property on its West side.
- b. The use will not substantially injure the value of adjoining or abutting property;
Lots behind the property have been sold for building purposes over the past several years; therefore, there has not been a substantial injury to adjoining properties.

Attachment: Case Analysis BOA 1.14.16 (1412 : BOA 16-01 R.F. London, Inc.)

00-06

- c. The use will be in harmony with the particular neighborhood or area in which it is to be located (even though the proposed use and surrounding uses are generally permissible in the same district and therefore usually compatible);

The property abuts Hwy. 158, a four lane roadway. Commercial businesses are located along the Hwy. 158 and in the immediate vicinity of the nightclub. Commercial development in the area consists of retail furniture outlets, warehouses, office buildings. The building has operated for several years without complaint from the neighbors.

- d. The use will be in general conformity with the Land Use Plan, Thoroughfare Plan, or other plan officially adopted by the board;

Applicant believes that the use is in conformity with the development plans of the County as commercial development is anticipated along Hwy. 158.

- e. The use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities.

The use will not exceed the county's ability to provide public facilities as such facilities will not be required more than other commercial establishments.

I, the undersigned, do certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief.

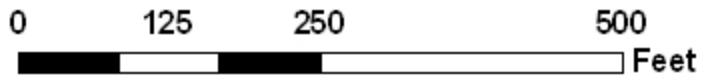
Further, I hereby authorize County Officials to enter my property for purposes of determining zoning compliance.

Robert J. [Signature]
Signature



Attachment: Case Analysis BOA 1.14.16 (1412 : BOA 16-01 R.F. London, Inc.)

PB 00-06 Robert F. London, Inc.
 Special Use Permit



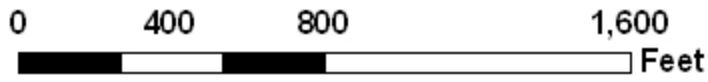
Currituck County Planning Department





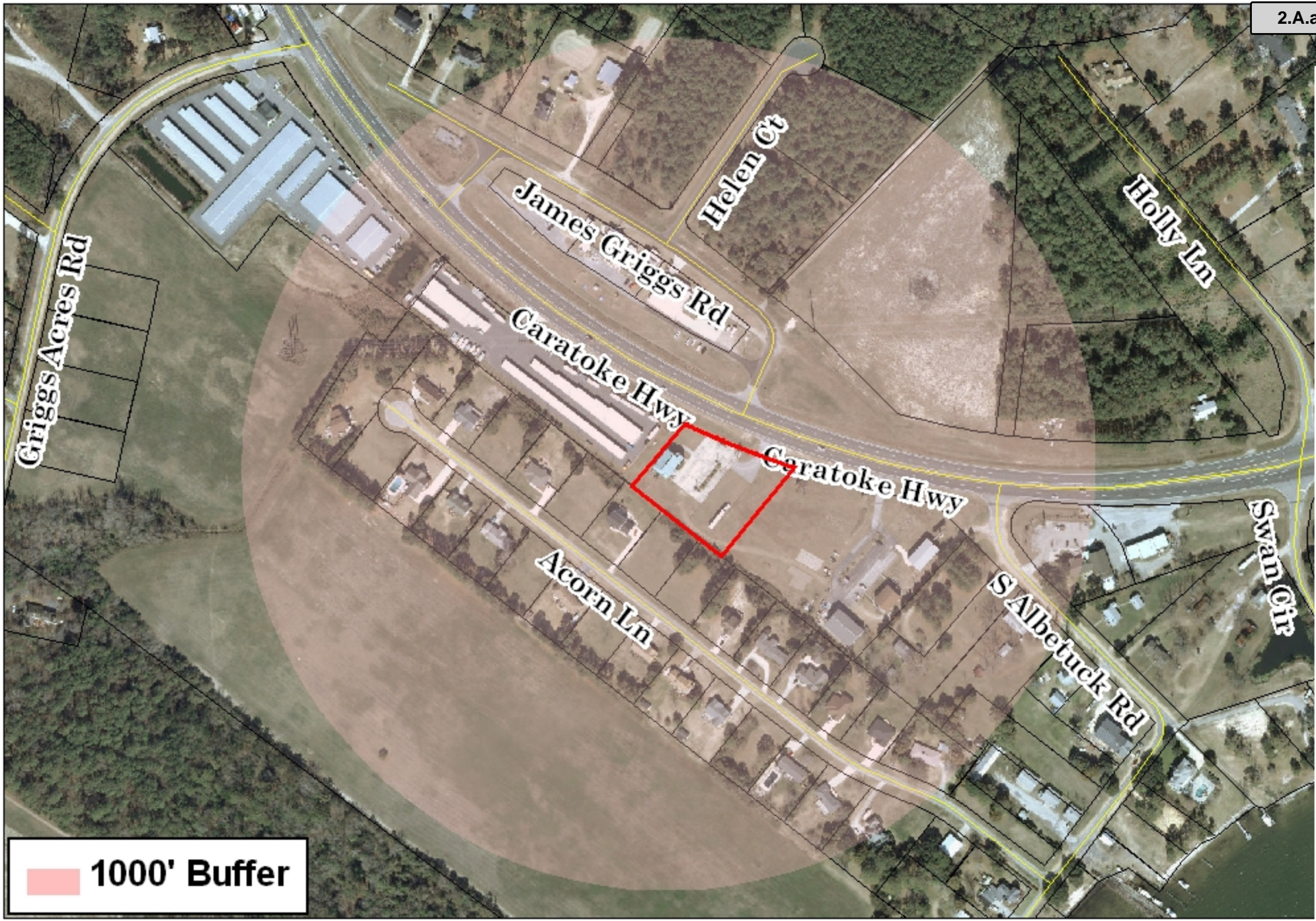
Attachment: Case Analysis BOA 1.14.16 (1412 : BOA 16-01 R.F. London, Inc.)

PB 00-06 Robert F. London, Inc.
 Special Use Permit



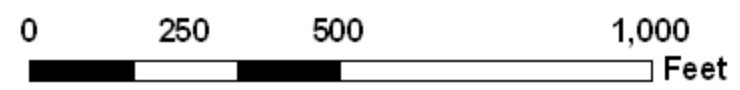
Currituck County Planning Department





Attachment: Case Analysis BOA 1.14.16 (1412 : BOA 16-01 R.F. London, Inc.)

PB 00-06 Robert F. London, Inc.
 Special Use Permit



Currituck County Planning Department



STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 11-CVS-113 and 00-CVS-134

R.F. LONDON, INC.,
ROBERT F. LONDON,
MERMAIDS, INC., and
MERMAIDS, INC. d/b/a HEADLIGHTS)

Petitioners,)

VS.)

CURRITUCK COUNTY
and CURRITUCK COUNTY BOARD OF
COMMISSIONERS,)

Respondents.)

R.F. LONDON, INC.,
ROBERT F. LONDON,
MERMAIDS, INC., and
MERMAIDS, INC. d/b/a HEADLIGHTS)

Petitioners,)

VS.)

CURRITUCK COUNTY BOARD OF
ADJUSTMENT, and
CURRITUCK COUNTY)

Respondents.)

FILED
12 JUL 31 PM 12:37
CURRITUCK COUNTY, C.S.C.
BY J. Twiford, Asst. C.S.C.

ORDER

THESE CAUSES coming on to be heard and being heard before the undersigned Superior Court Judge at the 16 July 2012 Civil Session of Dare County Superior Court; before the Court were the Petitioners' Writs of Certiorari for appeal from the February 11, 2011 Order of the Currituck County Board of Adjustment (file number 11-CVS-113), the September 21, 2011 Order of the Currituck County Board of Commissioners (file number 00-CVS-134) and the May 11, 2000 Board of Adjustment Order (file number 00-CVS-134) pursuant to N.C.G.S. § 160A-393; the Petitioners were represented by J. Bryan Plumlee and the Respondents were represented by the County Attorney Donald I. McRee, Jr.; that from review of the entire record on appeal including all transcripts, pleadings and exhibits contained within both files and review of all briefs submitted on behalf of the Petitioners and the Respondents which were combined

Attachment: ORDER - JUDGE HIGHT 7-31-2012 (1412 : BOA 16-01 R.F. London, Inc.)

for the purpose of these appeals and argument of counsel regarding both cases, this Court makes the following:

FINDINGS OF FACT

1. That these matters have been the subject of litigation and various appeals since 1994, and have been on remand to the Currituck Board of Commissioners and Currituck County Board of Adjustment since 1999.
2. That Mermaids is a topless, adult entertainment nightclub in Currituck County, North Carolina.
3. That R.F. London, Inc., the original Petitioner and operator of Mermaids, transferred all holdings, assets, permits, and rights, including the right to sue and defend to Petitioner Mermaids, Inc. also known as Mermaids, Inc. d/b/a Headlights.
4. That Mermaids, Inc. is in part owned by R.F. London. (London, Mermaids, Inc. and Mermaids, Inc. d/b/a Headlights are collectively referred to herein as "Petitioners").
5. That R.F. London is also the owner of the real property and improvements where the business "Mermaids" has operated.
6. That on August 23, 1993 the Currituck Board of Adjustment heard the conditional use permit application of Petitioner R. F. London, Inc.
7. That the R. F. London, Inc. application was for a conditional use permit to operate a pool hall/nightclub on the Property.
8. That at the time of filing the application for a conditional use permit, a topless bar was not a permitted use in Currituck County.
9. That Robert London appeared on behalf of R. F. London, Inc. and under oath testified that he understood a topless bar "is against the law" and that he did not plan to operate a topless bar.
10. That following the August 23, 1993 hearing and a rehearing on January 26, 1994, the Currituck County Board of Adjustment issued a conditional use permit dated January 27, 1994 to R. F. London, Inc. for operation of a pool hall/nightclub.
11. That on May 20, 1994 John W. Halstead, Jr., attorney for London, forwarded a letter to Currituck County Attorney William H. Romm advising that topless dancing would be offered on a regular basis unless Currituck County officials believed that topless dancing would be grounds for revoking the conditional use permit.

12. That on August 13, 1994, an inspection by Currituck County verified that topless dancing was occurring on Petitioner's premises.
13. That proceedings to revoke the January 27, 1994 conditional use permit were then initiated by Currituck County.
14. That on August 26, 1994 during a meeting with Currituck County's planning director, Petitioner Robert London and the operator of Mermaids Nightclub informed that Mermaids Nightclub was operating a topless nightclub and would continue to operate a topless nightclub on the Property.
15. That during the revocation hearing on August 31, 1994 the attorney for Petitioner R. F. London, Inc. stated that Petitioner R. F. London, Inc. was operating a topless nightclub.
16. That following the revocation hearing, the Currituck County Board of Adjustment issued its order dated September 12, 1994 revoking the January 27, 1994 conditional use permit to operate a pool hall/nightclub and order to immediately stop operating Mermaids Nightclub.
17. That on September 19, 1994 the Currituck County Board of Commissioners amended the Currituck County Unified Development Ordinance ("UDO") to allow for the first time adult or sexually oriented businesses in HM (Heavy Manufacturing) Zoning Districts with a special use permit issued by the Board of Commissioners.
18. That R.F. London, Inc. appealed the Board of Adjustment decision to revoke the conditional use permit to Currituck County Superior Court on September 28, 1994.
19. That on December 29, 1994, the Honorable Gary E. Traywick entered an order holding that: 1) the public hearing held on London's conditional use permit was invalid; 2) he further ordered the Board hold a new hearing to determine if the Petitioner's proposed use complies with the ordinances of Currituck County; and 3) that a new hearing be duly advertised as prescribed by ordinance.
20. That on January 24, 1995, Petitioner appealed Judge Traywick's decision to the North Carolina Court of Appeals.
21. That on January 16, 1996, the North Carolina Court of Appeals dismissed Petitioner's appeal

22. That on May 29, 1996, the Board of Adjustment held a new public hearing and denied R. F. London Inc.'s conditional use permit application for an adult and sexually oriented business.
23. That on July 8, 1996, R.F. London, Inc. timely appealed the Board of Adjustment decision to Currituck County Superior Court.
24. That in Order dated May 24, 1999, the Honorable Jerry R. Tillett, entered an order ruling:
- A. The matter to be remanded to the Currituck County Board of Adjustment for rehearing and that the Board of Adjustment consider an application pursuant to Sections 1304 and 808 of the UDO.
 - B. Petitioners were to file and the Currituck County Planning Staff was to accept a new application for a Special Use Permit.
 - C. The Board of Adjustment was ordered to consider the application pursuant to Section 1304 and to make specific findings of fact and conclusions of law to address the following:
 - a. the initial intended use;
 - b. the secondary effects of the initial use;
 - c. the amended use;
 - d. the secondary effects of the amended use; and
 - e. how the secondary effects are affected by the different intended uses.
 - D. The Board of Adjustment, in the alternative, was ordered to consider the application pursuant to Section 808 and to make specific findings of fact and conclusions of law to address the following:
 - a. the initial intended use;
 - b. the secondary effects of the initial use;
 - c. the amended use;
 - d. the secondary effects of the amended use; and
 - e. how the secondary effects are affected by the different intended uses.
 - E. Judge Tillett further ordered the matter be remanded to the Currituck County Board of Commissioners for hearing pursuant to Section 808. The Board of Commissioners was ordered to consider the application pursuant to Section 808 and to make specific findings of fact and conclusions of law to address the

following:

- a. the initial intended use;
 - b. the secondary effects of the initial use;
 - c. the amended use;
 - d. the secondary effects of the amended use; and
 - e. how the secondary effects are affected by the different intended uses.
- F. These matters were to be conducted at the earliest possible time and at or near the same time so that the matters could be appealed and considered by the Court jointly should the matter be appealed.
- G. Judge Tillett specifically found that the parties have consented to pursuing an appeal of Section 1304 and Section 808 jointly should the matter be further appealed.
25. That after May 24, 1999, Petitioners continued to operate the facility as an adult entertainment nightclub and this fact was well known within Currituck County and the Court takes judicial notice "Mermaids" operated openly and notoriously as a topless, adult entertainment nightclub and bar.
26. That Judge Tillett's Order of May 1999 has been never amended or appealed by any party and is the law of this case.
27. That Judge Tillett is the Senior Resident Superior Court Judge of the First Judicial District which includes Currituck County and has since May 1999 been available for any motion to amend or modify his May 1999 Order.
28. That Respondents have not requested that Judge Tillett amend or modify his May 1999 Order.
29. That on February 7, 2000, the Petitioners submitted to the County a Special Use Permit application to operate an adult and sexually oriented business and nightclub.
30. That on March 29, 2000, the Board of Adjustment held a hearing for a Conditional Use Permit application.
31. That Petitioners' February 7, 2000 application was denied and the Board of Adjustment failed to preserve the record or make the findings required under Judge Tillett's order of May 1999.
32. That on May 1, 2000, the Board of Commissioners held a hearing for a Special Use Permit application.
33. That the application was denied and the County Board of Commissioners failed to preserve the record or make the findings required under Judge Tillett's order of May 1999.

34. That on June 12, 2000, the Petitioners timely filed a Petition for Writ of Certiorari to the Currituck County Superior Court regarding both denials.
35. That on January 2, 2003, the Honorable William C. Griffin, Jr., entered an order granting the Petition for Writ of Certiorari and ordering a verbatim transcript of both hearings be filed with the Court.
36. That the Currituck County Board of Commissioners failed to comply with Judge Griffin's order that verbatim transcripts be supplied to the Superior Court Division as part of the record on appeal.
37. That on July 7, 2003, the Currituck County Board of Commissioners enacted Ordinance Sec. 8-34 requiring all sexually oriented businesses apply to the Sheriff of Currituck County for a license to operate as a sexually oriented business.
38. That in May 2004, the Sheriff of Currituck County issued Petitioners a sexually oriented business license.
39. That the Petitioners' license was renewed annually.
40. That on April 19, 2006, this matter came before the Honorable Cy A. Grant.
41. That Judge Grant found that the County was unable to produce a verbatim transcript and remanded the matter to the Currituck County Board of Commissioners for rehearing of Petitioners' application for a Special Use Permit consistent with Judge Tillett's Order of May 1999.
42. That a transcript of the Board of Adjustment hearing of March 29, 2000 does not exist.
43. That no hearing as ordered by Judge Tillett or Judge Grant was held and on December 4, 2006, the Currituck County Board of Commissioners during a public hearing and in the presence of counsel voted 4 to 1 to settle and dismiss the lawsuit.
44. That Petitioners continued to operate the facility as an adult entertainment nightclub.
45. That on May 29, 2007, the Honorable J. Richard Parker, Senior Resident Superior Court Judge, entered an administrative order in case number 00-CVS-134 of "removal and discontinuance" from the pending trial calendar.
46. That on May 11, 2009, the Currituck County Sheriff's Office renewed Mermaids, Inc.'s Sexually Oriented Business License and added Robert Brown as a registered agent.
47. That on June 29, 2009, a county code compliance officer, a county building inspector and a county fire marshal inspected the Mermaids building as part of the Petitioners' request to amend a state alcohol permit from beer and wine to include mixed beverages.
48. That the conditions of the structure clearly indicated that adult entertainment had been taking place and based upon the representations of the Petitioners at that time would

- continue to take place.
49. That all three county officials indicated their approval by signing the state form for an amended permit.
 50. That following this inspection, County Manager, Dan Scanlon, who was also present during the December 4, 2006 vote by the Board of Commissioners, signed a sworn statement making no objections to the continued operation of Mermaids at its location as part of its amended application to the Alcoholic Beverage Control Commission of North Carolina.
 51. That the Alcoholic Beverage Control Commission of North Carolina issued the amended permit on September 10, 2009.
 52. That after Petitioners changed one of the exterior signs to reflect Petitioners' new trade name "Headlights," County Code Enforcement Officer Jennie Newborn hand delivered Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010.
 53. That the Notices of Violation were against Mermaids, Inc. and Robert F. London.
 54. That Newborn issued civil citations on Monday, April 19, 2010.
 55. That Newborn thereafter on April 22, 2012 issued civil penalties in the amount of \$27,000.00
 56. That the Petitioners appealed the issuance of the Notices of Violation and the citations on April 23, 2010 to the Currituck County Board of Adjustment.
 57. That on April 28, 2010, Currituck County Attorney McRee wrote to the North Carolina Department of Crime Control and Public Safety Alcohol Law Enforcement Division indicating to this agency that Petitioners were not properly permitted to operate an adult entertainment nightclub at its location.
 58. That on May 3, 2010, the Alcoholic Beverage Control Commission suspended the Petitioners' ABC permit.
 59. That on October 14, 2010, the Currituck County Board of Adjustment met and held a public hearing upon Petitioners' appeal of the citations issued by Enforcement Officer Newborn.
 60. That the Board of Adjustment upheld the citations but reduced the penalty to \$9,000.00.
 61. That the written order of the Board of Adjustment upholding the citations and reducing the penalties is dated October 14, 2010 and is filed of record on February 11, 2011.
 62. That the only Board of Adjustment proceedings transcribed after Judge Tillet's ruling of May, 1999 pertain to this February 11, 2011 filed Order from which the appeal

referenced herein as case number 11-CVS-113 arises.

- 63. That on October 18, 2010, the Currituck County Board of Commissioners met and held a public hearing upon Petitioners' application for a Special Use Permit.
- 64. That the Board of Commissioners failed to make the rulings required by the May 24, 1999 Order of Judge Tillett or the subsequent order of Judge Grant.
- 65. That at no time have the Currituck County Board of Commissioners or the Currituck County Board of Adjustment submitted findings and records of proceedings in compliance with the May 1999 Order of Judge Tillett and the subsequent Order of Judge Grant.
- 66. That the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners and the Currituck County Board of Adjustment were arbitrary and capricious.
- 67. That because of the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners, the actions of County Code Enforcement Officer Jennie Newborn hand in delivering Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010 against Mermaids, Inc. and Robert F. London, in issuing civil citations on Monday, April 19, 2010 and in issuing civil penalties in the amount of \$27,000.00 on April 22, 2012 were arbitrary and capricious.

Conclusions of Law

Based upon the foregoing findings, the Court makes the following conclusions as a matter of law.

This Court has jurisdiction over the parties and over the subject matter.

Pursuant to N.C.G.S. § 160A-393(d), Petitioners have standing to seek review of the Orders of the Board of Commissioners and the Board of Adjustment.

This Court has conducted a review of the whole record.

This Court has reviewed the record de novo for compliance with the law of these cases (Judge Tillett's Order of May 1999).

The Currituck County Board of Adjustment and Currituck Board of Commissioners have at no time submitted findings and records of proceedings in compliance with the May 24, 1999 Order of Judge Tillett and the subsequent Order of Judge Grant

Attachment: ORDER - JUDGE HIGHT 7-31-2012 (1412 : BOA 16-01 R.F. London, Inc.)

Currituck County including its officials and boards have unreasonably delayed enforcement of the Currituck County's Uniform Development Ordinance for over 11 years following the remand of this matter to the Currituck County Board of Commissioners and Board of Adjustment by failing to follow the rulings of this Court as setout in Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006.

The unreasonable delays by Currituck County have been more than a mere passage of time based upon the facts and circumstances of this case.

The failure to follow Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006 are intentional.

That the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners and the Currituck County Board of Adjustment were arbitrary and capricious.

That the actions of County Code Enforcement Officer Jennie Newborn hand in delivering Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010 against Mermaids, Inc. and Robert F. London, in issuing civil citations on Monday, April 19, 2010 and in issuing civil penalties in the amount of \$27,000.00 on April 22, 2012 were arbitrary and capricious.

Because of Currituck County's unreasonable delay and refusal to comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006, it would be unjust for the County including its officials and boards to prosecute claims to enforce its Uniform Development Ordinance against the Petitioners.

All civil penalties against Petitioners should be stricken.

These matters should be remanded to the Currituck County Board of County Commissioners and the Currituck County Board of Adjustment to allow them to again comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006.

Until such time as Respondents comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006, Respondents should not be permitted to enforce the Currituck County Uniform Development Ordinance against the Petitioners.

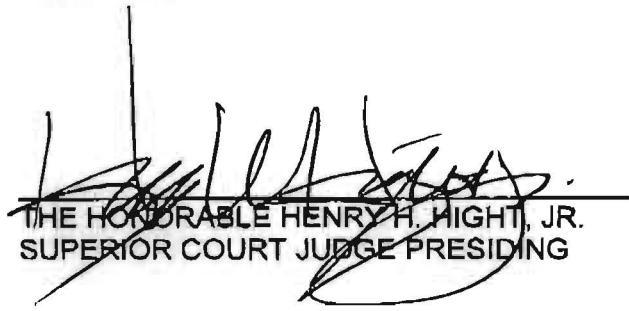
Based upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, it is now, therefore, Ordered, Adjudged And Decreed:

1. that the findings of fact and conclusions of law contained in the Board of Commissioners' September 21, 2011 Order are reversed and the matter is remanded forthwith to the Currituck County Board of Commissioners and to the Currituck County Board of

Adjustment for proceedings and findings not inconsistent with this **Order**, Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006;

- 2. that pending remanded proceedings and findings ordered herein, the Currituck County Board of Commissioner shall immediately but not later than 30 days from the date of this **Order** issue a Special Use Permit or any other required permit or approval to the Petitioners to operate an adult and sexually oriented business consisting of a nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses groups;
- 3. that pending remanded proceedings and findings ordered herein, Currituck County staff, employees, officers, agents, personnel, elected officials and/or appointed officials may not enforce the relevant portions of Currituck County's Uniform Development Ordinance which are the subject of these appeals against the Petitioners from their use of the property for a sexually oriented business, topless, adult entertainment establishment and/or bar and nightclub;
- 4. that Currituck County shall immediately certify to the North Carolina Alcoholic Beverage Control Commission that Petitioners have been awarded all necessary permits and approvals to operate the sexually oriented business, topless, adult entertainment establishment and/or bar and nightclub and that its business is not in violation of the County's Uniform Development Ordinance;
- 5. that the civil penalties against Petitioners are hereby stricken and the findings of fact and conclusions of law contained in the Board of Adjustment's February 11, 2011 filed Order are reversed.

Entered this 24th day of July 2012.


 THE HONORABLE HENRY H. HIGHT, JR.
 SUPERIOR COURT JUDGE PRESIDING

Attachment: ORDER - JUDGE HIGHT 7-31-2012 (1412 : BOA 16-01 R.F. London, Inc.)

2006-04-19

STATE OF NORTH CAROLINA

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IN THE GENERAL COURT OF JUSTICE

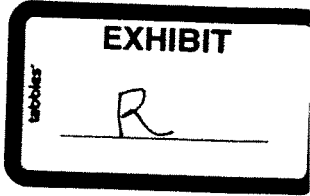
COUNTY OF CURRITUCK

05 APR 26

SUPERIOR COURT DIVISION

00 CVS 134

C.S.C.



R.F. LONDON, INC., a North Carolina Corporation, ROBERT F. LONDON, and MERMAIDS, INC.,

JLT

Petitioners/Plaintiffs,

ORDER

v.

CURRITUCK COUNTY BOARD OF ADJUSTMENT, and CURRITUCK COUNTY BOARD OF COMMISSIONERS,

Respondents/Defendants.

THIS MATTER came before the Currituck County Superior Court, Civil Session, on January 30, 2006, on Petitioners/Plaintiffs Petition for Writ of Certiorari, Motion to Show Cause, Complaint, and Request for Declaratory Judgment, and the Court finds that Currituck County is unable to produce a verbatim transcript of the hearing before the Currituck County Board of Commissioners.

IT IS HEREBY ORDERED that the matter be remanded to the Currituck County Board of Commissioners for rehearing of Petitioners' application for a Special Use Permit consistent with the Order signed by the Honorable Jerry R. Tillett in *London v. Currituck*, 96-SP-73.

This the 19th day of April, 2006.

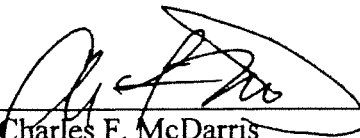
Cy A. Grant
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

I, Charles F. McDarris, hereby certify that I have served a copy of the foregoing proposed ORDER by depositing a copy with the United States Postal Service, postage prepaid and addressed to the following:

John Morrison
Attorney at Law
111 Currituck Commercial Dr.
Moyock, N.C. 27958

This the 13 day of April, 2006.



Charles F. McDarris
Bailey & Dixon, LLP
2500 Two Hannover Square
434 Fayetteville Street Mall
Raleigh, North Carolina 27601

2.A.C

Packet Pg. 34

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
96-SP-73

R. F. LONDON, INC.)
)
Petitioner,)
)
v.)
)
)
THE BOARD OF ADJUSTMENTS OF)
THE COUNTY OF CURRITUCK)
)
Respondent.)
_____)

ORDER

THIS CAUSE, coming on for hearing on May 3, 1999 before the undersigned Superior Court Judge on Petitioner's Writ of Certiorari. After reviewing legal briefs and hearing oral arguments of counsel, the Court hereby makes the following:

FINDINGS OF FACT:

1. Petitioner applied for a Conditional Use Permit on or about August 4, 1993 (hereinafter "initial filing").
2. On or about January 26, 1994, the Currituck County Board of Adjustment (hereinafter "Board of Adjustment") issued a Conditional Use Permit to Petitioner.
3. At the time of the initial filing, § 1304(3)(f) of the Currituck County Unified Development Ordinance (hereinafter "Ordinance") was in effect and was interpreted by the Currituck County planning staff as being applicable to topless nightclubs and as being a strict prohibition against topless nightclubs.
4. On August 31, 1994, the Currituck County Board of Adjustment moved to revoke Petitioner's Conditional Use Permit.

-179-

EXHIBIT

_____ D _____

5. On September 19, 1994, the Currituck County Board of Commissioners amended the Ordinance whereby it repealed §1304, Permissible Uses and Specific Exclusions, and adopted §808, Adult and Sexually Oriented Businesses.

6. On August 28, 1994, Petitioner timely appealed the Conditional Use Permit revocation to the Superior Court.

7. On December 29, 1994, the Honorable Gary E. Trawick ordered the Board of Adjustment to conduct a new public hearing.

8. On May 29, 1996, a public hearing was held before the Board of Adjustment.

9. On July 8, 1996, the Petitioner timely filed an appeal with this Court in the nature of a Writ of Certiorari, appealing the Board of Adjustment's May 29, 1996 hearing.

10. The Petitioner had submitted a letter (Exhibit 7 of the Record on Appeal) on April 1, 1996, indicating that it would be offering, among other activities, topless dancing.

11. The planning staff interpreted Petitioner's letter (Exhibit 7) as an amendment to the initial application and found the application to be complete (Record on Appeal, Exhibit 11, page 6, lines 1-10).

12. The Board of Adjustment did not make findings of fact and conclusions at its May 29, 1996 hearing that properly supported the denial of Petitioner's application for a Conditional Use Permit pursuant to §1304 as specifically related to diminution of value of adjoining property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, based upon the foregoing Findings of Fact, that:

1. The matter be remanded to the Board of Adjustment for rehearing and that the Board of Adjustment consider Petitioner's application pursuant to §1304 and §808.

2. The Petitioner is to file and the Currituck County planning staff is to accept a new application for a Special Use Permit.

3. The Board of Adjustment shall consider the Petitioner's application pursuant to §1304 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;
- e. How the secondary effects are affected by the different intended uses.

4. The Board of Adjustment, in the alternative, shall consider the Petitioner's application pursuant to §808 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;
- e. How the secondary effects are affected by the different intended uses.

5. The matter be remanded to the Board of Commissioners for hearing pursuant to §808.

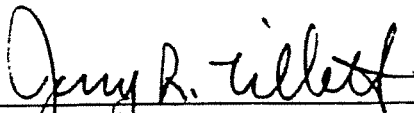
6. The Board of Commissioners shall consider the Petitioner's application pursuant to §808 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;

e. How the secondary effects are affected by the different intended uses.

7. These matters are to be conducted at the earliest possible time and at or near the same time so that the matters may be appealed and be considered by the court jointly should the matter be appealed. The parties have consented to pursuing an appeal of § 1304 and § 808 jointly should the matter be further appealed.

This the 24th day of May, 1999.



Jerry R. Tillet,
Superior Court Judge