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SPECIAL PERMIT APPLICATION SHOWTIME ENTERTAINMENT LLC 49 MILFORD STREET

SUMMARY OF COMPLIANCE WITH MENDON'S ZONING BY-LAWS

The Applicant, Showtime Entertainment LLC, has applied for a Special Permit under the Mendon Zoning By-Laws to operate an entertainment establishment, which will provide its customers food and drink and the viewing of adult entertainment ("Project"). As is detailed in this summary, and as supported by the accompanying documents, the proposed Project complies with Mendon's Zoning By-Laws and accordingly should be granted its requested Special Permit. The portions of the Mendon Zoning By-Laws to which the Project must adhere are addressed below in numerical order.

(1) Section 1.03 (General Business District)

The Project, which is located in the General Business District, Section 1.03(a)(iii), fits within the definition of that District, whose purpose is "[t]o provide for the business and retail needs of the residents of the Town in areas where access is acceptable, and where adequate off-street parking can be provided."

In this case, as is shown in the Site Plan submitted with Showtime's application for a Special Permit, access to the site is acceptable and ample off-street parking can be provided.

(2) Section 1.06 (Special Permit)

Section 1.06 establishes the criteria generally required for the issuance of a Special Permit.

- a. *Section 1.06(a) sets forth the size of lots and the location of buildings within those lots with which a Special Permit applicant must comply.*

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200 feet of frontage is required by this section and the project site has 259 feet of frontage. A lot depth of 300 feet is required by this section and the Project site features a depth from the street of 523 feet.

The proposed building will cover only 3.2% of the lot, considerably less than the 33.3% limitation of this section.

The section states that buildings cannot be situated less than 20 feet from the boundary abutting a residence or less than 85 feet from the street center line. The site complies with both of these requirements.

b. Section 1.06(b) governs what materials the applicant must submit as part of its Special Permit application.

The applicant has already presented the Site Plan to the Planning Board and, after lengthy hearings, it was approved by unanimous vote of the Board on August 24, 2020.

Prior to approving the Site Plan, the Planning Board retained an independent engineer, Jeff Walsh of Graves Engineering, Inc., to review the proposed plans. Mr. Walsh provided feedback as to changes that had to be made in order for the Project to comply with the Zoning By-Laws. In turn, the applicant revised the Site Plan to incorporate Mr. Walsh's recommendations. Eventually, Mr. Walsh determined that, in his opinion, the Plan complied with all zoning requirements and the Planning Board then approved the Site Plan at a public hearing on August 24, 2020. The Planning Board Decision issued a written decision on January 27, 2021. A Copy of the Planning Board decision is attached as Exhibit A.

The Site Plan complies with all the criteria set forth in 1.06(b):

- (i) The Site Plan complies with the requirements set forth in the Bylaws for parking, lot size, frontage, yards, and heights and coverage of buildings.
- (ii) The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties, or improvements were addressed in the Site Plan and found adequate by the Planning Board's independent engineer.

- (iii) The arrangement and the number of parking and loading spaces are set forth in the Site Plan. The independent engineer retained by the Planning Board reviewed the plans and confirmed that the proposed project's allotment of 75 spaces exceeds the 40 spaces that are required for this project under the Bylaws. Further, the applicant will strictly have valet parking for guests.
- (iv) The provisions for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the lot or tract are addressed in the Site Plan, which Mr. Walsh reviewed and approved during the Planning Board process.
- (v) The arrangement and appearances of proposed buildings, structures, signs, screening and landscaping are addressed in the Site Plan.
- (vi) The adequacy of methods for waste disposal, surface and subsurface drainage and lighting are addressed in the Site Plan and were approved by Mr. Walsh. The applicant will tie into the municipal water line of the town of Hopedale for potable water and a Title V septic system will be installed for sewage disposal.
- (vii) The protection of adjoining premises and the general neighborhood from any detrimental use of the lot or tract are accounted for in the Site Plan.

In short, each of the Site Plan criteria in section 1.06(b) were met to the satisfaction of the independent engineer retained by the Planning Board and the Planning Board itself.

c. Harmony

The design of the building will be consistent with the character of architectural appearance and arrangement of buildings within the vicinity of the project site.

(3) Section 2 (All Districts)

a. Dimensional Regulations

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As is shown in the accompanying Site Plan, the Project specifications satisfy the Dimensional Regulations laid out in Section 2.01, Table 1.

b. Sewage Regulations

The applicant will tie into the municipal water line of the town of Hopedale for potable water and a Title V septic system will be installed for sewage disposal.

c. Parking

Section 2.03 requires that "restaurants and other places serving food or beverages" provide "1 space for each 5 seats plus 1 space for each 5 employees." The Site Plan provides for 165 seats, and the applicant plans to employ 24 individuals. Therefore, 38 parking spaces are required. The Site Plan shows 75 parking spaces, or twice as many as is required by the Zoning By-Laws.

The applicant also intends to utilize valet parking, which will further assist in controlling parking concerns.

The layout of the parking lot and loading spaces, as well as the other standards set forth in this section, were reviewed by the Planning Board and found to be in compliance.

d. Sign By-Law

The Project's proposed signage complies with the Sign By-Law, Section 2.06. The sign will not include any material depicting or describing sexual conduct as defined in M.G.L. Chapter 272, Section 31.

(4) Section 3.01(3)(40) (Allowable Uses)

A "restaurant or other establishment providing food and/or beverages within the building" is permitted by right within the General Business District under Section 3.01, Table A: Table of Uses, No. 40, and under No. 65, "Adult Entertainment" is permitted by Special Permit. The applicant currently holds an adult entertainment license.

(5) Section 4.02 (Site Plan Review) (Previously Approved)

The Applicant's Site Plan, Exhibit 2, was submitted to the

Planning Board in accordance with Section 4.02, and the Planning Board issued its unanimous decision approving the Site Plan on January 27, 2021, which is attached hereto as Exhibit A.

(6) Section 5.01 (Adult Entertainment Overlay District)

Section 5.01 establishes specific requirements that Adult Entertainment Establishments within the Town of Mendon have to meet. The applicant satisfies them all.

First, all Adult Entertainment may only be presented on one of the four parcels within the Adult Entertainment Overlay District. The property on which the Project is to be located is located on one of those four parcels. Therefore, pursuant to Section 5.01(e), Adult Entertainment is permitted on the site.

The Project satisfies the Special Permit Standards for Adult Uses established in Section 5.01(f), which are addressed one by one below:

(i) The proposed adult entertainment establishment is not located within 500 feet of a childcare facility, park, playground, recreational area, another Adult Use, or any establishment licensed under the provisions of M.G.L. Chapter 138, Section 12; nor is it within 300 feet of any residential building.

(ii) The required buffer zones are met and shown in the Site Plan. It should be noted that restaurants and entertainment facilities in Mendon that do not present adult entertainment only require a six foot strip of landscaping, which means that the greater requirement here is likely unconstitutional.

(iii) No material depicting, describing or relating to sexual conduct or sexual excitement will be displayed in the windows of, or on the building of, the Adult Entertainment Establishment, or will be visible to the public from the pedestrian sidewalks or walkways or from other areas outside such establishments.

(iv) In addition to complying with any Mendon bylaws concerning signs, the Project's sign will identify the name of the establishment only and shall contain no advertisement in addition to the identification of the use. The sign will be mounted on the building wall face and will

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be no larger than 16 square feet.

(v) No merchandise or services prohibited as obscene or indecent under any federal or Massachusetts law will be disseminated or available within the Adult Entertainment Establishment.

(vi) The appearance of the building will be consistent with the appearance of buildings in similar (but not specifically "adult") use in Mendon and will be screened by a landscaped buffer of evergreen trees or shrubs six feet high.

(vii) No more than one structure to be used for adult entertainment will be located on the Project site.

(viii) The applicant has not been convicted of violating M.G.L. Chapter 119, Section 63 or Chapter 272, Section 28.

The applicant has provided the information required by Section 5.01(g) in its application for a Special Permit and Site Plan:

(i) The site plan, attached as Exhibit 2, shows appropriate distances between the proposed adult entertainment establishment and any residential zoning district, public or private school, public park or recreation area, group day care center, family day-care center, or any other adult entertainment establishment(s), as well as the locations and sizes of buildings, setbacks, signage, landscape design and buffers.

(ii) The applicant submits below the required information:

1) Name and address of all legal owners of the establishment and the property, as well as the manager of the proposed establishment

- Landmark Realty Trust II, 297 Boston Road, Sutton, MA is the owner of the real property;
- Showtime Entertainment, LLC 297 Boston Road, Sutton, MA will be the owner of the proposed establishment; and
- George Funari will be the manager.

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2) The names and addresses of all persons having a fee, equity and/or security interest, ownership interest and/or beneficial interest in the establishment.

- George Funari, 297 Boston Road, Sutton, MA is the only such person.

3) The proposed number of employees is 24.

4) Security precautions are included in the Adult Entertainment license that was issued by the Mendon Select Board, which is attached as Exhibit B. After the Special Permit issues, the Applicant will amend its Entertainment License and, as part of that process, may, if requested, further define the security measures.

5) A full description of the intended nature of the business has been provided.

6) Approval of the nature of the live entertainment, proximity of entertainers to patrons, behavioral restrictions, and security plans were obtained by Showtime and any issues were addressed in the conditions attached to the Adult Entertainment license issued to the applicant.

The applicant would note that several of the requirements still included under Section 5.01 were invalidated by the United States District Court, the First Circuit Court of Appeals, and/or the Massachusetts Supreme Judicial Court. See the following cases:

1. Showtime Entertainment LLC v. Ammendolia, 885 F. Supp. 2d 479, 490 (D. Mass. 2012) (holding that the special permit requirement violated the United States Constitution and that, since "[n]o part of the [special permit] licensing scheme contemplated under Sections 5.01(f), (g), or (h) make sense without a provision granting authority to a body to issue the special permits," "[t]hose sections are accordingly non-severable and invalid.").

2. Showtime Entm't, LLC v. Town of Mendon, 769 F.3d 61, 66 (1st Cir. 2014) ("We find that these [size, height, hours of operation] bylaws—which have no effect on other businesses of like size, height, or operating hours—unconstitutionally infringe on Showtime's right to engage in a protected expressive activity.").
3. Showtime Entertainment, LLC v. Mendon, 472 Mass. 102 (2014) (ruling that Mendon's alcohol restrictions were invalid under the Massachusetts Declaration of Rights).

(7) Adult Entertainment and Alcohol Licenses

Attached as Exhibit B and Exhibit C are copies of the applicant's Entertainment License and Alcohol License. After securing a Special Permit, the Applicant will submit applications requesting that these licenses be amended to reflect the larger building on the approved Site Plan.