

PG officials hit ruling

Turnabout opens door for adult bookstores in county

By John Mercurio
THE WASHINGTON TIMES

Prince George's County officials yesterday criticized a federal appeals court's decision to strike down a law governing adult bookstores, calling the ruling a "flip-flop" from a 1989 decision to uphold the ordinance.

But attorneys for area bookshops hailed the 11-3 decision, and businesses in neighboring Montgomery County, who are fighting similar zoning restrictions, said they hope it will help them avoid costly legal battles.

On Wednesday, the 4th U.S. Circuit Court of Appeals in Richmond threw out a county law that imposed bureaucratic hurdles for adult bookstores seeking permission to operate in Prince George's.

Ending a nine-year legal odyssey that has taken the case to the Supreme Court, the appeals court ruled the ordinance, which allowed county officials as long as 150 days to review a bookstore's application for a special exception, was an unconstitutional prior restraint on free speech.

If officials denied the application, the law allowed a court appeal to take as many as 100 days. But officials said most appeals took no longer than 45 days.

The debate over whether local governments can use zoning regulations to limit adult bookstores has been heard throughout the region over the past decade.

The District passed a law in the 1980s to ban new sexually oriented businesses from residential areas and limiting them to one commercial zone. Such businesses also could not locate within 600 feet of a church, school, library or playground or within 300 feet of a similar business.

Sean Wallace, assistant county attorney, said the court has "flip-flopped" from a 1989 ruling that said the county's 180-day process was constitutional.

In 1989, according to Mr. Wallace, the same court ruled that "diligent exercise of due process takes time, and we find that the time limits generally followed by the county to be reasonable for careful review in this sensitive area of the law."

"They flip-flopped," Mr. Wallace said. "We've made it shorter, and now, inexplicably, they say it's too long."

But that was before the Supreme Court ordered the lower court in June 1990 to reassess the local law in light of other rulings the Supreme Court handed down that year on vendors of sexually explicit materials.

"It's completely compatible

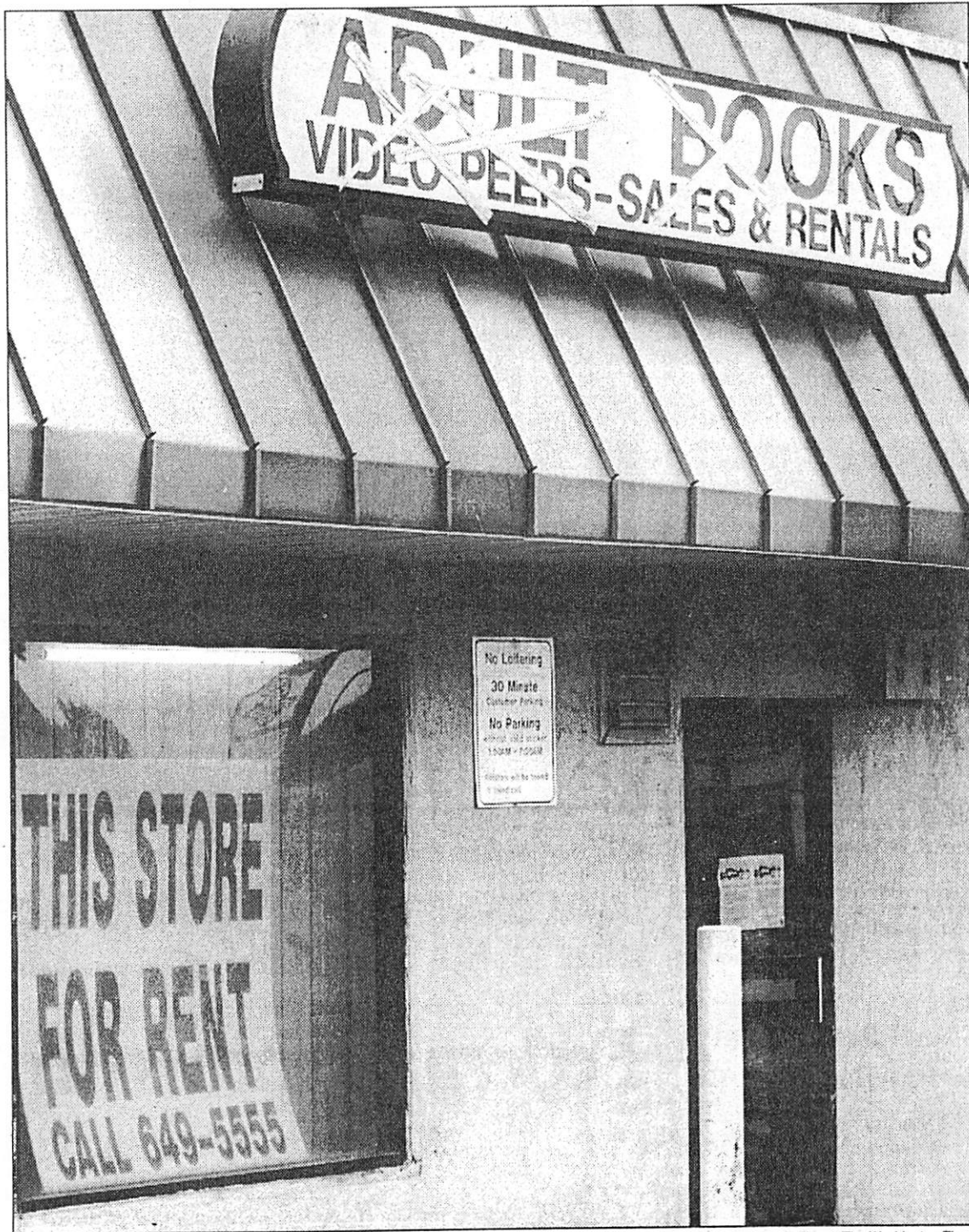


Photo by Andrea C. Figgatt/The Washington Times

Warwick Books, an adult bookstore in Beltsville, is no longer open for business.

with what the court has said before," said Howard Schulman, an attorney for 11126 Baltimore Blvd. Inc., operator of Warwick Books, a Beltsville bookstore.

"Administrative decisions created irrelevant excuses that the county used in order to censor, masking the real reason," Mr. Schulman said. Under the county law, "you could keep someone from opening the store by saying too many cars in the parking lot created too much smog."

Former County Council members who supported the law when it was passed in 1986 yesterday said they were confounded by a court ruling that protects the bookstores, which

one former lawmaker called thinly veiled prostitution rings.

"There's very little reading that goes on in these places," said Laurel Democrat Frank P. Casula, who as a council member sponsored the bill with Sue V. Mills. "Homosexuality goes on in these places, and that's a house of prostitution."

The ruling encouraged a group of adult bookstores in Montgomery County, who have been targeted by a local anti-pornography group, the Maryland Coalition Against Pornography Inc., for failing to abide by a similar zoning law.

Under August 1993 Montgomery County law, adult bookstores cannot be within 500 feet

of a home, a community center, a park, a day care center or a place of worship.

Instead of grandfathering existing businesses, the county gave stores one year to comply and placed a \$10,000 fee on each special exception application.

Wednesday's ruling does not directly affect Montgomery County, but Mitchell Shapiro, an attorney for K&B News Emporium in Silver Spring, said the county law unconstitutionally burdens operators of county stores, generally small business owners, who resemble those the court ruled are protected by free speech.

■ This article is based in part on wire service reports.