

STAFF EVALUATION

To: Planning Commission

Prepared By: C. Dyser

728-5238

Reviewed By: Caroline Butler, AICP

728-5231

Case No.: Conditional Privilege No.93 Date: 8/7/08

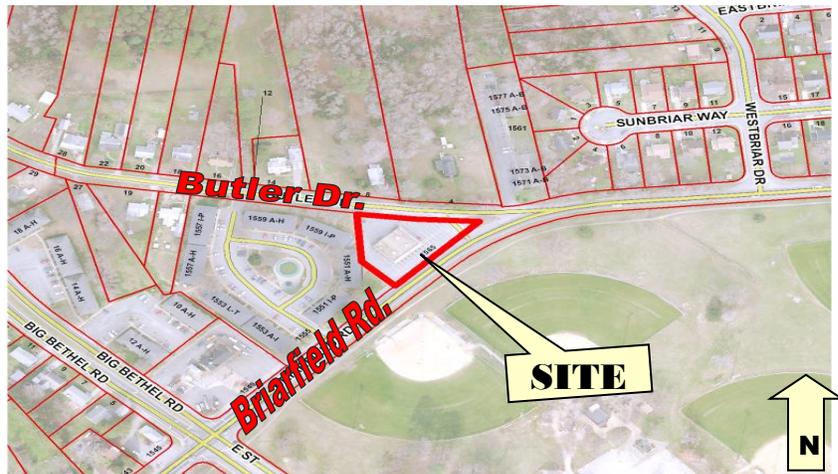
General Information

Applicant/Owner

Wilbur L. & Brenda Hendrix

Location

1565 Briarfield Rd LSRN # 3005371 located on a 23,740sf (.5450± acre) lot



Requested Action

To permit live entertainment in the form of a band, DJ, and karaoke at Mallory's Restaurant.

Background Information

The existing facility has operated as a restaurant since 1945. A Use Permit was granted in March 1971 for live entertainment, but expired shortly thereafter due to a continuous 24 month period without any live entertainment. A Conditional Privilege is needed for live entertainment in conjunction with a restaurant in the Neighborhood Commercial District (C-1).

Description of Proposal

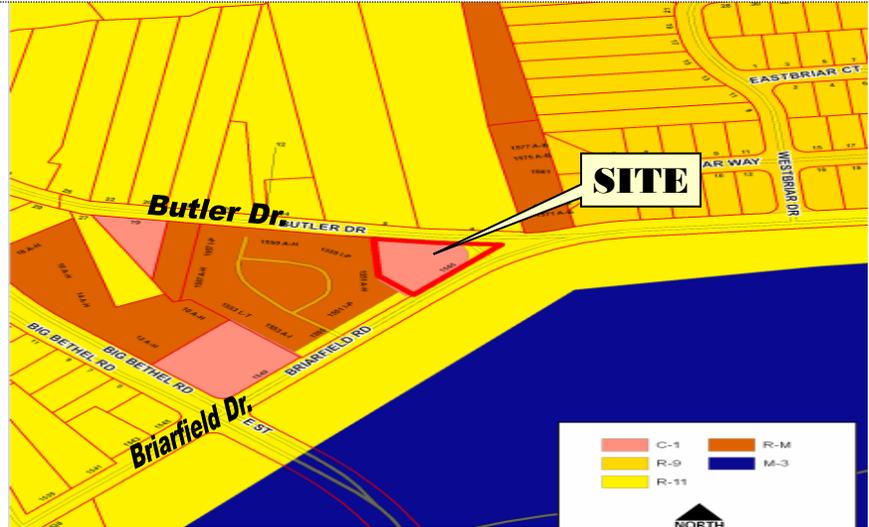
| <i>Project Components</i> | <i>Existing Restaurant Use</i> | <i>Proposed Live Entertainment Use</i> | <i>Staff Recommendation if Approved</i> |
|---------------------------|--|---|---|
| Building Capacity | 118 | 118 | 118 |
| Parking Spaces | 41 | 41 | 52 (42 current restaurant requirements) + 10 (seating capacity) |
| Hours of Operation | Monday-Saturday (6:30am-1am) Sunday (8am-9pm) | Wednesday (6-9pm) Friday: (9pm-2am) Saturday: (9pm-2am) | Wednesday (6-9pm) Friday: 9pm-1am Saturday: 9pm-1am |
| Leisure Activities | Pool, jukebox, lottery machine | DJ, band, karaoke | DJ, band, karaoke |

STAFF EVALUATION

| | | | |
|----------------------------------|------------------|----------------|-------------|
| Location of Entertainment | Indoor | Indoor | Indoor |
| Size | 3920 square feet | 20 square feet | Marked area |

In the chart shown above, the proposal would increase hours of operation and add live entertainment in the form of a DJ, band and karaoke.

Existing Land Use and Zoning



The existing commercial building is currently operated as a restaurant. Other uses located in the general area of Mallory's restaurant include single family homes, apartments, a service station, Briarfield Park and a service station located at the northwest intersection of Briarfield Road and Big Bethel Road.

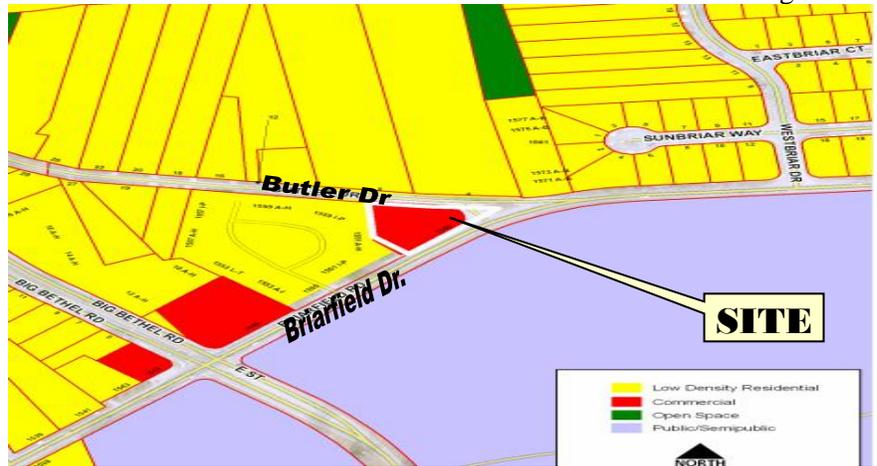
Surrounding Land Use and Zoning

- North:** One Family Residence District-R-11: Single Family Residential Homes
- South:** One Family Residence District-R-11 & Heavy Manufacturing District, M-3: Briarfield Park
- East:** Multiple Residence District-R-M: Apartments
- West:** Multiple Residence District-R-M: Apartments

Public Policy

Hampton Community Plan 2006, as amended

The Hampton Community Plan (2006, as amended) designates Commercial Land Use for this site because it reflects the existing land use.



According to the Hampton Community Plan, the intersection of Butler Drive and Briarfield Road is not a recommended commercial node. Commercial nodes are defined as areas where commercial and retail uses

STAFF EVALUATION

are the primary uses in the area. Commercial nodes are concentrated in nature and located in a central location. In this instance, the intersection of Butler Drive and Briarfield Road is in an area where residential uses are predominant.

State Dept. Of Alcohol Beverage Control (ABC)

Permits to serve and sell alcoholic beverages are subject to review by the State Alcoholic Beverage Control (ABC) Board. Mallory's restaurant applied for a permit to sell alcohol in the 1970s under the ownership of the Mallory family and on April 9, 2007 under new owners Wilbur and Brenda Hendrix. There have been no complaints or violations of alcohol enforcement from the Virginia Department of Alcohol Beverage Control within the past year. The agent in charge of the Hampton area informed staff of a positive background report. The agent also stated that they would like staff to recognize when patrons have had enough to drink.

Impact Analysis

The subject request will not negatively impact school enrollment, utility and environmental conditions of this general area as it is an existing commercial structure.

Case History

In the past 5 years, City Council has approved 14 establishments for live entertainment. Historical information gathered by the Hampton Police Division has reported an array of incidents for sites approved for live entertainment venues. Some of the incidents reported include: public intoxication, fighting, double-parking on public streets, disorderly conduct and littering.

Public Safety

Hampton Live Entertainment Venues: Most Recent Year Reporting (1 year)

| <i>NAME</i> | <i>ADDRESS</i> | <i>ZONING</i> | <i>INCIDENTS</i> |
|--------------------------------------|----------------------|---------------|---|
| Mallory's Restaurant | 1565 Briarfield Road | C-1 | 11 (1 for prior owner & 10 during new owner): intoxication, domestic dispute, larceny, car windows shot out, auto accident, fire assistance, fight, suspicious car |
| Rooney's Bar & Grill | 1144 Big Bethel Road | C-1 | 97: public nuisance, larceny, fighting, gun, vandalism, stolen car, intoxication, |
| Cujo's Sports Bar & Grill | 50 Town Center Way | C-1 | 33: larceny, fight, disorderly conduct, gun, lacerations wound |
| Bay View Bar & Grill | 155 State Park Drive | C-1 | 17: public nuisance, disorderly conduct, boat |

STAFF EVALUATION

| | | | |
|----------------------|----------------------|-----|---|
| | | | in distress |
| Hat Trix | 24 N. Mallory Street | C-2 | 37: intoxication, suicide, domestic assault, fight, suspicious car |
| Cool Runnings | 4006 W. Mercury Blvd | C-2 | 9: gun activity, burglar alarm |

The chart above provides a snapshot view of incidents reported within the last year of comparable establishments in Hampton. The venues above were selected as comparable facilities because of the similar zoning and the location near residential areas. The live entertainment venues located in Downtown Hampton were not selected because their location in a central retail and commercial area helped to ensure minimal impact to residential areas.

Some of the incidents recorded are not directly related to the facility or live entertainment at the venues (ex. Boat in distress, fire assistance or auto accident). In the past year (January 2007-July 2008), 11 incidents have been reported occurring at Mallory’s Restaurant. A total of 10 incidents were under the new ownership of the facility and only 1 incident from the previous ownership.

Conditions

If approved, the attached conditions will help to address the impact on the surrounding uses addressing: staffing, adequate parking on site, limitation of uses, location of entertainment, hours of operation, capacity, noise, revocation of permit and annual re-evaluation. Staff recommends limiting hours of operation for live entertainment to 6-9pm on Wednesday and 9pm-1am on Friday and Saturday to coincide with the current closing hours of the facility at 1:30am. This would ensure that the proposed live entertainment hours would not go beyond the restaurant closing hours.

Community Meeting

The applicant hosted a community meeting on June 3, 2008 at Lindsay Middle School. A total of 18 people attended.

During the meeting, complaints were voiced from the public including trash left in the parking lot, bottles filled with urine left in the parking lot, the occurrence of crowd and motorcycle noise carried on in the parking lot and lack of sufficient parking maintained at the restaurant. Concerns were also voiced regarding late hours of operation and the report of a band playing at the venue recently. Attendees of the meeting expressed concerned that the late hours and crowd noise affected them as they prepared and rested for work.

The applicant said their staff are willing to address some of the concerns raised by the citizens including enforcing clean-up of trash in the restaurant parking lot, providing designated motorcycle parking spaces placed on the opposite site of the building away from the adjacent apartments and providing parking lot security. The applicant also mentioned that the establishment has not provided band entertainment since Codes issued a special one-time permit in March 2008. The report of recent band activity was simply a private party for staff that included the usage of guitars.

Analysis

A restaurant is a permitted use in the Neighborhood Commercial District. As a land use, a restaurant offering live entertainment can be an acceptable and desirable addition to an urban commercial area. The evaluation of a Conditional Privilege application analyzes whether the use is appropriate at a specific location. If the proposed use is appropriate and if there are conditions that will ensure that the live entertainment would not be detrimental to the public health, safety and welfare of the surrounding uses, then it may be warranted to allow the proposed use at the site.

According to the Police Calls for Service Report, there have been 11 incidents reported dating back to January 2007 that suggest the restaurant has experienced a great deal of incidents deemed not appropriate for the surrounding residential uses. Some of the incidents reported included fighting in the parking lot, domestic dispute, pellet gun activity, and larceny. As recently as June 14, 2008, 9 policemen were called to the scene to break-up a fight in the Mallory's Restaurant parking lot. This type of behavior does not represent a safe environment for the surrounding residential neighborhood. As a result, there is a need to monitor behavior related directly or indirectly to Mallory's Restaurant to ensure a safe environment for patrons and surrounding property owners.

Restaurant facilities with live entertainment are better suited for areas where commercial uses are the predominant uses such as commercial nodes. Based on the City's approval of live entertainment venues in Downtown Hampton and the location of similar venues in C-2 zoning districts, the proposed use should be situated in areas that lessen the impact on residential uses such as commercial corridors. Mallory's Restaurant is not located in a commercial node recommended by the Hampton Community Plan. Therefore, staff is not in support of the addition of live entertainment at Mallory's Restaurant.

Live entertainment would increase the number of patrons frequenting the restaurant. As a result, additional parking should be required. Staff does not recommend the addition of live entertainment at Mallory's Restaurant because of the location of the restaurant in a residential area.

Staff recommends denial of Conditional Privilege Application #93.

Should the City Council approve, the Conditional Privilege request, staff recommends the attachment of the following 11 conditions:

1. **Limitation on Uses:**
 - a. Live Entertainment activities shall be limited to activities such as: band, disc jockey and karaoke. The City of Hampton Zoning Administrator shall have the discretion to decide if an activity meets the definition of live entertainment.
2. **Location of Live Entertainment:**
 - a. Live Entertainment shall be conducted inside the building only. There shall be no live entertainment conducted on the exterior areas of the building. The band area, as indicated on the submitted floor area, shall be no larger than 20 square feet. All live entertainment equipment and performances shall be contained in these areas during all performance.
3. **Hours of Operation:**
 - a. The hours of operation for live entertainment shall be limited to the following:

- i. Wednesday: 6:00pm-9:00pm
- ii. Friday: 9:00pm-1:00am
- iii. Saturday: 9:00pm-1:00am

4. Capacity:

- a. The capacity of the building shall be limited to a total of 118 persons or the building capacity listed on the Capacity Certificate, whichever is fewer.

5. Amplified Music:

- a. Any sound or noise from amplified music shall not exceed a noise level measurement of 60 decibels upon the real property of another as determined by a sound level meter using the “A” weighting scale in accordance with the American National Standard Institute.

6. Staff:

- a. Sufficient staff shall be provided to maintain and control patron behavior upon their exit of the building into the parking lot to prevent the following from occurring on public or private property: abusive language, disturbing the peace, disorderly conduct, fights and/or brawls, trespass after having been forbidden to do so, and/or urinating in public.

7. Re-Evaluation of Use:

- a. This Conditional Privilege shall be re-evaluated for compliance with the above standards after a period of six (6) months from the date of approval by City Council. Staff may determine at that time if continuing evaluations are necessary.

8. Revocation of Conditional Privilege:

- a. The City Council shall have the ability to revoke Conditional Privilege No.93 upon two (2) convictions of the Hampton City Code, Section 22-1 to Section 22-7, “Noise” or upon two (2) or more violations of any of the conditions attached.

9. Conditional Privilege No. 93 To Become Null and Void:

- a. The Conditional Privilege shall become null and void upon vacation of the premises by the applicant.

10. Parking:

- a. All adequate parking must be provided on-site at all times.

11. Posting of Conditions:

Conditions of the Conditional Privilege shall be placed in a visible area within the facility.