

STAFF EVALUATION

To: City Council

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Case No.: Use Permit No. 15-00014 **Date:** December 9, 2015

General Information

Applicant Elvie Wilson
Location 1565 Briarfield Road [LRSN 3005371]



Requested Use Use Permit to allow for indoor live entertainment 2 at an existing restaurant with a capacity greater than fifty (50) people.

Description of Proposal The applicant is proposing to provide live entertainment inside LV's Sports Bar and Grill located on Briarfield Rd. A restaurant has been operated at this site since the late 1960s, at least. Requested hours of live entertainment are from 11:00AM until 10:30PM Monday through Thursday, 11:00AM until 11:00PM on Friday and Saturday, and 6:00PM until 10:00PM on Sunday.

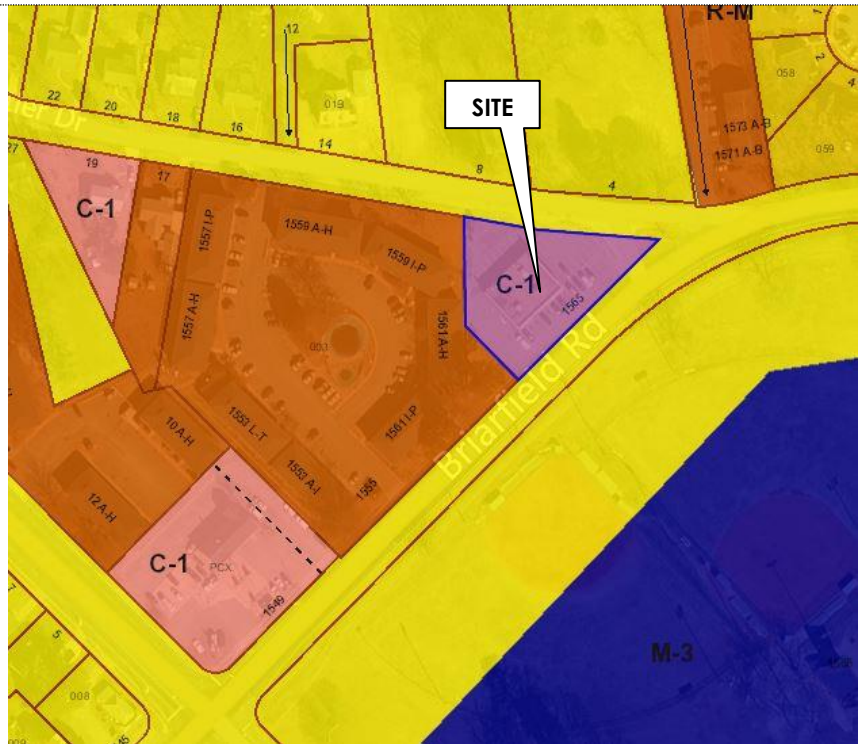
Existing Land Use Restaurant

Zoning C-1 (Neighborhood Commercial)

Surrounding Zoning and Land Use **North:** R-11; single family residential
South: R-11, M-3; Briarfield Park

East: R-M, R-9, R-11; multifamily residential, single family residential

West: R-M; multifamily residential



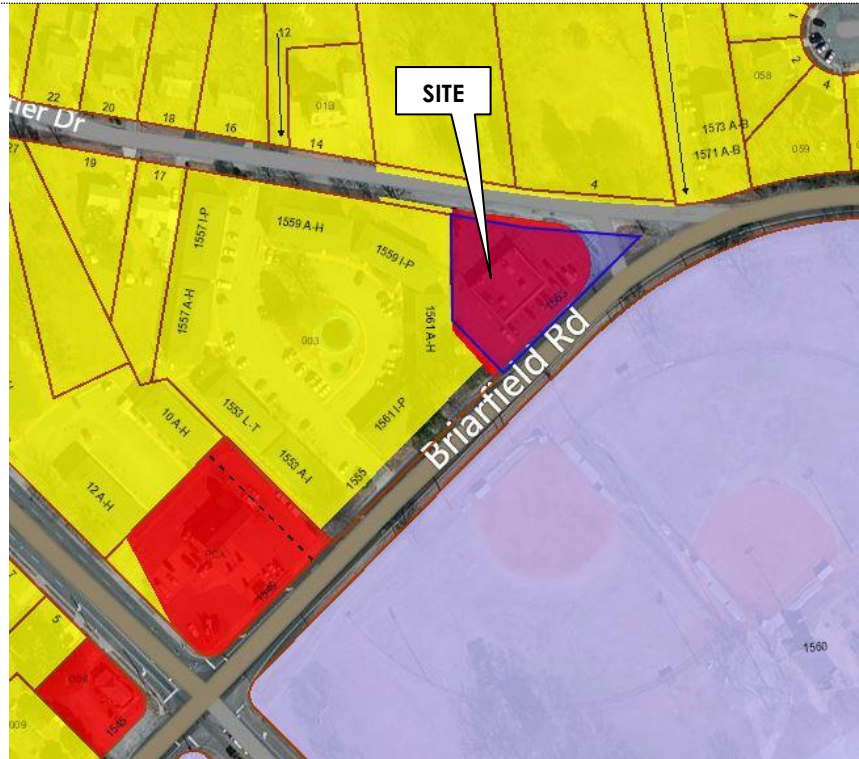
Zoning History

A use permit for live entertainment was approved for this location in 1971. Permitted hours of operation were 7:00PM to 12:00AM. The use permit has since expired due to inactivity.

In 2008, the operators of Mallory's Restaurant requested a conditional privilege for live entertainment. The request was denied by City Council.

Public Policy

The Hampton Community Plan (2006, as amended) recommends commercial use for the subject property. Residential and public/semi-public uses are recommended for nearby properties.



Broadly, The Plan establishes a vision "To Make Hampton the Most Livable City in Virginia". Goals to achieve this vision include fostering a healthy business climate as well as healthy neighborhoods.

Relevant policies related to these goals include:

LU-CD 7: Safeguard the integrity of existing residential neighborhoods.

LU-CD 23: Promote family, school, and community interaction at the neighborhood level.

Residential Corridors with Commercial Nodes

LU-CD 36: Protect adjacent neighborhoods and promote compatible land uses within the city's residential corridors. Compatible uses include medium and low density residential. Other potentially compatible uses include: high density residential and public/semi-public uses (churches, community facilities, schools, etc.).

ED-4: Nurture small and start-up businesses.

ED-6: Expand tourism, entertainment, and cultural opportunities within the city.

Applicable Regulations

C-1 allows live entertainment subject to securing a Use Permit. The purpose of this Use Permit is to identify the operational characteristics of the proposal and establish the conditions under which the facility will be operated. This action is necessary to ensure the safety and welfare of the public as well as minimizing project impacts on the adjoining properties.

Traffic/Parking

The zoning ordinance requires that restaurants have a minimum of one parking space per 75 sq.ft. of floor area exclusive of kitchen and freezer areas. Using the standard for restaurants, 45 parking spaces are required.

Establishments offering live entertainment are required to have one parking space per every three persons based on maximum occupancy. Using the standard for live entertainment, 33 parking spaces are required.

On a site visit during the application process, 46 parking spaces were counted. Since that time new information regarding parking was discovered. Seven parking spaces on the west side of Mr. Wilson's property encroach onto the Mallory Apartment property. Those spaces will need to be removed or reconfigured. Additionally, through unrelated work, the Public Works Department found that the eastern corner of Mr. Wilson's property is state right-of-way, limiting the use of that area for parking that can be counted toward the requirements of the Zoning Ordinance. Based on this new information, staff recommended at the Planning Commission hearing the addition of Condition 7 regarding parking. This condition requires 33 off-street parking spaces in order to provide live entertainment.

Schools

This proposal does not impact city schools.

Environmental

Newly created environmental impacts are not anticipated.

Public Safety

The Hampton Police Division provided reports of for calls for service logged to 1565 Briarfield Rd. for 2014 and 2015 through October 7th. Over this period, the Police Division received six calls for service. These included one report of threatening, one suspicious vehicle, one assault, one drug related problem, and two vehicle stops. Two of these calls for service were recorded in 2014 and four were recorded in 2015.

Community Meeting

A community meeting was held at the West Hampton Community Center on October 22. About 20 residents from the Mallory Apartments and Butler Rd. attended the meeting. Everyone that spoke at the meeting opposed approval of the use permit. Opposition to the use was not focused on disturbance directly from live entertainment, but from associated impacts. These included noise and unruly behavior from patrons leaving the restaurant and overflow parking on Butler Dr.

Larry Cumming, an attorney representing the management of the Mallory Apartments, proposed additional conditions to mitigate the impact of the use. These included a requirement that third party security be hired when live entertainment is offered, and limiting "live bands" to Friday, Saturday, and Sunday. The applicant indicated a willingness to accommodate these requests. Another resident suggested scheduling review of the use, as called for in Condition 12, at some point sooner than the 12 months currently required.

Analysis

LV's Sports Bar and Grill is a restaurant located at 1565 Briarfield Rd. The owner of the restaurant, Elvie Wilson, is requesting a use permit to allow indoor live entertainment. Live entertainment in conjunction with a restaurant is a permitted use in the Neighborhood Commercial (C-1) District subject to securing a use permit.

Briarfield Rd. is primarily a residential corridor that contains scattered commercial uses. 1565 Briarfield Rd. is a commercially zoned parcel that is bordered on three sides by residential uses. A restaurant has been operated at this site since the late 1960s, at least. A use permit for live entertainment was approved for this location in 1971. Permitted hours of operation were 7:00PM to 12:00AM. The use permit expired due to inactivity.

In 2008, the operators of Mallory's Restaurant requested a conditional privilege for live entertainment. This application was denied by City Council. The operators had been providing unpermitted live entertainment previous to applying for the use permit. Neighbors opposing approval of the use permit complained of noise, trash, disorderly conduct, and parking problems. The applicant provided a petition with 250 signatures of people supporting the use permit application.

Ownership of the restaurant has changed since the 2008 use permit application. The current applicant purchased the property in early 2015. Also since the 2008 application, staff has recommended a condition be attached to all use permits for live entertainment enhancing review of establishments providing live entertainment.

The Hampton Community Plan (2006, as amended) calls for safeguarding existing residential neighborhoods, promoting community interaction, nurturing small businesses, and expanding entertainment opportunities. Staff believes that appropriately conditioned live entertainment is in alignment with these Community Plan policies.

The applicant has requested hours of live entertainment from 11:00AM until 10:30PM Monday through Thursday, 11:00AM until 11:00PM on Friday and Saturday, and 6:00PM until 10:00PM on Sunday. Staff proposes limiting hours of live entertainment from 11:00AM to 10:00PM Sunday through Saturday to minimize adverse impacts on nearby residential properties. City Council has approved 15 use permits for live entertainment over the past several years (See Table 1). In seven of these cases the establishment providing live entertainment was adjacent to residential uses. However, in the majority of these cases the establishment was located in an area with a heavier mix of commercial uses. In the case most similar to this one (UP14-00009 at Grandview Island Grill) City Council limited the hours of indoor live entertainment to 11:00AM to 10:00PM Sunday through Saturday.

If the application is approved, staff and the Planning Commission are recommending conditions regarding the location of live entertainment within the restaurant, compliance with the City Code noise ordinance, the provision of sufficient staffing and parking, and the above mentioned review condition.

At the Planning Commission public hearing, eleven members of the public spoke in opposition to the use permit request. 78 letters were also submitted opposing the use.

Two votes were taken at the Planning Commission public hearing on the motion for approval. The first vote was a tie and would have resulted in no recommendation to City Council. As is the practice of the Commission, a second vote was called in order to resolve the tie so that a recommendation be made to City Council. One commissioner opposing approval left the hearing after voting the first time. The second vote resulted in the recommendation of approval.

Staff recommends approval of Use Permit Application 15-00014 with 13 conditions.

Table 1: Recently Considered Applications for Live Entertainment						
Establishment	Adjacent to Single Family	Adjacent to Multi Family	Hours of Live Entertainment	Capacity	Decision	Indoor/Outdoor
Papa Ciccio's	No	No	Indoor: 12:00 PM Sun- Thurs 2:00AM Fri-Sat	125	Approved	Indoor
Sushi Hampton LLC (Sushi King)	No	No	Indoor: 10:00PM Sun- Thurs 2:00 AM Fri-Sat Outdoor: 9:00PM Sun-Thurs 10:00 Fri-Sat	300	Approved	Indoor/Outdoor
Avenue Blue Piano Bar	No	No	10:00 PM Sun- Thurs 2:00 AM Fri-Sat	168	Approved	Indoor
Peninsula Soul Food & Sports Bar	Yes	No	11:00PM Sun – Thurs. 1:00AM Fri - Sat		Approved	Indoor
Stillwater Tavern (UP 14-00017)	No	No	12:00AM Sun. – Thurs. 2:00AM Fri. - Sat	80	Approved	Indoor
Grandview Island Grill (UP 14-00009)	Yes	No	Indoor: 12:00PM - 10:00PM Sun – Sat Outdoor: 4:00PM - 8:00PM Fri & Sat	134	Approved	Indoor/Outdoor
The Point (UP 1091-2013)	No	No	12:00AM Sun- Thurs 2:00AM Friday - Sat	80	Approved	Indoor
Applebee's (CP 139-2013)	No	No	12:00AM Sun. – Thurs. 1:00AM Fri.- Sat.	165	Approved	Indoor
An Event to Remember (CP 136-2013)	No	No	11:00PM Sun.- Thurs. 12:00AM Fri. - 1:00 AM Sat.	189	Approved	Indoor
The Turtle	Yes	No	12:00AM	105	Approved	Indoor

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(CP 130-2012)			Sun.-Thurs. 1:00AM Fri.-Sat.			
Bar Louie (CP-129-2012)	No	Yes	11:00 PM Sun.- Tues. 2:00 AM Wed.- Sat.	248	Approved	Indoor
The Jewish Mother (CP 128-2012)	No	No	12:00AM weekdays 2:00AM weekends	80	Approved	Indoor
Mirro'z (CP 120-2011)	Yes	No	11:00 PM weekdays 1:00 AM weekends	240	Approved	Indoor
Terra (CP 116-2011) 2320 McMenamin Street	No	Yes	Indoor: 11PM Sun.-Tues. 2:00AM Wed.- Sat. Outdoor: 9:00 PM Sun – Thurs 10:00 Fri - Sat	160	Approved	Indoor/ Outdoor
Queens Way Soul Café (CP 112)	No	Yes	12:00 AM weekdays 2:00 AM weekends	148	Approved	Indoor

Conditions**Use Permit Application No. 15-00014****Elvie Wilson****1565 Briarfield Rd., Hampton, VA 23666 [LRSN: 3005371]****1. Issuance of Permit**

The Use Permit applies only to 1565 Briarfield Road [LRSN 3005371] and is not transferable to another location.

2. Location of Live Entertainment

Live Entertainment shall be limited to the 6'x 16' area indicated on the attached floor plan identified as "Live Entertainment Area," attached hereto as Exhibit A. The set up and use of any equipment shall not interfere with required clear space for safe exit in the case of emergency, per the Uniform Statewide Building Code and/or the Statewide Fire Prevention Code.

3. Hours of Operation

The hours of operation for live entertainment shall be limited to the following:

Indoor

- Sunday – Saturday: 11:00AM – 10:00PM

5. Sound

Live entertainment located at 1565 Briarfield Road shall comply with City Code section 22-9 with respect to any sound or noise.

6. Staffing

Sufficient staff shall be provided to monitor patron behavior upon their exit of the building into the surrounding areas.

7. Parking

There shall be at least 33 off-street parking spaces meeting the dimensional standards specified in Ch. 11, Sec. 11-7 of the Zoning Ordinance on the subject property at all times.

8. Licensing and Compliance with all Laws

When required by law, the restaurant must maintain a valid license from the Virginia Department of Alcoholic Beverage Control (VABC) and comply with all restrictions or requirements imposed by VABC. In addition, this Use Permit may be terminated for any violation of federal, state, or local law.

9. Dancing

The property owner shall comply with section 4-16 of the Hampton City Code with respect to dancing on the premises and dance floor area.

10. Third Party Promoters

Neither the facility nor any portion of it shall be leased, let, or used by any third party to stage an event for profit. No outside promoter shall be permitted to use, operate, rent, or host any event at the facility.

11. Revocation

Failure to comply with any conditions of this Use Permit shall constitute a violation of the provisions of Chapter 14 of the Zoning Ordinance and shall be cause for revocation of the use permit by City Council.

12. Nullification

The use permit shall automatically expire and become null and void under any of the following conditions:

- (1) If, in the case of new construction, the building has not been erected, with doors, windows, roof covering and exterior finish materials in place within two (2) years of the issuance of the use permit;
- (2) No building permit to construct the authorized improvements has been issued within twelve (12) months of the date of approval by the city council, or if no building permit is required, if the use is not established within twelve (12) months of the date of approval by the city council; or
- (3) Once the property may be occupied, if the property is not used for the permitted purpose for a continuous two-year period unless otherwise specified in the zoning ordinance. In making this determination the city may consider such matters as the issuance of a building permit, a business license, utility connections and such related factors.

13. Review of Live Entertainment Uses

After 12 months of operation, the Use Permit will be scheduled for review by the Director of Community Development (the "Director") to consider if the continuation of the Use Permit would not be detrimental to the public health, safety, and welfare and that to continue the activities under the Use Permit would not cause public inconvenience, annoyance, disturbance, or have an undue impact on the community or be incompatible with other uses of land in the zoning district. The review will be based, in part, upon a physical site review, traffic flow and control, access to and circulation within the property, off-street parking and loading, hour and manner of operation, noise, light, neighborhood complaints, police service calls, and any violations of any federal, state, or local law. If after review, the Director determines that the Use Permit would not be detrimental to the public health, safety, and welfare and that to continue the activities under the Use Permit would not cause public inconvenience, annoyance, disturbance, or have an undue impact on the community or be incompatible with other uses of land in the zoning district, the permit shall be scheduled for the same administrative review in 5-year increments. If the Director determines that the Use Permit would be detrimental to the public health, safety, and welfare and that to continue the activities under the Use Permit would cause public inconvenience, annoyance, disturbance, or have an undue impact on the community or be incompatible with other uses of land in the zoning district, the Director will notify the Permittee in writing and may initiate the revocation process before City Council. Nothing contained herein shall limit the City's ability to enforce City Code violations at any time during the operation.

Exhibit A

