



City of Hampton

MEMORANDUM

TO: Hampton City Council
Mary Bunting, City Manager

FROM: Terry O'Neill, Acting Director of Community Development

SUBJ: Conditional Privilege No. 112 – Queens Way Soul Café live entertainment request

DATE: October 1, 2010

Conditional Privilege Application No. 112 was heard at the September 2, 2010 meeting of the Planning Commission. This request is to add live entertainment to the existing Queens Way Soul Café restaurant in Hampton Woods Plaza at 1144 Big Bethel Road. The Planning Commission unanimously recommended approval of this item; however, three citizens from the surrounding neighborhoods spoke in opposition to this request. We would anticipate similar opposition when this application comes before the City Council for consideration. It is the intent of this memo to alert you to the issues raised and apprise you of both staff's position regarding these issues and options you may have at the public hearing.

The concerns raised by these individuals who attended the Planning Commission are largely based upon the neighborhoods experience with a previous establishment (Rooney's) located in this same shopping center. It was pointed out to the Planning Commissioners and the citizens that the "Rooney's experience" was in part the impetus for the City to amend its live entertainment permits process and procedures. The process now in place provides a great deal more control over the operation of these types of establishments. Rooney's operated without these types of conditions now being routinely applied to live entertainment permits and thus many of the issues experienced at that time would be correctable or the live entertainment permit could have been revoked due to lack of compliance.

The new process for reviewing and issuing conditional privileges for live entertainment is predicated on the principle of granting owners/operators a "trial period" after which their performance is evaluated.

Based upon this evaluation, the permit for live entertainment can be “terminated, revised, or extended” based upon a review of their performance over the first 12 months.

The owners of Queens Way Soul Café previously operated between September 2005 and March 2009 in Downtown Hampton. During this time, there were no complaints to the City’s 311 call center and no violations of their ABC license. Over this three-and-a-half year period, there were two high-priority “Group A offense” calls to the Hampton Police Division, both regarding assault on July 4, 2008. For comparison, City-wide in 2008, there were 1,993 reports of assault and 12,306 reports of all Group A offenses.

The current issues raised by the citizens fall into three categories: noise, patron behavior, and transformation from a restaurant to a “nightclub.” The Planning Commission and staff believe the issues raised by the citizens are adequately addressed with the conditions below.

- Regarding noise, **Condition No. 7** states that any sound shall not exceed 60 decibels on the property of an adjacent owner. The City has sound level meters that can measure this.
- Regarding patron behavior, **Condition No. 8** states that sufficient staffing shall be provided to monitor patron behavior upon exit of the restaurant.
- Regarding the “nightclub” issue, **Condition No. 6** states that the types of live entertainment shall be limited to those described in the applicant’s narrative, which includes several passive forms of entertainment, such as a three-piece jazz band, recorded music, a stand-up comic, and karaoke, but shall *not* include dancing.
- Additionally, **Condition No. 10** allows for revocation of the permit at any time if the business has two or more violations of any of the conditions.
- Furthermore, **Condition No. 12** allows for this use to operate for 18 months. After the first 12 months, the City will start to reevaluate this use to ensure it has not become detrimental to the neighborhood. If no problems are found, the permit will be extended another 5 years. If there have been problems with this use and it has become a detriment to the neighborhood, the use will be denied an extension beyond the initial 18 months.

While the Planning Commission was satisfied with the controls identified in the existing set of conditions, Council may modify these conditions as you deem appropriate. If you are inclined to want to control the

provision of live entertainment even further, we have identified revisions to two of the conditions which you may want to consider:

- A revision of **Condition No. 7** regarding **Sound** is an option. While the current Condition No. 7 prohibits amplified music in excess of 60 dBA, this condition could be strengthened to completely prohibit amplification of *live* music (i.e. musical instruments). However, by their nature, the other forms of live entertainment requested (karaoke, stand-up comedy, etc.) require equipment, such as microphones, which must be amplified. These types of live entertainment will still be held to the 60 dBA limit. The language of a new Condition No. 7 follows:

7. Sound

Live music shall be limited to acoustical performances only; amplification of live music is not permitted. Any amplified sound or noise from other permitted types of live entertainment shall not exceed a noise level measurement of 60 dBA 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.

- A revision of **Condition No. 4** regarding **Hours of Operation** is another option. Currently, this condition allows live entertainment until midnight Sunday through Wednesday, 1:00 AM Thursday, and 2:00 AM Friday and Saturday. The applicant's current ABC license (which they will be requesting to amend to allow for later hours of operation) currently allows the business to operate until 10:30 PM Sunday through Thursday and 1:30 AM Friday and Saturday. You may choose to further restrict the hours listed in Condition No. 4 or to limit the number of days per week that live entertainment can be conducted.

Just as a reminder, conditions related to a conditional privilege differ from those proffered as a rezoning in that City Council may add or modify conditions of a conditional privilege without the consent of the applicant. I hope this additional information is helpful in your deliberations on this matter. Please feel free to contact me or Jeff Conkle, City Planner if you need any additional information.

Respectfully,



Terry O'Neill

Acting Director, Community Development Department