

STAFF EVALUATION

To: Planning Commission

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Reviewed By: Mike Hayes, AICP 728-5244
Bonnie Brown, Deputy City Attorney

Case No.: Use Permit No. 19-00008

Date: October 17, 2019

General Information

Applicant

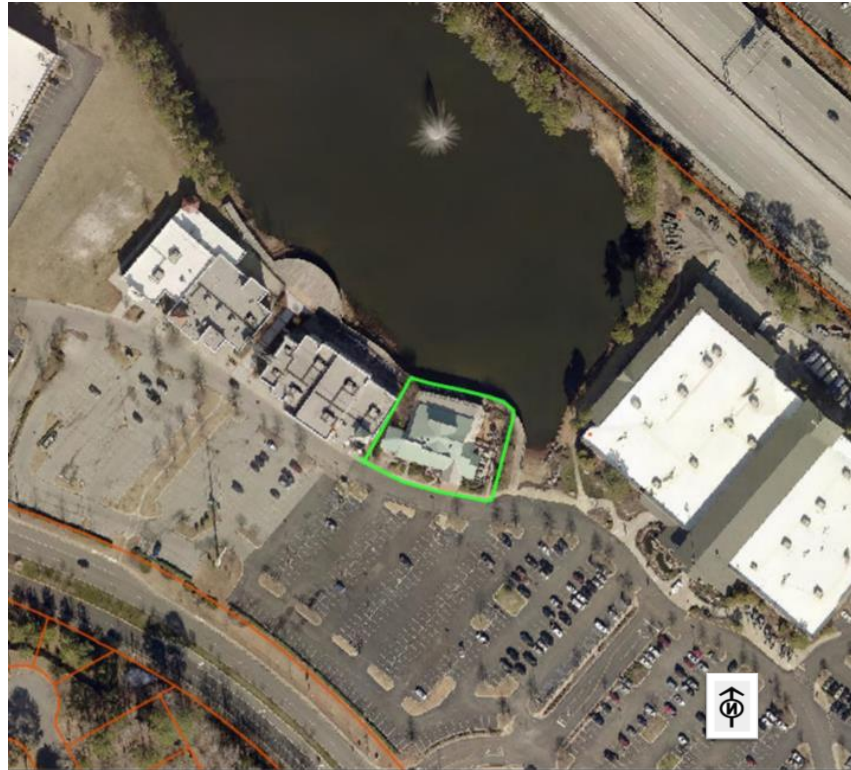
HPP Western, LLC

Property Owner

Industrial Development Authority of the City of Hampton

Location

1976 C Power Point Parkway [LRSN 13000686] Guy Fieri's Dive & Taco Joint



Requested Use

Use Permit to allow live entertainment 2 in conjunction with a restaurant.

Description of Proposal

The subject restaurant consists of an existing 7,374 square foot building of which 3,744 square feet are open to the public (including the dining room, entryway, and restrooms). This restaurant also has outdoor patio areas totaling 4,349 square feet. See the attached floor plan submitted with this application, labeled "Exhibit B: Guy Fieri's Dive & Taco Joint".

The applicant proposes adding live entertainment that can be heard inside and out. Bands would perform on an indoor stage, or alternatively a DJ in the booth next to the stage, with the music of any performance also playing through speakers outdoors on the rear patio area.

The application includes a list of typical days and hours for the live entertainment, with the wording leaving open the possibility of wanting performances on other night. The times included in the application are bands on Thursday, Friday and Saturday, from 9PM – closing, and DJ's on Tuesday, Thursday, Friday, and Saturday evening's 9 – Midnight.

Existing Land Use

Currently used as a restaurant called Guy Fieri's Dive & Taco Joint.

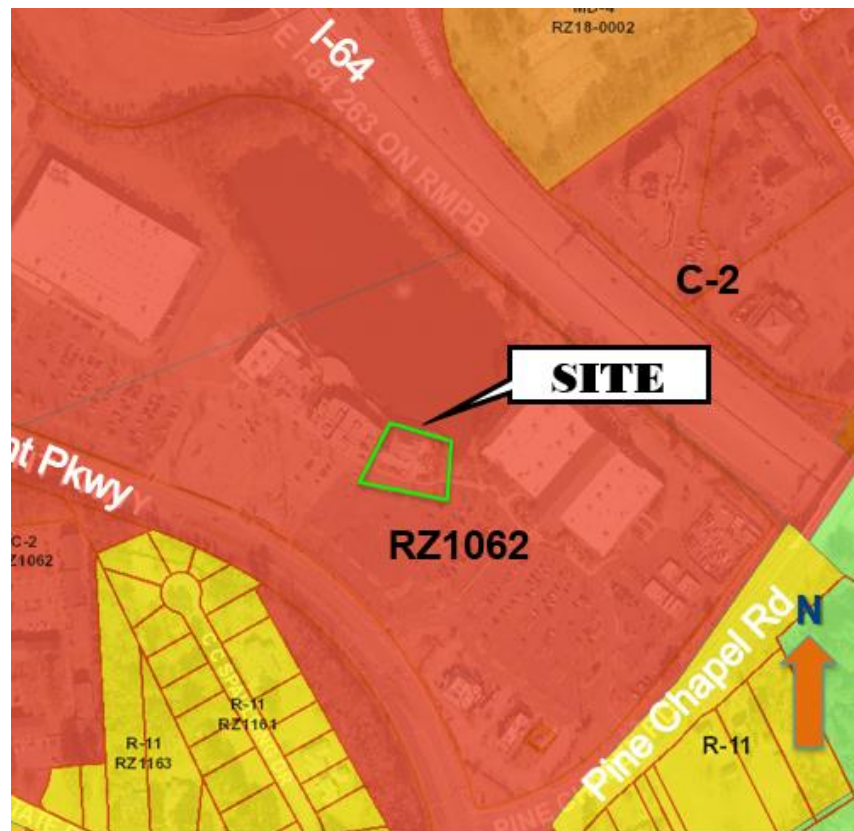
Zoning & Zoning History

The subject site is zoned Limited Commercial (C-2) District with proffered conditions; which permits live entertainment subject to an approved Use Permit. The property is also covered by the O-CC (Coliseum Central Overlay) District.

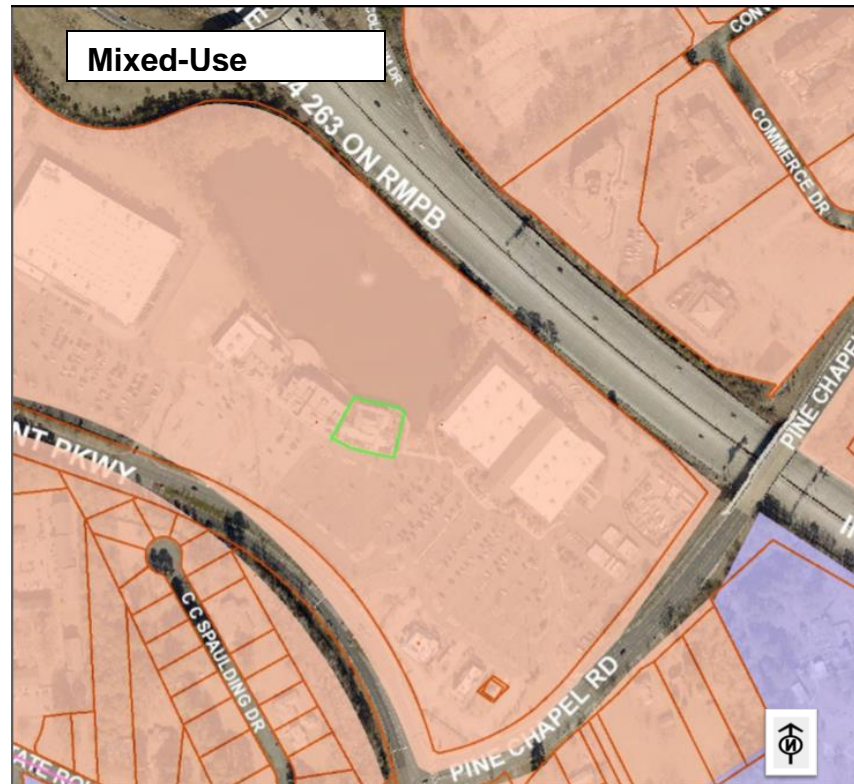
The subject property was rezoned (RZ No.1062 with conditions) in 1997 from R-11 to C-2 for a regional scale retail/mixed-use development. This rezoning led to the development of the existing Power Plant Shopping Center.

Surrounding Land Use and Zoning

- North:** C-2 (Limited Commercial) (RZ No.1062), lake/storm-water pond, Interstate 64
- South:** C-2 (Limited Commercial) (RZ No.1062) – parking lot for Power Plant Shopping Center, Power Plant Parkway, single-family homes
- East:** C-2 (Limited Commercial)(RZ No.1062), retail, Pine Chapel Road
- West:** C-2 (Limited Commercial) (RZ No.1062), restaurants



Public Policy



The Hampton Community Plan (2006, as amended) recommends mixed use development for the subject property and the immediate area.

Listed below are policies related to this request. These policies involve making Hampton a unique regional retail and entertainment destination by supporting the City's economic development priorities:

LU-CD Policy 4: Evaluate land use proposals from a regional, city-wide, and neighborhood perspective. [pg. LU-19]

LU-CD Policy 31: Encourage a mix of land uses that is appropriate for each district. [pg. LU-22]

ED-6: Expand tourism, entertainment, and cultural opportunities within the city. [pg. ED-23]

The subject properties also fall within the Coliseum Central Master Plan, (2015, as amended), specifically in the Power Plant Parkway initiative area. The Master Plan recognizes Power Plant Parkway's proximity to the interstate, and the area is well suited for a mixture of large format retailer's, supported by outparcel retail, restaurants, entertainment facilities and hotels. Being in near proximity to the Hampton Convention Center and Coliseum, a goal of the Master Plan is promoting entertainment venues such as Guy Fieri's, to be integrated with the hotels, restaurants and shopping, which is typically situated in nodes throughout the master plan area.

Applicable Regulations The current zoning, C-2 permits Entertainment 2 with an approved 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.

Traffic/Parking The subject property was formally another restaurant and, was recently renovated for the current occupant, Guy Fieri's Dive and Taco Joint. Because this new establishment will not have a dance floor no additional parking is required.

Community Meeting The applicant has not scheduled a community meeting at this time, and does not intend to schedule one since the restaurant is not near a residential area and area where music will be played faces a lake/storm-water pond and the interstate.

Analysis

Use Permit Application No. 19-00008 is a request for a Use Permit for Live Entertainment 2 in conjunction with a restaurant. The subject property is located at 1976 C Power Plant Parkway next to Bass Pro [LRSN: 12001143]. The property is currently zoned C- 2 and is within the Coliseum Central Overlay District, which permits live entertainment 2 in conjunction with a restaurant subject to an approved use permit.

The existing business is called Guy Fieri's Dive & Taco Joint and is operated by HPP Western, LLC. The applicant is proposing to provide live band and DJ performances inside with the music carried outside on the establishment's patio speaker system.

The building is one and half stories, totaling 7,374 square feet of which 3,744 square feet are open to the public. The restaurants outside patio area totals 4,349 square feet and surrounds the building's north side facing Bass Pro Lake and Interstate 64. Details can be viewed on attached "Exhibit B: Guy Fieri's Dive & Taco Joint".

The applicant's description of hours of live entertainment is for bands to play on Thursday, Friday and Saturday's 9PM – 2AM. The restaurant intends to periodically use DJ's on those nights where bands are not scheduled, which are Tuesday's 9PM - Midnight and Thursday – Saturday 9PM – 2AM. However, the application indicates live entertainment may be desired at other times as well.

Because the location of this restaurant, being adjacent to Guy's Pizza Parlor, Bass Pro Shops, and PBR Hampton Roads, is in a large retail center backing up to Bass Pro Lake and Interstate 64 – there should be minimal, if any, impact on other businesses and residents from the proposed use. There are no residential units in the Power Plant. Additionally, with this

being the situation, staff recommends permitting a greater extent of hours, which would be 11:00AM until midnight Sunday through Wednesday and 11:00AM until 2:00AM Thursday through Saturday. This is a way to provide flexibility and avoid the need for a Council approved amendment should the restaurant find a need to shift days or hours beyond their specific request in an area the City identifies as a place to support entertainment and develop regional attractions. Please note that if approved, the live entertainment can occur anytime within these conditioned hours. These hours do not govern the operating hours of Guy Fieri's Dive & Taco Bar.

As is typical with live entertainment 2 use permit applications, the end of the staff report includes a table of approved live entertainment use permits with the location and hours permitted for each.

The Hampton Community Plan identifies this location as part of a mixed-use district and within the Coliseum Central Master Plan. The policies in the City's comprehensive plan related to this request also signify the importance of making Hampton a unique regional retail, tourism, and entertainment destination. The Coliseum Central Master Plan, (2015, as amended) recognizes Power Point Parkway's proximity to the Interstate suitable for larger formatted retailers, restaurants and hotels. The goal of the area is to have auto oriented businesses designed not to negatively impact surrounding areas, which is how the Power Plant has been developed. The existing restaurant, and even more so with the addition of live entertainment, adds to the potential for the Power Plant to become a stronger regional destination.

Staff has identified twelve conditions based upon the proposed use's operational and land use characteristics. A few of them are highlighted here: Security Personnel; Location of Live Entertainment; Hours of Operation; Dancing; Third Party Events.

Based on the analysis of this proposal, staff and Planning Commission recommend approval of Use Permit Application No. 19-00008 with twelve (12) conditions.

1) Issuance of Permit

The Use Permit applies only to a portion of LRSN 13000686 addressed 1976 C Power Plant Parkway, as depicted in green on the attached **Exhibit A** and is not transferable to another location.

2) Security Personnel

The business shall provide security services, consisting of in-house security officers, services of a contracted security firm, or extra duty police officers at a minimum rate of one (1) per 75 patrons for the live entertainment area present on the property during any live entertainment event. At least one (1) security personnel shall be posted outside the establishment to monitor patron behavior in the surrounding parking areas used by patrons of Guy Fieri's, reporting any potential criminal activity to the Hampton Police Department. Staffing shall be sufficient to monitor and control patron behavior inside as well as upon exit of the building into the surrounding area.

3) Location of Live Entertainment

A) The Live Entertainment performance area shall be limited to the locations denoted as "125 SF stage" and "42 SF DJ booth" on the floor plan attached as **Exhibit B**. 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.

- B) The floor layout of the restaurant, including but not limited furniture placement, shall be in conformance with **Exhibit B**.

4) Hours of Operation

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

- Thursday-Saturday: 11AM-2AM
- Sunday – Wednesday: 11AM – 12 Midnight

5) Capacity

The maximum capacity of the building shall be determined by the City Building Official in accordance with applicable law. Maximum occupancy shall not be exceeded.

6) Sound

Live entertainment shall comply with the Hampton City Code, Section 22-9 (as amended) with respect to any sound or noise.

7) Dancing

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

8) Licensing and Compliance with Applicable Laws

When required by law, the business 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) Third Party Events

If the facility is leased, let, or used by any third party for any event, the owner/operator, or his or her employees, shall be present at all times during the event and shall be responsible for compliance with all conditions of this use permit regardless of any contract or agreement with any third party regarding the facility. Any cover charges or tickets shall be collected directly by the owner/operator.

10) 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.

11) Revocation of Use Permit

The City Council may revoke this use permit, after notice and a public hearing as set forth in section 15.2-2204 of the Virginia Code, as amended, for any violation of a term or condition thereof or repeated or continuing violations of the city zoning ordinance or city code, failure to comply with approved plans, and/or when false, fraudulent, or misleading information is supplied by the applicant. The consideration of a possible revocation shall follow the procedure set forth in the zoning ordinance for approving the use permit, provided that fifteen (15) days' written notice is given to the owner of the subject property prior to the public hearing.

12) 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.

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
Sly Clyde Ciderworks	No	No	Indoor: 11AM-11PM Sun-Thurs 11AM-1AM Fri-Sat Outdoor: 4PM-8PM Mon-Thurs 12PM-8PM Fri-Sat	130	TBD	Indoor & outdoor
Juan's Mexican Café & Cantina	No	Yes	Indoor: 11AM to 10:00PM Sun-Wed 11AM-12AM Thurs 11:00AM -2:00AM Fri-Sat		Approved	Indoor
Bowman's Soul-N-The-Wall	Yes	No	Indoor: Sunday-Thursday 11AM-11:00PM Friday-Sunday 11:00AM-1:00AM	85	Approved	Indoor
Capstan Bar Brewing Co.	No	No	Indoor: 5:30PM-12AM Mon-Fri 11AM-2AM Sat-Sun	70	Approved	Indoor
Bull Island Brewing Company 758 Settlers Landing Rd	No	No	Indoor: 11:00AM-12:00AM Sun-Thurs 11:00AM-2:00AM Fri-Sat	164	Approved	Indoor
Déjà vu Restaurant & Lounge 2080 Nickerson Blvd	No	Yes	Indoor: 11:00AM-12:00 AM Sun-Thurs 11:00 AM - 2:00AM Fri-Sat	160 or less	Withdrawn	Indoor
The Comfort Zone 2165 Cunningham	No	Yes	Indoor: 11:00AM-12:00 AM Sun-Thurs 2:00AM Fri-Sat	517	Approved	Indoor
The Vanguard 504 North King	Yes	No	Indoor: 11:00AM-11:00PM Sun-Thurs 1:00AM Fri-Sat Outdoor: 4:00PM to 8:00PM Mon-Thurs 12:00PM to	1100	Approved	Indoor/Outdoor

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			8:00PM Fri-Sun			
LV's 1565 Briarfield Road	No	Yes	Indoor: 11:00AM-10:00PM Sun- Sat		Approved	Indoor
Papa Ciccio's 89 Lincoln	No	No	Indoor: 11:00AM-12:00 AM Sun-Thurs 2:00AM Fri-Sat	125	Approved	Indoor
Sushi Hampton LLC (Sushi King) 5101 Kilgore	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 2330 McMenamin	No	No	10:00 PM Sun-Thurs 2:00 AM Fri-Sat	168	Approved	Indoor
Stillwater Tavern (UP 14-00017) 555 Settlers Landing	No	No	12:00AM Sun. - Thurs. 2:00AM Fri. - Sat	80	Approved	Indoor
Grandview Island Grill (UP 14-00009) 155 State Park	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) 30 E Mellen	No	No	12:00AM Sun-Thurs 2:00AM Friday - Sat	80	Approved	Indoor
Applebee's (CP 139-2013) 2159 Coliseum	No	No	12:00AM Sun. - Thurs. 1:00AM Fri.- Sat.	165	Approved	Indoor
An Event to Remember (CP 136-2013) 2000 W Mercury	No	No	11:00PM Sun.-Thurs. 12:00AM Fri. - 1:00 AM Sat.	189	Approved	Indoor
The Turtle (CP 130-2012) 24 N Mallory	Yes	No	12:00AM Sun.-Thurs. 1:00AM Fri.-Sat.	105	Approved	Indoor
Bar Louie (CP-129-2012) 3530 Von Schilling	No	Yes	11:00 PM Sun.-Tues. 2:00 AM Wed.-Sat.	248	Approved	Indoor
The Jewish Mother	No	No	12:00AM weekdays	80	Approved	Indoor

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(CP 128-2012) 2 Town Center			2:00AM weekends			
Mirro'z (CP 120-2011) 2710 W Mercury	Yes	No	11:00 PM weekdays 1:00 AM weekends	240	Approved	Indoor
Terra (CP 116-2011) 2330 McMenamin	No	Yes	11PM Sun.-Tues. 2:00AM Wed.-Sat.	160	Approved	Indoor/ Outdoor
Queens Way Soul Café (CP 112) 1144 Big Bethel	No	Yes	12:00 AM weekdays 2:00 AM weekends	148	Approved	Indoor
Guy Fieri's Dive & Taco Bar (UP 1900008) 1976 C Power Plant Parkway	No	No	9:00 PM – 2 AM Thurs, Fri, Sat 9:00 PM – 12 Midnight Tuesday	350	TBD	Indoor/Outdoor on patio via speaker system