

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BREMERTON**

In the Matter of the Application of)	NO. BP05-00004
)	
George T. Jones)	FINDINGS, CONCLUSIONS
)	AND DECISION
<u>For Approval of a Special Use Permit.</u>)	

SUMMARY OF DECISION

The request for approval of a Special Use Permit to operate a drinking place with entertainment at 333 Callow Avenue is **GRANTED**, subject to conditions.

SUMMARY OF RECORD

Request

George T. Jones (Applicant) requests approval of a Special Use Permit (SUP) to operate a live entertainment nightclub at 333 Callow Avenue, Bremerton Washington. Alcohol would be served on the premises.

Procedure

Section 21.02.905 of the Bremerton Municipal Code (BMC) allows SUPs to be classified as "Administrative" or "Non-Administrative." Administrative SUPs are Type II applications that are decided by the Director of the Department of Community Development (Director). Non-Administrative SUPs are Type III applications decided by the Hearings Examiner after an open record hearing. The Director may classify a SUP as Non-Administrative if he determines that the proposal may have significant impacts beyond the immediate site, that there is neighborhood or community-wide interest, or that the proposal may be of a sensitive or controversial nature. The Director determined that the proposal may be of a sensitive or controversial nature and classified the SUP as Non-Administrative (see Exhibit 1, page 4 and Exhibit 5). The Hearing Examiner held an open record hearing on the application on April 15, 2005.

Testimony

The following individuals presented testimony under oath at the open record hearing:

Robert Grumbach, City Planner
George T. Jones, Applicant
Mercedes Jones, Applicant
Dave Ruby
Amy Burnett
Brock Jackley

Exhibits

The following exhibits were admitted into the record:

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COMMUNITY DEVELOPMENT

1. Staff Report
2. SUP application, including payment receipt, site plan, vicinity map and pre-submittal report dated January 3, 2005
3. Comprehensive Plan Map and page LU-19 of Comprehensive Plan (Charleston District Center)
4. Information on operations
5. March 28, 2005 letter from Robert Grumbach to George T. Jones re: public hearing required
6. Notice of Public Hearing documents (includes Affidavit of Posting, Notice of Public Hearing, Notice of Public Hearing as published in The Sun, Certificate of Publication, Affidavit of Mailing, Mailing List, and letter to George T. Jones dated April 5, 2005), Notice of Application documents, and Determination of Completeness dated February 8, 2005
7. Staff comments, including from Engineering Department, Fire Department and Traffic/Bremerton Police Department
8. Public comment, including letter from Brock Jackley dated February 23, 2005 and letter from Richard Thomas dated March 1, 2005
9. Copy of City of Bremerton slide presentation (15 pages total)
10. Five photographs, including two depicting Callow Avenue in the vicinity of the site, one depicting the alley behind the building, and two depicting residential uses to the west of the site

Based upon the evidence admitted at the open record hearing, the Hearing Examiner enters the following Findings of Fact and Conclusions of Law:

FINDINGS

1. The Applicant requests approval of a SUP to operate a nightclub at 333 Callow Avenue, Bremerton, Washington. Alcohol would be served on the premises. *Exhibit 1, page 3; Exhibit 2.*
2. The subject property is a 0.1-acre lot that is developed with the former Charleston Theater building. *Exhibit 1, pages 1 & 4.*
3. The subject property and surrounding properties to the north, south, east and west are zoned Charleston District (CD). *Exhibit 1, pages 1 & 2.* The intent of the CD zone is to "strengthen the business district of the Charleston neighborhood by providing a compatible combination of allowed uses, along with development standards that reflect the historical character and design limitations of the district." The zone "encourages compact and mixed use development, pedestrian activities, and retail and service businesses." *BMC 21.02.120, Figure 120.*
4. Within the Charleston District is a mix of residential and commercial uses, including retail, restaurant and service uses. Some of the business uses within a one-block radius of the subject property include an adult bookstore, a Christian bookstore, a furniture store, a tattoo parlor, and a gun shop. There are residential uses (duplexes and triplexes) to the

west of the subject property. The residential properties are separated from the subject property by an alley. *Exhibit 1, page 3; Exhibit 10.*

5. Under the use classifications established in the BMC, the proposed use is a “drinking place -- with entertainment.”¹ Drinking places with entertainment are allowed in the CD zone upon approval of a SUP. *BMC 21.02.140, Figure 140; Exhibit 1, page 4; Exhibit 9; Testimony of Mr. Grumbach.*
6. The Comprehensive Plan designation of the subject property is Charleston District Center. The designation seeks to encourage redevelopment of the historic business district. Some of the Comprehensive Plan policies that are relevant to the proposed development include LU1H, to encourage adaptive reuse and preservation of historic elements; LU1K, to promote neighborhoods which foster interaction among residents, contribute to the well-being of citizenry, and create and sustain a sense of community and personal safety; and EC4L, to encourage a more diversified economic base to increase elasticity in the local economy. *Exhibit 1, pages 2-3.*
7. The proposed hours of operation are from 5:00 PM to 2:00 AM Wednesday through Sunday. *Testimony of Ms. Jones.*
8. There are no existing parking spaces on site, and none are proposed or required. BMC 21.02.670(c)(2) exempts businesses within the “Charleston Business District” from the City’s off-street parking and loading requirements. The subject property is within the Charleston Business District. Although no on-site parking would be provided, street parking would be available in the vicinity of the site. The evening hours of operation would mitigate potential parking conflicts because many of the other businesses in the area would be closed. *Exhibit 1, page 5; Exhibit 4; BMC 21.02.670(c)(2); BMC 21.02, Figure 600.*
9. The change in use of the building from a theater to a nightclub changes the applicable fire code requirements. BMC 18.02.080(d)(2) requires A-2 occupancies (i.e., nightclub, tavern or bar) to provide an automatic sprinkler system when the occupancy is 100 or more. Because the occupancy of the building is 250, a fire sprinkler system is required with the change in use. The Applicant has installed a fire sprinkler system per International Fire Code requirements. *Exhibit 1, pages 4-5; see also Exhibit A, Pre-Submittal Report.*
10. The proposed change in use does not involve any new construction or expansion of the existing structure. Consequently, the use is exempt from the City’s landscaping standards. *Exhibit 1, page 5; BMC 21.02.700(a).*
11. Utilities are available to serve the site. *Exhibit 1, page 2.*

¹ The BMC defines drinking place as “an establishment selling intoxicating beverages for consumption on the premises.” *BMC 21.02.070.*

12. At the open record hearing, concern was raised that the proposed use would cause the same type of negative impacts to the neighborhood as a former nightclub called Psycho Betty's. While Psycho Betty's was in business, surrounding property owners observed drug use, prostitution and vandalism. Broken bottles and drug-related debris would be left in the alley, and Psycho Betty's customers would climb onto the roofs of buildings. Some of the customers' activities caused false security alarms for surrounding business owners. *Exhibit 8; Testimony of Mr. Jackley.* There have been no similar concerns or problems with the Applicant's business since he has been in operation for about three weeks and no negative effects to the neighborhood have been observed as a consequence of the business. *Testimony of Mr. Jackley.* Public comment in support of the SUP expressed the opinion that crime in the area may be reduced by having a business open during evening hours. *Testimony of Ms. Burnett.* The Bremerton Police Department reviewed the proposal and raised no issues or concerns. *Exhibit 7.*
13. The Applicant proposes to implement security measures on site including installing security cameras at the front and rear entrances, in the lobby and bar areas, and at a location to scan the dance floor and seating area (five cameras total). Security officers would also be present during open hours. Between one and four security officers would be present on site as needed, based on customer volume. The Applicant anticipates that as many as four security guards would be needed on Friday and Saturday nights, with one outside the front door to check identification and search for weapons, one at the inside entrance, and two monitoring the seating and dancing area. City staff recommended as a condition of approval that the Applicant provide at least four security officers during all hours that the nightclub is open as a drinking place with entertainment. The Applicant submitted that four security officers five days a week is excessive, and requested that the condition require at least one and up to four security officers, as determined based on need. *Exhibit 4; Testimony of Mr. Jones; Testimony of Ms. Jones.*
14. The BMC contains provisions for limiting noise impacts (BMC 6.32) and public disturbances (BMC 9A.44). Compliance with these provisions would also be required by the conditions of approval recommended by staff. *Exhibit 1, pages 5 & 9; Exhibit 9.* The Applicant does not expect noise to be an issue because the building has 1.5-foot thick concrete walls. *Testimony of Mr. Jones.*
15. The proposal is exempt from the requirements of the State Environmental Policy Act pursuant to WAC 197-11-800(3). *Exhibit 1, page 1.*
16. Notice of the open record hearing was posted on site on April 6, 2005, published in *The Sun* on April 6, 2005, and mailed to properties within 300 feet of the site on April 5, 2005. *Exhibit 6; Exhibit 9.* Many of those present at the hearing expressed support for a new business operation in the Charleston District. This business district is becoming a desirable business location and more business will contribute to the success of the district if those new businesses help attract reputable consumers. The proposed nightclub, with conditions of operation, will likely be one of those businesses that helps foster a positive

business environment in the Charleston District. Other business owners and operators in the area appear generally supportive and are willing to cooperate to help each business in the area be successful. *Testimony of Mr. Ruby; Ms. Burnett; Mr. Jackley.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for Special Use Permits pursuant to Section 21.02.850 of the Bremerton Municipal Code. The decision may be to approve, approve with conditions, or deny the application.

Criteria for Review

To approve a Special Use Permit, the Hearing Examiner must find that the application satisfies the applicable criteria for review; is consistent with the Comprehensive Plan and other adopted plans; and conforms to all applicable City development regulations, minimum standards, and design guidelines. *BMC 21.02.885.* BMC 21.02.905(d) provides that a Special Use Permit may be approved if all of the following questions can be answered "yes":

1. Is the proposal consistent with the City's Comprehensive Plan and either designated "SUP" in the Zoning Ordinance, or is being processed as an "Unlisted Use"?
2. Will the proposal comply with all applicable development standards and requirements, including the availability of all needed utilities and services?
3. Will the proposal, along with any mitigation measures or other conditions of approval, avoid significant adverse environmental consequences?
4. Will the proposal be compatible with adjacent uses and surrounding neighborhood?
5. Does the proposal comply with all other criteria or design guidelines that are applicable to the specific use or type of development?

The Hearing Examiner has authority to impose such conditions as site orientation, fencing, buffering, parking location, lighting, access, hours of operation or others as conditions of SUP approval if needed to prevent adverse impacts and/or ensure compatibility of the surrounding area. *BMC 21.02.905(e).*

Conclusions Based on Findings

1. **With conditions, the proposal satisfies the criteria for approval of a Special Use Permit.**
 - a. **The proposed use is consistent with the City's Comprehensive Plan and is designated SUP in the Zoning Ordinance.** The use utilizes an existing building within the historic business district, fosters interaction among residents, and increases economic diversification. *Findings of Fact Nos. 1, 2, 3, 5 & 6.*
 - b. **The use will comply with all applicable development standards and requirements.** The use is exempt from the City's landscaping and parking standards. The Applicant has already installed a sprinkler system per Fire Code

requirements. Utilities are available. Compliance with the City's noise and public disturbance ordinances can be assured by conditions of approval requiring compliance. *Findings of Fact Nos. 8-11 & 14.*

- c. **The proposal will avoid significant adverse environmental consequences.** The proposal is a change in use within an existing building. The primary potential environmental impact of the use is noise from music. However, this potential impact is addressed by the BMC and the conditions of SUP approval. The project is exempt from SEPA review. *Findings of Fact Nos. 14 & 15.*
- d. **The proposal will be compatible with adjacent uses and surrounding neighborhood.** The neighborhood is characterized by a mix of commercial and residential uses. The commercial uses include restaurants, services, retail stores, and adult businesses. Conditions of approval requiring security officers and cameras on site, and compliance with the City's noise and public disturbance standards will ensure a safe environment and further enhance neighborhood compatibility. *Findings of Fact Nos. 4, 12, 13 & 14.*
- e. **All relevant design criteria have been addressed.** *Findings of Fact Nos. 1-15.*

DECISION

Based upon the preceding Findings of Fact and Conclusions, the request for approval of a Special Use Permit to operate a drinking place with entertainment at 333 Callow Avenue is **GRANTED**, subject to the following conditions:

1. The applicant shall install the five (5) security cameras prior to operating the establishment as a drinking place with entertainment. The security cameras shall be maintained and operational at all times the business is operating as a drinking place with entertainment.
2. Adequate security personnel shall be provided. At least one security person shall be on site during all hours the establishment is open as a drinking place with entertainment. On Friday and Saturday evenings and other peak times the minimum number of security persons shall be increased as necessary to ensure compliance with conditions and to avoid any negative impacts to the surrounding neighborhood. Additional security persons may be required to be on site during hours of operation if the Bremerton Police Chief determines additional security personnel are necessary to protect the public welfare and ensure safe business operations.
3. The property owner and/ or the person responsible for operating the drinking place with entertainment shall take measures to ensure entertainment activities comply with the City's noise ordinance as set forth in BMC Chapter 6.32. Measures shall include keeping doors closed at any time noise volumes might exceed the noise standards and keeping the speaker sound system volumes inside the building at a level that does not generate a violation of the standards outside the building.

4. The property owner and/ or the person responsible for operating the drinking place with entertainment shall ensure the business operates in a manner that does not violate public disturbance rules set forth in BMC Chapter 9A.44. If the Bremerton Police Chief finds the business operation causing public disturbances in violation of the Bremerton Municipal Codes, it shall be cause for the Hearing Examiner to revoke the Special Use Permit after a hearing pursuant to BMC Section 21.02.940 and any amendments hereto.

Decided this 26th day of April 2005.



Theodore Paul Hunter
Hearings Examiner for the City of Bremerton

