

# STAFF EVALUATION

To: City Council

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728-5244

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727-6157

Case No.: Use Permit No. 18-00007

Date: January 9, 2019

## General Information

Applicant

Colonial Downs Group, LLC

Property Owner

Economic Development Authority

Location

1990 to 1999 Power Plant Parkway [LRSN 13001056, portion], former Nascar and Lucky's restaurants in the Power Plant Shopping Center



Requested Use

Use Permit to allow for an amusement center

Description of Proposal

The applicant is proposing to provide a satellite wagering facility with simulcast horse racing for the purpose of para-mutuel wagering of historical horse racing.

The facility will feature a full service restaurant that is approximately 2470 SF and an indoor off-track horse racing betting facility that will allow patrons to bet on historical horse races that have previously occurred worldwide. The off-track betting facility will include a maximum of 700 terminals or betting machines.

The applicant plans to renovate and expand the former Nascar and Lucky's restaurants which include roughly 15,800 SF, as well as construct an addition on the western side of the former Nascar building. The building addition will be approximately 22,580 SF. In

total, the facility will be approximately 38,380SF.

The applicant's requested hours of operation for the facility are from 8AM until 2AM Sunday through Saturday. In the future, the applicant may desire twenty-four hour operations depending upon market demands; however, through the Use Permit conditions staff is requiring more limited hours. Those hours include:

- Sunday through Wednesday: 8AM-12AM
- Thursday through Saturday: 8AM-2AM

*Existing Land Use*

Vacant buildings, former Nascar and Lucky's restaurants

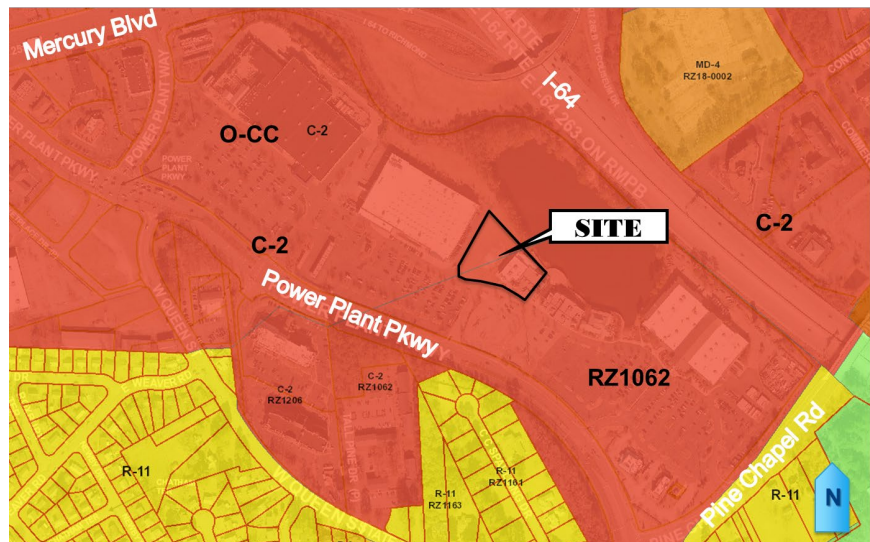
*Zoning & Zoning History*

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

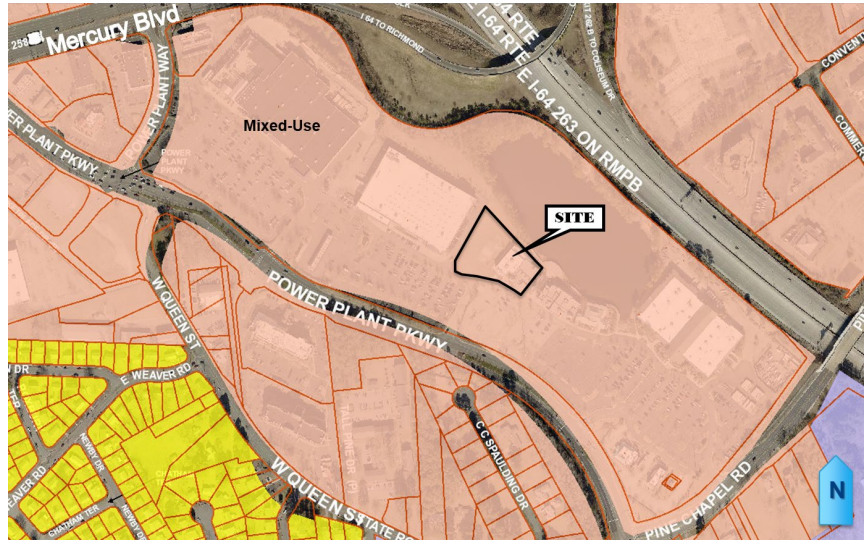
The subject property was rezoned (RZ1062 with conditions) in 1997 from R-11 to C-2 for a regional scale retail/mixed-use development. This rezoning led to the development of the existing Power Plant Shopping Center.

*Surrounding Land Use and Zoning*

**North:** C-2 (Limited Commercial) (RZ1062), lake, Interstate 64; MD-4 (Multiple Dwelling) – proposed Ellipse Apartments  
**South:** C-2 (Limited Commercial) (RZ1062) – parking lot for Power Plant Shopping Center, Power Plant Parkway, Pinewood Apartments, single-family homes  
**East:** C-2 (Limited Commercial) (RZ1062), Cold Stone Creamery, PBR & Tapps Bar & Grill, Bass Pros Shops, Pine Chapel Road  
**West:** C-2 (Limited Commercial) (RZ1062), BJ's Wholesale, Lowe's Home Improvement, Mercury Blvd



Public Policy



The Hampton Community Plan (2006, as amended) recommends mixed use development for the subject property and much of the Coliseum Central District.

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-16]

**LU-CD Policy 31:** Encourage a mix of land uses that is appropriate for each district. Promote the efficient use of land and high quality urban design.

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

The subject property falls within the Coliseum Central Master Plan, (2015, as amended), specifically in the Power Plant Parkway initiative area. The Master Plan recommends promoting the Power Plant Parkway initiative area as the location for destination and larger format retail uses, continue reinvestment in existing retail centers, and treating the character of driveways within retail centers like streets, and providing appropriate landscaping, sidewalks, and crosswalks.

*Applicable Regulations*

The current zoning, C-2 with proffered conditions allows amusement centers subject to securing 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. This action is necessary to ensure the safety and welfare of the public as well as minimizing impacts on the adjoining properties.

*Traffic/Parking*

The applicant commissioned a traffic impact analysis (TIA) which was conducted by Kimley Horn, a Planning and Design

Engineering firm. Per the TIA, there are no foreseen negative impacts to traffic.

The TIA recommends the driveway off of Power Plant Parkway that serves as the southbound access point to BJ's, Cold Stone, and the proposed Colonial Downs & Rosie's be restriped so that an exclusive left-turn lane and an exclusive right-turn lane is clearly visible.

For reference, the TIA is included in the application package.

Per the Hampton Zoning Ordinance, the proposed off-track betting facility including the restaurant and accessory office spaces requires a minimum of 143 parking spaces. There is a sufficient amount of parking spaces within the Power Plant Shopping Center to accommodate the proposed uses.

*Community Meeting*

The applicant held two community meetings on Wednesday, August 15<sup>th</sup> and Wednesday, August 29<sup>th</sup>. Both meetings were held at Sentara Careplex from 6PM-7:30PM.

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**Analysis**

Use Permit Application No. 18-00007 is a request for an amusement center for an off-track betting horse racing facility. In conjunction with the use permit, the applicant is proposing a full service restaurant. The subject property is located at 1990 to 1999 Power Plant Parkway [LRSN 13001056, portion], which is the former NASCAR and Lucky's restaurants in the Power Plant of Hampton Roads Shopping Center. The shopping center that contains approximately 62 acres and is bound by Interstate 64 to the north, Pine Chapel Road to the east, Power Plant Parkway to the south, and Mercury Boulevard to the west. The shopping center is owned by the Economic Development Authority.

The proposed business is called Colonial Downs & Rosie's and will be operated by the Colonial Downs Group, LLC. The applicant is proposing to provide a satellite betting facility with simulcast horse racing for the purpose of para-mutuel wagering of historical horse races. Pari-mutuel wagering allows an individual to bet their winning horse and a pool of other players. In traditional betting, an individual is betting against the franchise or the house but in para-mutuel wagering the individual is betting against a group of other betters.

The applicant plans to renovate and expand the former NASCAR and Lucky's restaurants which include roughly 15,800 SF, as well as construct an addition on the western side of the former NASCAR building. The building addition will be approximately 22,580 SF. In total, the facility will be approximately 38,380 SF. The facility will feature a full service restaurant that is approximately 2,470 SF and an off-track horse racing betting facility that will allow patrons to bet on historical horse races that have previously occurred worldwide. The off-track betting facility will include a maximum of 700 historical horse racing wagering machines similar to what one may see in a gaming facility.

The applicant's requested hours of operation for the facility are from 8AM until 2AM Sunday through Saturday. In the future, the applicant may desire twenty-four hour operations depending upon market demands; however, through the Use Permit conditions staff is recommending more limited hours. Those hours include: Sunday through Wednesday: 8AM-12AM and Thursday through Saturday: 8AM-2AM.

The applicant's proposal is a direct result of changes made to state law during the 2018 General Assembly Session, in conjunction with new regulations promulgated by the Virginia Racing Commission, which collectively authorized the expansion of Virginia's para-mutuel wagering laws to include "historical horse racing," i.e., wagering on horse races that have already taken place worldwide. This type of wagering typically occurs through an electronic machine. These machines can allow for multiple, simultaneous bets. Of note, the legislation temporarily limited the number of historical horse racing wagering machines to 3,000 statewide, and limited localities with a population size of 120,000 or greater to 700 historical horse racing wagering machines. This is the reason one of the Use Permit conditions caps the total number of betting machines to 700. HB 1609 also directed the Virginia Racing Commission, the licensing agency for horse racing, to establish additional regulations related to horse racing.

Per Executive Directive One (2018) from Virginia's Executive Department, live horse racing has existed throughout the Commonwealth's history and it is an important part of the economy. Hampton was a part of the horse racing industry until Colonial Downs off of Commerce Drive closed. That location provided an indoor betting facility that allowed patrons to view live races on television screens. The Commonwealth no longer has live horse racing the way it is used to in the past since racing ceased at Colonial Downs in New Kent County outside of Richmond. This proposal is a part of a statewide initiative to re-introduce live horse racing, which will take place at the New Kent County outdoor race track; as well as introduce para-mutuel wagering of historical horse races at new satellite betting facilities across the Commonwealth. Thus far, those locations include: Hampton, Richmond, Chesapeake, and Town of Vinton in Roanoke County.

In addition to the Commonwealth's legislation for horse racing, the City of Hampton applies standard land use regulations such as the Zoning Ordinance. The subject site is zoned Limited Commercial (C-2) District with proffered conditions; which in this case permits amusement centers subject to an approved Use Permit. The subject property was rezoned (RZ1062 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.

The Hampton Community Plan (2006, as amended) recommends mixed use development for the subject property and much of the surrounding area. The policies in the City's comprehensive plan related to this request signify the importance of making Hampton a unique regional retail, tourism, and entertainment destination, by supporting the City's economic development priorities. It also encourages a mix of land uses that is appropriate for each district. Promotes the efficient use of land and high quality urban design. The proposed use permit is consistent with the City's goals and policies, as outlined in the Hampton Community Plan (2006, as amended) and it will also serve as a neighborhood amenity for nearby residents. Additional policy guidance comes from the Coliseum Central Master Plan, (2015, as amended), which recommends promoting the Power Plant Parkway initiative area as the location for destination and larger format retail uses, continue reinvestment in existing retail centers, and treating the character of driveways within retail centers like streets, and providing appropriate landscaping, sidewalks, and crosswalks.

Staff has identified several conditions based upon the proposed use's operational and land use characteristics. A few of them are highlighted below:

- The use permit only applies to the area depicted in Exhibit A of the conditions. It is important to note that, if the business operation changes and a new restaurant/operator occupy the subject property, the use permit remains valid so long as the use does not lapse for longer than two years.

**USE PERMIT NO. 17-00002****STAFF EVALUATION**

- Requirement of the incorporation of the accessory restaurant.
- Although the applicant requested operating hours from 8AM-2AM daily. Staff is recommending a condition for operating hours from Sunday through Wednesday: 8AM-12AM and Thursday through Saturday: 8AM-2AM. These hours are typical of a live entertainment use permit.
- Based on the traffic impact analysis (TIA), a condition mandating that the driveway off of Power Plant Parkway that serves as the southbound access point to BJ's, Cold Stone, and the proposed Colonial Downs & Rosie's be restriped so that an exclusive left-turn lane and an exclusive right-turn lane is clearly visible.
- Substantial compliance of the concept plan to ensure the applicant builds what is being proposed.
- Required procedures for safe handling of all money transfers.
- A security plan mandating the following: a minimum number of security guards are present during and one hour after business hours, the presence of surveillance cameras, and for the security plan to be submitted to the Community Development Department, Hampton Police Division, and the Division of Fire and Rescue.
- A lighting plan requiring 1.5 foot candles of light at the walking surface during hours of darkness.

**Based on the analysis of this proposal, staff and Planning Commission recommend approval of Use Permit Application No. 18-00007 with 17 conditions.**

<b>Table 1: Recently Considered Applications for Live Entertainment – Used as the Basis for Colonial Downs &amp; Rosie's Operating Hours</b>						
<b>Establishment</b>	<b>Adjacent to Single Family</b>	<b>Adjacent to Multi Family</b>	<b>Hours of Live Entertainment</b>	<b>Capacity</b>	<b>Decision</b>	<b>Indoor/Outdoor</b>
<b>Bowman's Soul-N-The-Wall</b>	Yes	No	Indoor: Sunday-Thursday 11 AM-11:00PM Friday-Sunday 11:00AM-1:00AM	85	TBD	Indoor
<b>Capstan Bar Brewing Co.</b>	No	No	Indoor: 5:30PM-12AM Mon-Fri 11 AM-2AM Sat-Sun	70	Approved	Indoor
<b>Bull Island Brewing Company</b> 758 Settlers Landing Rd	No	No	Indoor: 11:00AM-12:00AM Sun-Thurs 11:00AM-2:00AM Fri-Sat	164	Approved	Indoor
<b>Déjà vu Restaurant &amp; Lounge</b> 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
<b>The Comfort Zone</b> 2165 Cunningham	No	Yes	Indoor: 11:00AM-12:00 AM Sun-Thurs 2:00AM Fri-Sat	517	Approved	Indoor
<b>The Vanguard</b> 504 North King	Yes	No	Indoor: 11:00AM-11:00PM Sun-Thurs 1:00AM Fri-Sat  Outdoor: 4:00PM	1100	Approved	Indoor/Outdoor

**USE PERMIT NO. 17-00002**

**STAFF EVALUATION**

			to 8:00PM Mon-Thurs 12:00PM to 8:00PM Fri-Sun			
<b>LV's</b> 1565 Briarfield Road	No	Yes	Indoor: 11:00AM-10:00PM Sun- Sat		Approved	Indoor
<b>Papa Ciccio's</b> 89 Lincoln	No	No	Indoor: 11:00AM-12:00 AM Sun-Thurs  2:00AM Fri-Sat	125	Approved	Indoor
<b>Sushi Hampton LLC (Sushi King)</b> 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
<b>Avenue Blue Piano Bar</b> 2330 McMenamin	No	No	10:00 PM Sun-Thurs  2:00 AM Fri-Sat	168	Approved	Indoor
<b>Stillwater Tavern (UP 14-00017)</b> 555 Settlers Landing	No	No	12:00AM Sun. – Thurs.  2:00AM Fri. - Sat	80	Approved	Indoor
<b>Grandview Island Grill (UP 14-00009)</b> 155 State Park	Yes	No	Indoor: 12:00PM - 10:00PM Sun – Sat  Outdoor: 4:00PM - 8:00PM Fri & Sat	134	Approved	Indoor/Outdoor
<b>The Point (UP 1091-2013)</b> 30 E Mellen	No	No	12:00AM Sun-Thurs  2:00AM Friday - Sat	80	Approved	Indoor
<b>Applebee's (CP 139-2013)</b> 2159 Coliseum	No	No	12:00AM Sun. – Thurs.  1:00AM Fri.- Sat.	165	Approved	Indoor
<b>An Event to Remember (CP 136-2013)</b> 2000 W Mercury	No	No	11:00PM Sun.- Thurs.  12:00AM Fri. - 1:00 AM Sat.	189	Approved	Indoor
<b>The Turtle (CP 130-2012)</b> 24 N Mallory	Yes	No	12:00AM Sun.-Thurs.  1:00AM Fri.-Sat.	105	Approved	Indoor
<b>Bar Louie (CP-129-2012)</b> 3530 Von Schilling	No	Yes	11:00 PM Sun.- Tues.  2:00 AM Wed.-	248	Approved	Indoor

**USE PERMIT NO. 17-00002**

**STAFF EVALUATION**

			Sat.			
<b>The Jewish Mother (CP 128-2012)</b> 2 Town Center	No	No	12:00AM weekdays 2:00AM weekends	80	Approved	Indoor
<b>Mirro'z (CP 120-2011)</b> 2710 W Mercury	Yes	No	11:00 PM weekdays 1:00 AM weekends	240	Approved	Indoor
<b>Terra (CP 116-2011)</b> 2330 McMenamin	No	Yes	11PM Sun.-Tues. 2:00AM Wed.-Sat.	160	Approved	Indoor/ Outdoor
<b>Queens Way Soul Café (CP 112)</b> 1144 Big Bethel	No	Yes	12:00 AM weekdays 2:00 AM weekends	148	Approved	Indoor



**Use Permit Application No. 18-00007 – Amusement Center**

Colonial Downs Group, LLC  
29271 Centerville Road  
La Motte, IA 52054

**Conditions:**

**1) Issuance of Permit**

The Use Permit boundary applies only to a portion of LRSN 13001056, as depicted on "Hampton OTB Site Plan – Hampton Parcel Boundary," dated October 8, 2018 and attached as **Exhibit A**. The Use Permit is not transferable to another location.

**2) Permitted Use**

The amusement center shall incorporate an accessory restaurant consisting of a minimum of 2,470 square feet and the two uses shall operate together as shown on **Exhibit B**. All satellite wagering and historical horse racing terminals shall be located within the building.

**3) Site Design**

**a. Concept Plan**

The Property shall be developed in substantial conformance with the concept plan prepared by Populous and entitled Hampton OTB Architectural Site Plan, dated October 8, 2018, which is attached hereto and incorporated by reference (see **Exhibit C**). Any minor changes to the concept plan made necessary by environmental, engineering, architectural, topographic or other development conditions, or site plan and subdivision approval requirements, may be permitted subject to the approval of the Director of Community Development.

**b. Crosswalks**

The development shall include two new crosswalks compliant with the Virginia Supplement to the 2009 Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), (2011 edition – revision 1 – 9/30/13). The crosswalks shall extend from the parking lot south of the subject use permit boundary to the building, as depicted on **Exhibit C**. The crosswalks shall be installed and approved by the city prior to issuance of a Certificate of Occupancy.

**4) Coliseum Central Design Guidelines**

Prior to submitting applications for site plan or building permit review, detailed building elevations shall be submitted to the Planning and Zoning Administration Division of the Community Development Department for design review and approval in accordance with the Coliseum Central Design Guidelines, dated January 12, 2018, attached as **Exhibit D**. A materials board, including samples of all proposed materials for the exterior of the building and building addition, shall be submitted in conjunction with the building elevations.

## 5) Lighting Plan

- A. Building Lighting: All exterior light fixtures on the building shall meet or exceed the standards set forth within the City of Hampton Outdoor Lighting Policy & Procedures, (May 2013).
- B. Site Lighting: LED lighting shall be provided such that a minimum 1.5 foot-candle of light is provided in all areas within the parking lot boundary depicted on **Exhibit E**. A substitute for LED lighting may be permitted, subject to the approval of the Director of Community Development, provided the minimum foot-candle requirement is met. All light fixtures within the parking lot boundary as depicted on **Exhibit E** shall also meet or exceed the standards set forth within the City of Hampton Outdoor Lighting Policy & Procedures, (May 2013).
- C. All lighting required in this condition shall be maintained in working condition at all times.

## 6) Parking Lot

The parking lot boundary depicted on **Exhibit E**, shall remain as a parking lot.

## 7) Security Plan

Submission of a Security Plan shall be provided to Community Development Department for review by the Hampton Police Division, Division of Fire and Rescue, and other such departments as may be applicable. The Security Plan must be reviewed and approved by the Hampton Police Chief or his designee, the Fire Chief or his designee, and the Director of Community Development or his designee prior to the issuance of a Certificate of Occupancy. All final Security Plan submittals made to the Virginia Racing Commission pertaining to the applicant's state license shall also be sent to the City.

The Security Plan shall include at least the following components:

- A. There shall be a minimum of seven (7) security personnel present during business hours and until at least one (1) hour after closing time.
- B. All security personnel must be certified by the Virginia Department of Criminal Justice Services (VDCJS). Certification of training by all security personnel must be kept current and provided to the city upon request.
- C. Sufficient security personnel shall be provided to monitor patron behavior upon their exit of the building into the parking lot and surrounding areas until at least one (1) hour after closing hours.
- D. There shall be at least one (1) armed security guard present at each public entrance to the establishment.
- E. There shall be at least one (1) armed security guard present at the site of financial transactions.
- F. Surveillance cameras shall be provided outside and inside the building for monitoring the property. If the Hampton Police Division suspects that criminal activity has occurred on premises, surveillance video shall be made available for review by authorized personnel of the Hampton Police Division.
- G. The security plan shall include procedures for the handling of all money transfers in and out of the building.

**8) Traffic Improvements**

In accordance with the traffic impact analysis submitted by the applicant, the applicant shall re-stripe the access driveway approach depicted on **Exhibit E** in the location of the yellow dotted line, to clearly reflect an exclusive left-turn and an exclusive right-turn lane.

**9) Hours of Operation**

The hours of operation shall be limited to the following:

- Sunday-Saturday: 8AM-2AM

As with all other conditions of this use permit, the hours of operation may be amended by the City Council in the manner set forth in zoning ordinance section 14-13, as amended.

**10) Capacity**

The maximum capacity of the building shall be determined by the City Building Official in accordance with applicable law.

**11) Submission Requirements for Virginia Racing Commission**

The applicant shall provide the Community Development Department with a copy of its license issued by the Virginia Racing Commission as well as final versions of other documents submitted to the Virginia Racing Commission, with appropriate redactions to protect financial data, security interests and personal data, to the Director of the Community Development Department upon request from the City for specifically identified information. Copies of requests to increase the minimum number of historical horse racing (HHR) machines shall be submitted to the Director of the Community Development Department.

**12) Historical Horse Racing Machines**

The number of historical horse racing (HHR) machines/terminals shall be allowed up to but shall not exceed seven-hundred (700).

As with all other conditions of this use permit, the number of historical horse racing machines (HHR) may be amended by the City Council in the manner set forth in zoning ordinance section 14-13, as amended.

**13) 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.

**14) Compliance with the Virginia Racing Commission Regulations**

The business must maintain a valid license from the Virginia Racing Commission and comply with all restrictions or requirements imposed by the Virginia Racing Commission.

**15) 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.

**16) 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.

**17) 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.

Exhibit A



HAMPTON OTB  
SITE PLAN

HAMPTON PARCEL BOUNDARY  
1" = 30'-0"

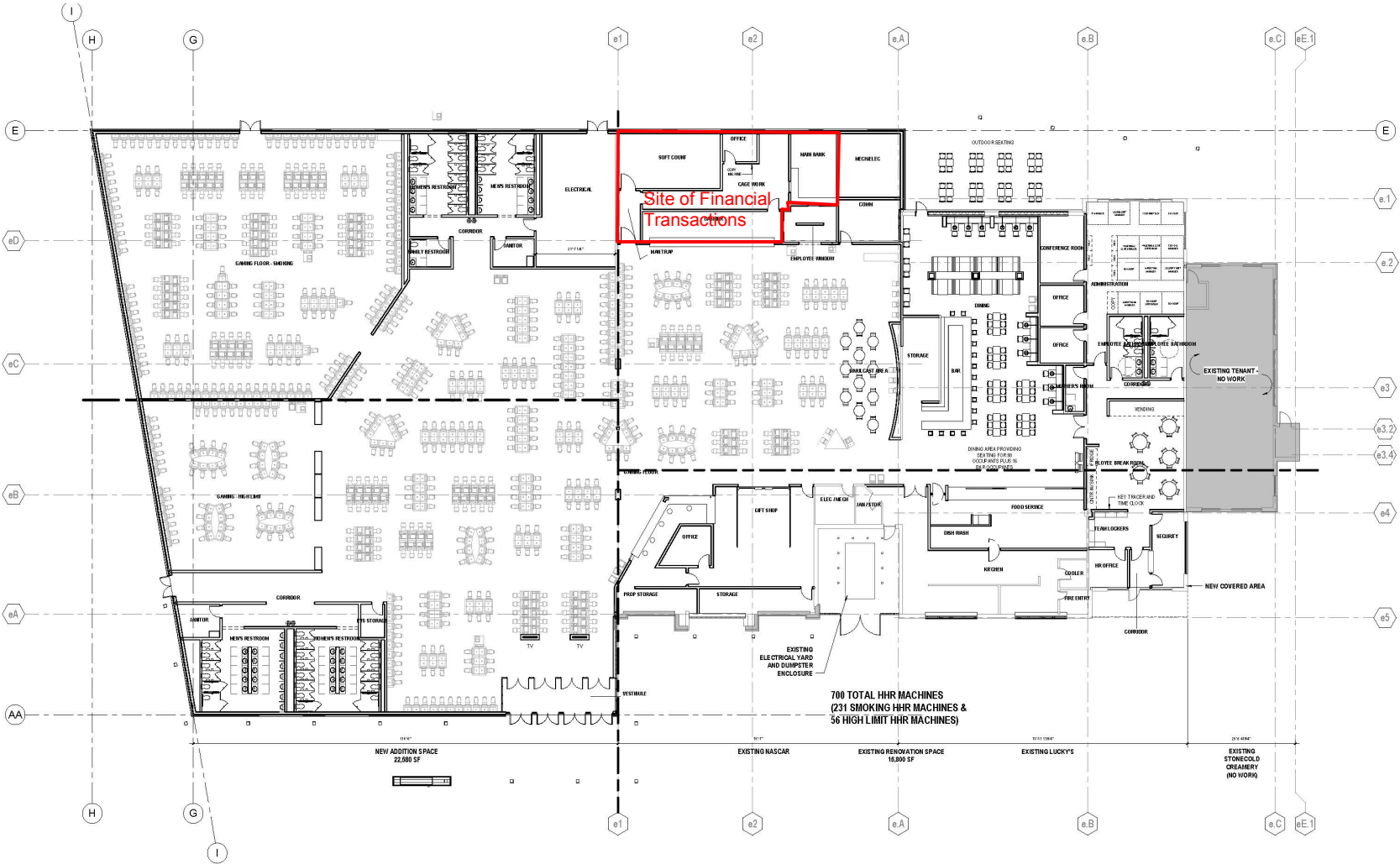


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OCTOBER 8, 2018

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Exhibit B – Floor Plan

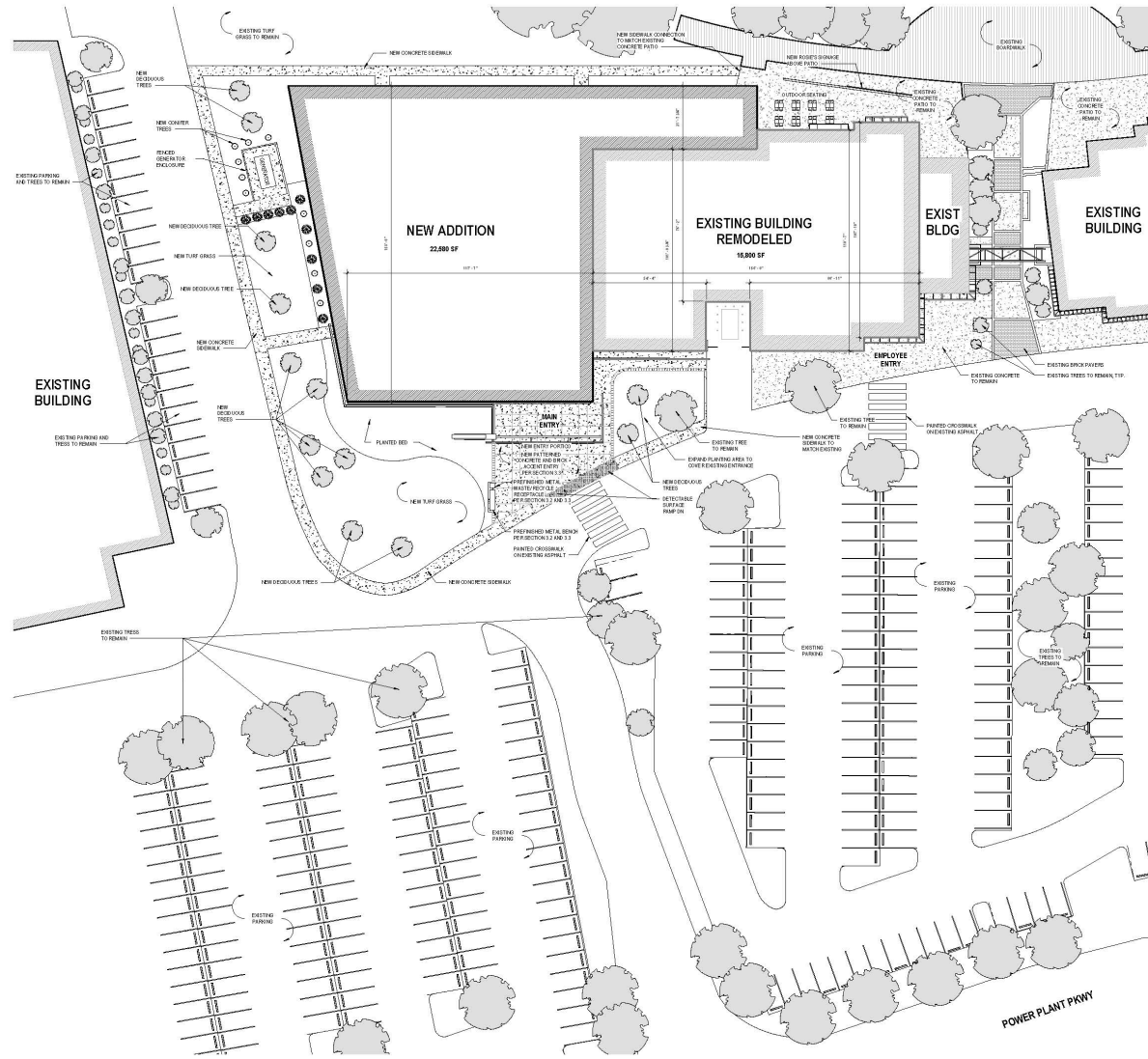


HAMPTON OTB  
OVERALL FLOOR PLAN



OCTOBER 8, 2018

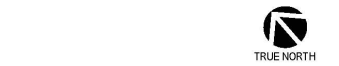
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SITE MATERIAL VARIATION, SITE FURNISHINGS,  
AND FINISH PATTERNS INDICATED IN COMPLIANCE  
WITH ARTICLE 3 SITE DESIGN OF COLISEUM  
CENTRAL DESIGN STANDARDS

HAMPTON OTB  
ARCHITECTURAL SITE PLAN

ARCHITECTURAL SITE PLAN  
1" = 20'-0"



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**Exhibit D – Design Guidelines**

**See Attached Design Guidelines**



Exhibit E – Parking Lot Boundary

