

STAFF EVALUATION

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Case No.: Use Permit No. 21-00010
Planning Commission Date: November 18, 2021 **City Council Date:** December 8, 2021

General Information

Applicant Charlotte Tucker
Property Owner Hampton Woods Associates, LLC
Location 1144 Big Bethel Road [LRSN 4002763]



Requested Use Restaurant, with or without a retail alcoholic beverage license, with live entertainment II.

Description of Proposal The applicant is requesting to expand operating hours of an existing restaurant and cigar bar, MealOne Hampton and Mo's Cigar Bar. Under existing Zoning Administrator permits, the current live entertainment and operation of a restaurant with an ABC License must cease at 10:00 p.m. The applicant's request is to extend operating hours to allow these uses to extend to 12:00AM Sunday – Thursday and 2:00AM Fridays and Saturdays.

The establishment includes 21.35 square feet devoted to a DJ area and no dance floor.

Existing Land Use

Restaurant with a retail alcoholic beverage license

Zoning & Zoning History

The subject site is zoned Neighborhood Commercial District (C-1) The site is part of the Hampton Woods Plaza Shopping Center. This retail center was the subject of previous rezoning cases #904 (1987) and #1053 (1997). There are fourteen (14) conditions attached to the most recent rezoning for this property.

This space was previously occupied by two restaurants including Queensway Soul Café Rooney's Grille and Bar. The Queensway Soul Café did offer live entertainment, and its conditions stipulated limiting the live entertainment indoors. The performance area, indicated on the floor plan, would be no larger than 10% of the dining area. All live entertainment performers and equipment were to be contained in this area during all performances.

Currently, the restaurant's hours of operation are limited by conditions attached to three Zoning Administrator Permits (ZA) with the more restrictive hours for a restaurant with a retail Alcoholic Beverage License taking precedent:

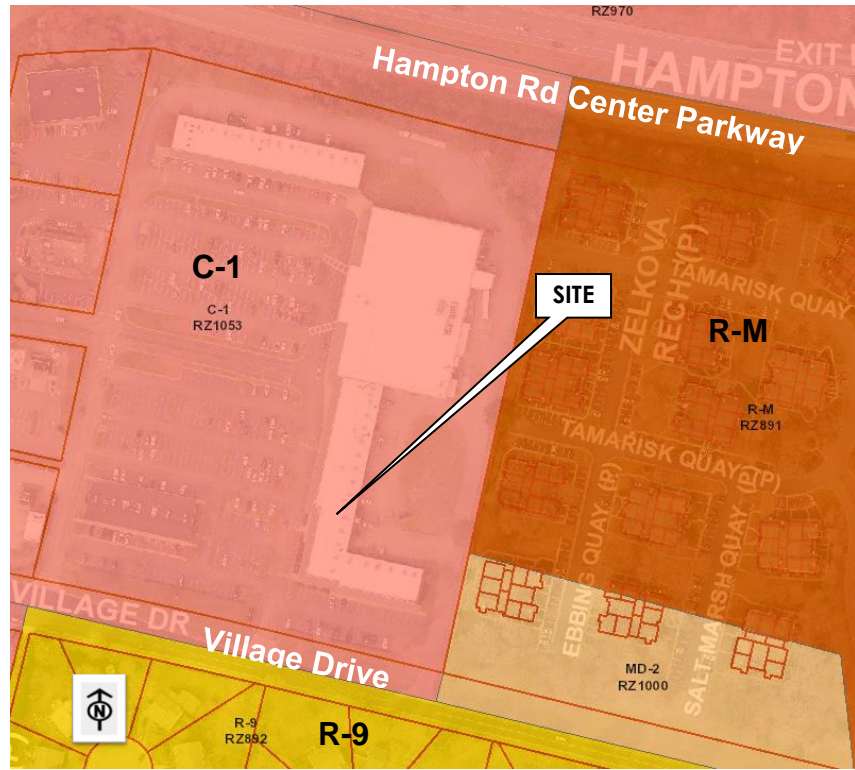
ZA20-25 - This is for Outdoor Dining '1' which allows outdoor dining to operate from 8:00 AM – 9:00 PM Sunday through Thursday, and 8:00 AM – 10:00 PM Friday through Saturday.

ZA20-34 - This permits a restaurant with a retail Alcoholic Beverage License to operate within the hours of 6:00 AM – 10:00 PM Monday – Sunday.

ZA20-35 - This allows a restaurant to operate with Live Entertainment '1'. Live Entertainment '1' allows live entertainment inside only. The hours of operation are limited by ZA20-34.

Surrounding Land Use and Zoning

- North:** C-1 (Neighborhood Commercial), Shopping Center and Hampton Roads Center Parkway.
- South:** R-9 (One Family Residential), single-family houses.
- East:** R-M (Multiple Residential) and MD-2 (Multifamily Residential), Townhouses.
- West:** C-1 (Neighborhood Commercial), shopping Center and Big Bethel Road



Public Policy

The Hampton Community Plan (2006, as amended) recommends commercial use for the subject property as part of a commercial node centered around the intersection of Big Bethel Road and Hampton Roads Center Parkway.

Listed below are policies supportive to this request:

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

LU-CD Policy 17: Preserve and enhance the identity and scenic qualities of city corridors and gateways.

LU-CD Policy 36: Protect adjacent neighborhoods and promote compatible land uses within the city's residential corridors.

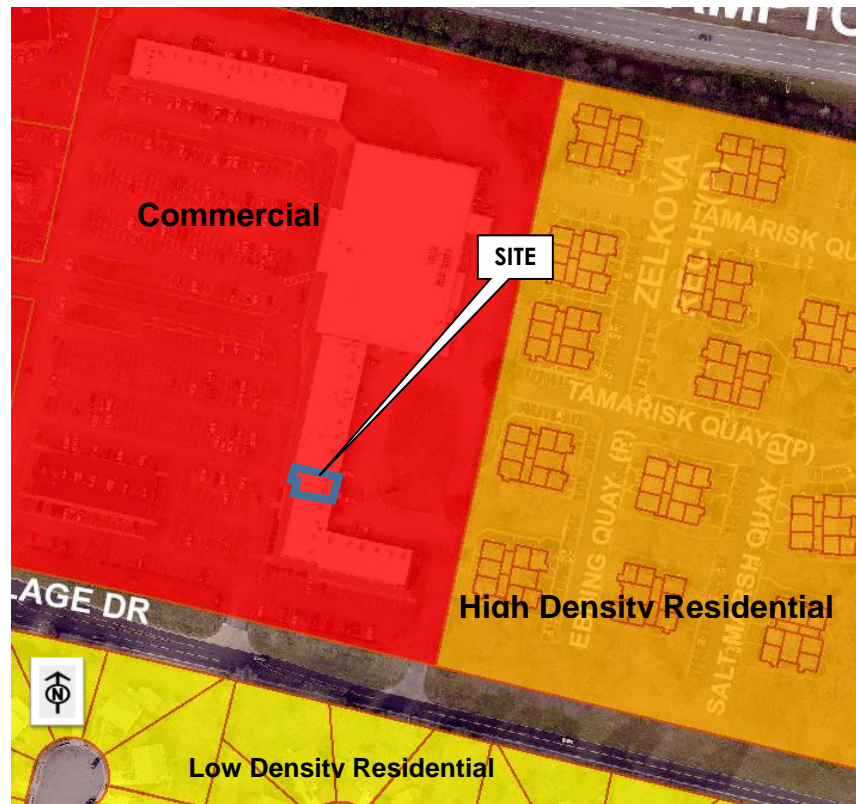
ED Policy 4: Nurture small and start-up businesses.

ED Policy 10: Foster the successful redevelopment of well-situated vacant and underutilized commercial and industrial properties within the city.

Future Land Use:

The Hampton Community Plan (2006, as amended) designates this area for neighborhood commercial uses.

Land Use Plan:



Applicable Regulations

The current zoning, C-1, allows for the operation of a restaurant with or without a retail alcoholic license. Expansion of the hours of operation for a restaurant with Alcoholic Beverage License and live entertainment requires a use permit. Specifically to allow this a restaurant with an ABC license and live entertainment to extend hours past 10:00 p.m. The purpose of this Use Permit is to identify the operational characteristics of the proposed use in manner compatible with surround land uses.

Traffic/Parking

The restaurant is a relatively small portion of a large shopping center with ample parking for the proposed use.

Community Meeting

As of November 3, 2021 the applicant has not scheduled a community meeting.

Analysis

Use Permit Application No. 21-00010 is a request to operate a restaurant, with or without a retail alcoholic beverage license, with live entertainment 2. The primary purpose of this application is to allow the existing business to operate beyond 10:00 PM. The subject property is located at 1144 Big Bethel Road [LRSN: 4002763] and within the Hampton Woods Plaza retail center. The subject unit is a total of approximately 3,836 square feet of space. The property is zoned Neighborhood Commercial District (C-1)

The restaurant is known as MealOne Hampton and Mo's Cigar Bar. MealOne is a smaller portion of the space, located at the front and separated from Mo's Cigar Bar by a door. Mo's is a cigar bar

with additional dining area, the bar, and the DJ booth. A dance floor neither exists nor is one proposed.

Currently, the restaurant operates with three zoning administrator permits; one each for a restaurant with retail alcoholic beverage license, live entertainment 1, and outdoor dining 1. Combined, these Zoning Administrator Permits require operations to cease by 10:00PM. Denial of the current use permit request would not revoke the existing zoning administrator permits. Additionally, approval of the requested use permit does not affect the conditions for outdoor dining as outdoor dining is not a part of the current request.

The restaurant was sent a notice of violation for operating beyond 10:00PM, a violation of their Zoning Administrator Permit conditions, on May 18, 2021. The business was again found in violation and notified on September 2, 2021 via email with a notice of violation sent on September 14, 2021. Having been cited and informed of violating the conditions of the Zoning Administrator permit multiple times, at a minimum, raises some concern as to the applicant's commitment to operate within the boundaries of any set of reasonable conditions.

The Hampton Community Plan (2006, as amended) recommends commercial use for the subject property. The policies in the City's comprehensive plan related to this request support nurturing and redeveloping small businesses on underutilized commercial properties.

While the City's adopted policies clearly support the creation and expansion of small business, it also expects these businesses to operate within the bounds of the applicable rules and regulations. The City recognizes that small businesses face particular challenges in navigating what can seem like a maze of rules and regulations. As such, the City of Hampton tries to be supportive and empathetic to this type of challenge by giving individuals and businesses time to correct initial, one time violations. When an individual or business begins to establish a pattern of non-compliance, the City's approach changes to one of aggressive enforcement. It is also clear that The City of Hampton has sought and achieved additional regulatory authority from the General Assembly to regulate businesses with Alcoholic Beverage Licenses by requiring a use permit that runs with the operator of the business and not with the land.

MealOne Hampton and Mo's Cigar Bar has begun to establish a pattern of non-compliance and that raises questions as to the wisdom of granting them additional operational flexibility by extending their hours of operation later into the evening. In balancing all of the City's goals, staff finds that the most appropriate path forward would be a recommendation to defer this application for approximately six months from the last finding of violation. This deferral period would allow the applicant to prove that the business can consistently operate within the boundaries of the existing rules and limitations. If they can do so for this period of time, it should provide evidence of their willingness and commitment to operate with the confines of the proposed conditions recommended to be attached to their request for extended hours of operation. Such a deferral would bring the application back to the Planning Commission for public hearing on March 17, 2022. If the applicant is able to establish such a track record and no new information surfaces that would be detrimental to the application, staff would expect our recommendation to be in support of this application.

If the use permit is to be granted, staff has identified twelve (12) recommended conditions based upon the proposed use's operational and land use characteristics. A few key conditions are highlighted below:

- Hours of operations shall be Sunday through Thursday 10:00 AM – 12:00 AM, Friday and Saturday 10:00 AM - 2:00 AM.
- Location of Live Entertainment will be conducted inside the building only and shall be limited to the rea indicated on the attached floor plan identified as "Live Entertainment Area," attached as Exhibit A.
- Capacity limitations

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- Security services consisting of in-house security officers, contracted security firm, or extra duty police officers at a minimum of 1 per 75 patrons of the establishment shall be provided

The proposed hour's condition would allow for hours greater than those proposed by the applicant but are in keeping with similar approvals for live entertainment.

Based on the analysis of this proposal, staff recommends a deferral of this Use Permit Application. In the event the application is granted, staff recommends approval of No. 21-00010 with 12 conditions.