

STAFF EVALUATION

To: City Council

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Bonnie Brown

Case No.: Use Permit No. 20-00003

Date: March 10, 2021

General Information

Applicant Colonial Downs Group, LLC

Property Owner Economic Development Authority

Location 1990 to 1996 Power Plant Parkway [Leasehold LRSN: 13001056, portion], which is within the Power Plant Shopping Center [Parcel LRSN: 3004808, portion]



Requested Action Approve application to amend Use Permit No. 18-00007 conditions to expand the hours of operation for the existing amusement center from 8AM to 2AM daily to 8AM to 4AM daily.

Description of Proposal On January 9, 2019, City Council approved UP 18-00007 to permit an amusement center with 17 conditions. More specifically, the approved operation is a satellite wagering facility with simulcast horse racing for the purpose of pari-mutuel wagering as well as electronic wagering machines based on historical horse races.

The former Nascar and Lucky's restaurants were renovated and expanded to provide a 38,380 square foot, single-story facility that includes a full service restaurant and the indoor off-track horse racing betting facility that allows patrons to bet on historical horse races that have previously occurred worldwide. The off-track betting (OTB) facility includes a maximum of 700 terminals (i.e. betting machines).

Condition #9 of the current use permit limits the hours of operation for the facility to 8AM until 2AM Sunday through

Saturday. Although the OTB Facility would expand the operating hours to 4AM, alcohol would only be sold during hours compliant with applicable Virginia Alcoholic Beverage Control Act laws and regulations (6AM to 2AM) and there is no live music at the facility.

The applicant has noted that the additional hours in the short term would allow the facility to accommodate more patrons over the course of the day. Due to the pandemic, current physical distancing requirements limit the total number of patrons from the total facility capacity permitted under normal conditions. In the long term, the extended hours would allow the Hampton location to be more consistent with the hours of its sister facilities in New Kent, Richmond, and Vinton, Virginia.

Existing Land Use

Amusement Center

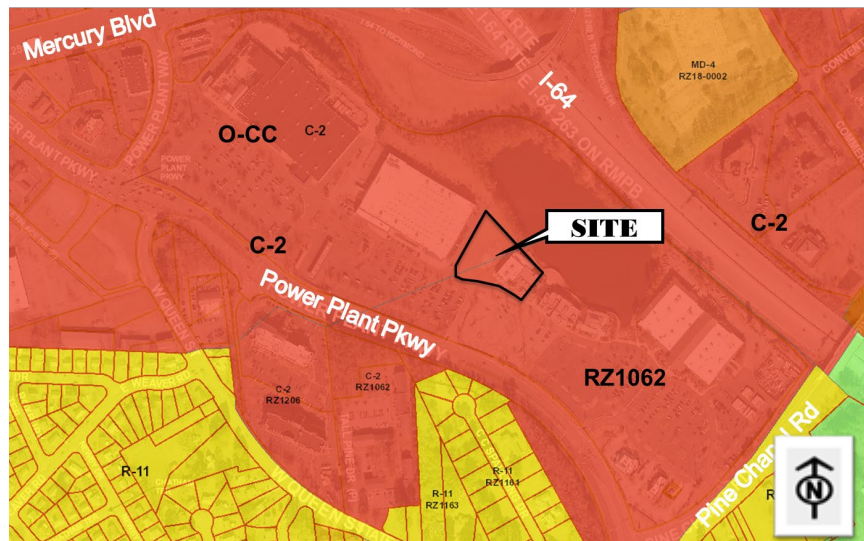
Zoning & Zoning History

The subject site is currently zoned Limited Commercial (C-2) District with proffered conditions and Coliseum Central Overlay (O-CC) District, which allow amusement centers, subject to an approved Use Permit. The use permit for the amusement center was granted on January 9, 2019.

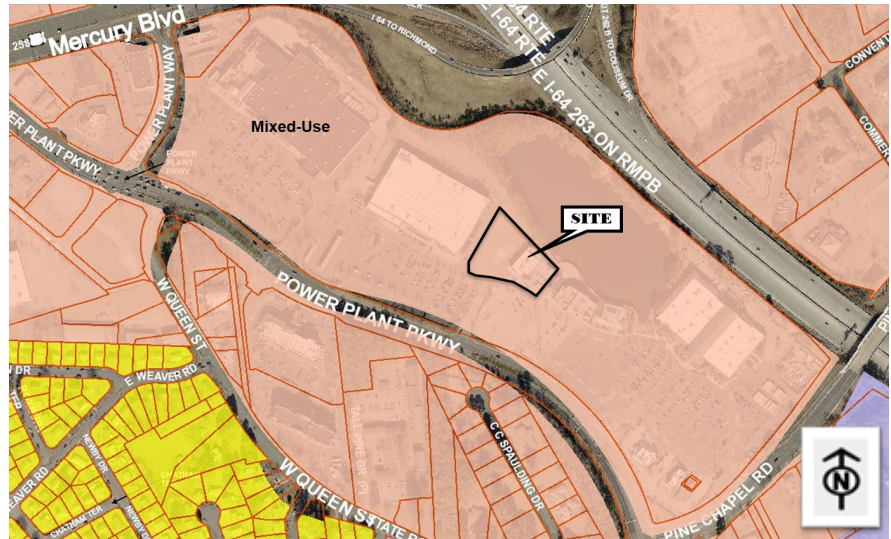
Although staff initially recommended the hours of operation be limited to 8AM to 12AM Sunday through Wednesday and 8AM to 2AM Thursday through Saturday, Planning Commission recommended and City Council approved extending the hours to 8AM to 2AM daily.

Surrounding Land Use and Zoning

- North:** C-2 (Limited Commercial) (RZ1062): Interstate 64, lake; MD-4 (Multiple Dwelling): proposed apartments
- South:** C-2 (Limited Commercial) (RZ1062): parking lot for shopping center, Power Plant Parkway; R-11: single-family homes
- East:** C-2 (Limited Commercial)(RZ1062): restaurants, retail
- West:** C-2 (Limited Commercial) (RZ1062): general retail



Public Policy



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

Policies related to this request involve making Hampton a unique regional retail and entertainment destination by supporting the City's economic development priorities as follows:

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 Coliseum Central Master Plan, (2015, as amended), also addresses the subject property, 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 and O-CC, allows amusement centers, subject to securing an approved use permit.

Traffic/Parking

In compliance with the initial use permit, the applicant has implemented the traffic and parking improvements as recommended by the Traffic Impact Analysis (TIA) relative to establishing the amusement center use as this location. There are no foreseen negative impacts to traffic and parking associated with expanding the hours of operation.

Community Meeting

The applicant chose not to hold a community meeting; however,

the application has been presented to the Coliseum Central Business Improvement District (CCBID) Board for feedback. The CCBID Board has no issue with the request for extended hours as long as the security presence is expanded to match the additional hours.

Analysis

Use Permit Application No. 20-00003 is a request to amend the use permit conditions relating to the hours of operation for the existing amusement center for an off-track betting horse racing (satellite wagering) facility. The initial use permit (UP 18-00007), establishing the amusement center use, was approved by City Council on January 9, 2019, subject to 17 conditions. Rosie's Hampton location opened in October 2019 and closed temporarily between March and their reopening on July 1, 2020 due to State mandated COVID-19 restrictions. To date, the business has operated a total of approximately seven (7) months. In that the amusement center use has been established, the subject of this use permit application focuses specifically on a request to amend Condition No. 9 to expand the hours of operation by two (2) hours from 8AM to 2AM daily to 8AM to 4AM daily. In 2019, the applicant stated a preference for these longer hours of operation. At the 2019 public hearings, understanding shorter hours were to be a condition of approval, the applicant indicated their desire to get approval for expanded hours at some point in the near future. In approving a condition that limits the hours to ending at 2AM, the conditions aligned with the latest hours approved for live entertainment in conjunction with a restaurant, which is a different use but was the closest comparable use.

The satellite wagering operation, identified as an amusement center in the City's Zoning Ordinance, is a special gaming facility enabled by state law during the 2018 General Assembly Session. In addition, the new regulations endorsed by the Virginia Racing Commission, collectively authorized the expansion of Virginia's pari-mutuel wagering laws to include "historical horse racing." This type of wagering typically occurs through an electronic machine that can allow for multiple, simultaneous bets. The legislation currently limits the number of wagering machines to 3,000 statewide, and further limits operations to localities with a population size of 120,000 or greater to 700 historical horse racing wagering machines.

Since the use was permitted via the initial use permit with certain hours of operation, staff's analysis of this request focuses on an evaluation of any land use or community impacts that may arise from an extension of the hours of operation. Staff is also cognizant of treating similar land uses consistently and equitably. It is often challenging to assess land use impacts from a use for which there is no precedent in the community. The most similar use to Rosie's was the former satellite wagering facility located at 1909 Commerce Drive, adjacent to Interstate 64 and Pine Chapel Road. Use Permit No. 914 was approved on 01/22/97 with the following hours of operation: 8:00 am to 2:00 am Monday through Saturday, and 11:00 am to midnight Sunday.

Staff also looked at hours of operation which were limited for live entertainment uses which also require a use permit. Staff's recommendation for the original use permit, depended heavily on trying to be consistent with hours of operation limitations approved for these types of establishments. The applicant did not agree with staff's original recommendation regarding hours of operation and was successful in persuading the Planning Commission and City Council to expand those hours until 2AM each day of the week.

When staff evaluated the initial use permit application, it was clearly concluded that certain aspects of a satellite wagering facility were unique within our community. For example, extensive conditions have been applied to the use permit application that address safety and security which reflects both the potential volume of money that would be handled on the premise as well as the potential volume of people visiting the location. On the other hand, staff wrestled with

application of conditions related to other aspects such as hours of operation. In this regard, staff looked toward establishments with live entertainment as a reasonable comparison for regulating hours of operation; reasoning that businesses of this general type should be treated consistently. As a result, staff's recommendation for limiting hours of operation was more conservative than what was eventually approved by City Council in 2019. Based upon the 2019 public hearings, City Council elected to endorse hours of operation more generous than the staff recommendation but consistent with what the applicant requested.

It is also a relevant question to assess how a satellite wagering facility differs from other businesses that stay open with extended hours. As examples, the City regulates the hours of operation of businesses with live entertainment but many businesses, including restaurants without live entertainment, do not have such limitations on hours of operations.

Sometime after Rosie's opened their doors to the public, the operators approached City staff to discuss when they could apply for an extension of their hours. Staff's recommendation to them was to wait 12 months so that enough time would pass to provide useful data related to any potential impacts created by this use. Twelve months is consistent with the length of time after which staff evaluates live entertainment permits. Due to the COVID-19 pandemic, there is only approximately seven (7) months of operational experience to assess what land use and community impacts are actually occurring. Obviously this is less than the 12 months we originally recommended.

When open, the business has been very successful. So successful in fact that more people are driving to this establishment than "typical" parking ratios would have indicated. On a number of occasions during peak times (1PM to 1AM, Wednesday to Sunday), parking in the Power Plant has been an issue for adjacent businesses. The Power Plant utilizes a series of large parking lots shared by the various tenants. At times, Rosie's patrons fill up the parking spaces in front of Rosie's and make use of spaces in front of other businesses as well.

With respect to safety and security, Rosie's has not created an unexpected volume of service calls to the Hampton Police Division. The current application was reviewed by the Hampton Police Department (HPD), which provided staff with a collective incident report, spanning the five (5) months it was initially open (October 2019 through March 2020). During this timeframe no major felony incidents were reported. The minor misdemeanor incidents reported were considered to be typical for a commercial shopping center. Also, in that the facility is located within a shopping center shared with other commercial tenants, not all incidents can be directly attributed to the satellite wagering facility operation. Based on this information along with the comprehensive security plan in place, HPD has expressed no concerns with the proposed expanded hours of operation. Additionally, despite some initial concerns, the Coliseum Central Business Improvement District (CCBID) Board has expressed that it views Rosie's as a good neighbor and welcome addition to the District; and likewise, supports the applicant's request to extend the hours of operation as long as Rosie's expands the security presence to match the additional hours.

Since there is no proposed physical expansion of the facility, other potential land use impacts (i.e. environmental, drainage, sewer, water etc.) remain unchanged. Overall capacity of the facility also remains unchanged. Parking appears to be the only negative land use impact that has surfaced and given that other businesses in the shopping center do not remain open during the hours of operation requested, parking should not be an issue between 2 to 4AM.

This application was considered by Planning Commission at its September 17, 2020 meeting. At that meeting a motion to approve failed with a 3-3 vote. A subsequent motion to defer pending a full 12-month of police call data also failed with a 3-3 vote; thus, there is no Planning Commission recommendation. Since the Commission meeting, the applicant voluntarily decided to defer the application being brought to Council for action until a complete 12-months of police call data could be collected. On February 4 2021, HPD staff collected data on police calls made

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between October 1, 2019 and February 4, 2021 for the subject address at 1996 Power Plant Parkway. Larceny (low priority) calls (17 calls) were the highest activity type, followed by suspicious person (8) and suspicious vehicle (8). In addition, the data indicated the most prominent day of week and time of day during which calls for service were reported, were on a Saturday and 4:00 PM (any day of the week). Additional days on which the highest volume of these reports were received, were Wednesday, Friday, and Sunday. Additional times of the day recording highest volume of calls were at 9:00 AM 5:00 PM, 6:00 PM, and 7:00 PM; Based on the data collected, HPD staff has determined there are no criminal behavior patterns or other concerning issues present that would justify not granting the requested extended hours of operation.

Staff's analysis has determined the proposed use is consistent with the Hampton Community Plan, negative land use impacts are not present nor expected, and the business has a track record of compliance with applicable codes, ordinance, and conditions; thus, staff recommends approving the proposed amendment to the conditions to permit hours of operation be extended to 4AM

If approved, only Condition No. 9 would be amended to expand the hours of operation from 8AM to 2AM to 8AM to 4AM. All remaining conditions that address various operational and land use characteristics (e.g. issuance of permit, security plan, capacity, limitation on number of machines, etc.) would remain in effect.

Based on the analysis of this proposal, staff recommends approval of Agenda Item No.21-0090 (Use Permit #20-00003) with 17 conditions.