

STAFF EVALUATION

Case No.: Use Permit No. 24-0045

Planning Commission Date: February 22, 2024

City Council Date: March 13, 2024

Prepared By: Donald Whipple, Chief City Planner

728-5235

Reviewed By: Mike Hayes, Planning & Zoning Division Manager

728-5244

Reviewed By: Jessica Kraus, Assistant City Attorney

General Information

Applicant Colonial Downs Group, LLC

Property Owners Economic Development Authority

Site Location 1990-1996 Power Plant Parkway [Leasehold LRSN: 13001056, portion], within the Power Plant Shopping Center [LRSN: 3004808, portion]



Requested Action Use permit to amend the conditions of an existing use permit to allow for extending the hours of operation for the existing amusement center from 8AM-4AM daily to 24 hours, 7 days a week.

Description of Proposal Condition #9 of the current use permit (UP No. 21-0090) limits the hours of operation for the facility to 8AM-4AM Sunday through

Saturday. The applicant has indicated that the additional hours would allow the facility to remain competitive with the Rivers Casino in Portsmouth, VA and the proposed Headwaters Casino in Norfolk, both of which are open 24 hours, 7 days a week. Alcohol sales would only occur during hours compliant with applicable Virginia Alcoholic Beverage Control Act laws and regulations (6AM to 2AM).

Existing Land Use Amusement Center

Zoning & Zoning History The subject site is located within the Limited Commercial (C-2) District with proffered conditions and the Coliseum Central Overlay District (O-CC), which allow for an amusement center, subject to an approved Use Permit.

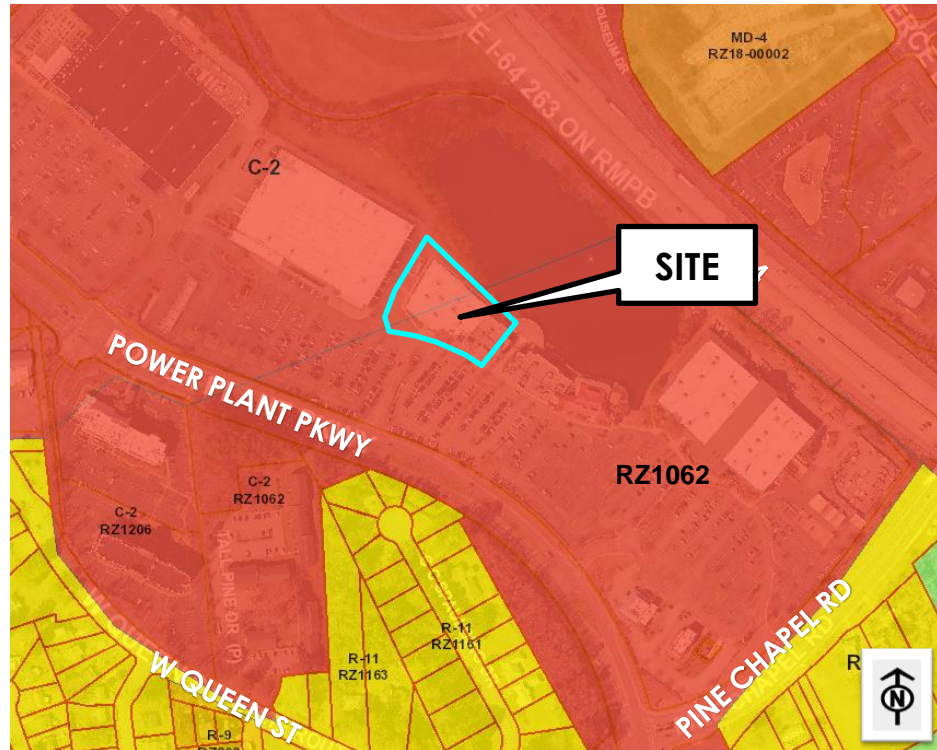
The off-track betting horse racing operation, identified as an amusement center in the Zoning Ordinance, is a special gaming facility enabled by state law during the 2018 General Assembly Session, in conjunction with regulations promulgated by the Virginia Racing Commission. These policies collectively authorized the expansion of Virginia's pari-mutuel wagering laws to include "historical horse racing." Due to this special legislation, staff views this facility as a unique amusement center use that differs in operation from other entertainment venues in the city, such as movie theaters, bowling alleys, live entertainment, etc. On January 9, 2019, City Council approved UP No. 19-0004 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. On March 24, 2021, City Council approved UP No. 21-0090, which amended UP No. 19-0004 and allowed the expansion of the hours of operation of the amusement center from 8 AM -2 AM to 8 AM-4 AM, Saturday through Sunday.

On February 9, 2022, City Council approved UP No. 22-0045 to allow the addition of live entertainment 2 to the existing restaurant, with a retail alcoholic beverage license

Currently, UP No. 21-0090 and UP No. 22-0045 govern the site concurrently, with the former governing the amusement center use and the latter governing the restaurant use with associated live entertainment.

Surrounding Land Use and Zoning **North:** Limited Commercial (C-2) District; Interstate 64
South: Limited Commercial (C-2) District & One Family Residential (R-11) District; hotel, multifamily dwellings, single family dwellings
East: Limited Commercial (C-2) District; general retail sales
West: Limited Commercial (C-2) District; general retail sales

Surrounding Zoning Map: **on the following page**



Public Policy

The Hampton Community Plan (2006, as amended) is adopted as the guiding policy document for the City of Hampton. The Hampton Community Plan includes the following policy recommendations pertinent to this case:

Land Use and Community Design Policies:

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.

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.

Coliseum Central Master Plan:

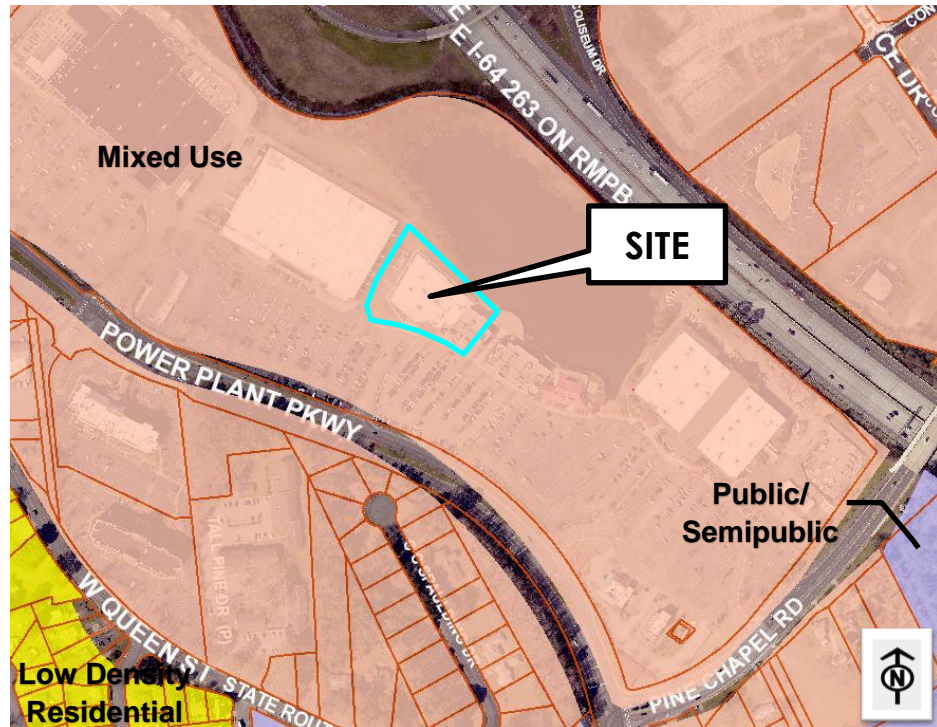
The Coliseum Central Master Plan, (2015, as amended), also addresses the subject property, specifically in the Power Plant Parkway initiative area. The Master Plan recommends promoting the Power Plant Parkway initiative area as the location for destination and larger format retail uses, continue reinvestment in

existing retail centers, and treating the character of driveways within retail centers like streets, and providing appropriate landscaping, sidewalks, and crosswalks.

Future Land Use:

The Hampton Community Plan (2006, as amended) designates this area as mixed use.

Land Use Plan:



Traffic/Parking

There are no foreseen negative impacts to traffic and parking associated with allowing live entertainment 2 at this location.

Community Meeting

The applicant chose not to hold a community meeting; however, Coliseum Central Business Improvement District (CCBID) Board is aware of the application and was solicited for feedback. To date, no Board member has objected to Rosie's request to expand to a 24-hour operation.

Analysis

Use Permit Application No. 24-0045 is a request to amend the use permit conditions (UP No. 21-0090) relating to the hours of operation for the existing amusement center, an off-track betting horse racing (satellite wagering) facility. The initial use permit (UP No. 19-0004), establishing the amusement center use, was approved by City Council on January 9, 2019, subject to 17 conditions. When the facility opened, the hours of operation were limited to 8AM-2AM daily. The hours of operation of the amusement center were extended to 8AM-4 AM Sunday through Saturday through an amended use permit (UP20-00003) approved by City Council on March 24, 2021. On February 9, 2022, City Council approved UP No. 22-0045 to allow live entertainment 2 to be added to the restaurant use

in the facility. Currently, UP No. 21-0090 and UP No. 22-0045 govern the site concurrently, with the former governing the amusement center use and the latter governing the restaurant use with associated live entertainment. The purpose of this proposal is to amend the conditions of UP No. 21-0090 to allow for an extension of hours of operation of the amusement center use to 24 hours daily.

When staff evaluated the initial use permit application, it was concluded that certain aspects of a satellite wagering facility were unique within our community. Staff views this facility as a unique amusement center use that differs in operation from other entertainment venues in the city, such as movie theaters, bowling alleys, and restaurants with live entertainment. For example, both the potential volume of money that would be handled on the premise as well as the potential volume of people visiting the location differs from other more typical entertainment venues. Thus, extensive conditions have been attached to the approved use permit addressing safety and security. This unique operation also included a condition on the requested hours of operation of the facility. Initially, staff looked toward establishments with live entertainment, such as restaurants, as a reasonable comparison for regulating hours of operation; reasoning businesses of this general type should be treated consistently. As a result, City Council approved the initial hours of operation 8AM-2AM daily. A year later, the applicant requested extending the hours of operation to 8AM-4AM daily to be consistent with the operating hours of other Rosie's locations. City Council approved the requested extended hours on March 24, 2021.

With respect to safety and security, Rosie's has not generated an unexpected volume of service calls to the Hampton Police (HPD) Division. The current application was reviewed by the HPD, which provided staff with a collective incident report for March 2021 to January 9, 2024, which is the timeframe since the hours of operation were last extended to the present. During this timeframe, no significant incidents were reported. The incidents reported, primarily minor misdemeanors (e.g., larceny low priority, man down unknown problem, suspicious activity), were considered to be typical for a commercial shopping center. It is important to note that the facility is located within a shopping center shared with other commercial tenants; thus, not all incidents can be directly attributed to the satellite wagering facility operation. Police calls for the subject site were down overall in 2023 when compared to years 2021 and 2022.

In addition, the application was reviewed by the City's internal public safety committee, which had no concerns with the proposed expansion of operating hours. An audit of the security plan was conducted by HPD and the property maintenance manager. The operation was found to be compliant. Based on the police calls data, no concerns by internal public safety committee, and the compliant security plan, HPD has expressed no overall concerns with the proposed expanded hours of operation. However, HPD requested the ability to audit the security plan for compliance and request reasonable updates due to Rosie's request to be open 24 hours a day. Although Rosie's has been cooperative with HPD and an exemplary partner, having a 24-hour business with this volume of money and number of patrons is novel for the City of Hampton. HPD is confident that with this amendment to the security plan condition, the citizens of Hampton will continue to benefit from a strong partnership between Rosie's and HPD.

If approved, Condition 9 of UP No. 21-0090, which presently limits the hours of operation to 8AM -4AM daily, would be removed; thus, permitting the facility to operate 24 hours, 7 days a week. Additionally, at the request of HPD, the condition regarding the security plan has been updated to enhance enforcement of the plan. Additionally, the ABC licensing condition has been updated to be consistent with use permits governing uses that conduct retail alcohol sales. All other existing conditions of UP No. 21-0090 that address various pertinent operational and land use characteristics (e.g., issuance of permit, capacity, limitation on number of machines, etc.) would remain in effect. In addition, UP No. 22-0045, including its existing conditions, remains in effect and operates to govern the restaurant and live entertainment uses in the facility.

Due to its size and extended hours of operation, Rosie's is considered to be a unique entertainment venue. Recommendations from the Coliseum Central Master Plan designate the Power Plant area of the Coliseum Central District as an ideal location for destination and larger format retail uses, as well as entertainment venues. As such, the initial use permit that established the amusement center use found the existing location to be consistent with the City of Hampton's overall land use plans and policies as well as the master plan recommendations. Rosie's is a great tax revenue generator for the city, helping to expand tourism and fostering a supportive business environment by attracting visitors and spinoff retail. Negative land use impacts are not expected with the proposal of extending the hours of operation from 8AM-4AM to 24 hours, 7 days a week. The business has a record of compliance with applicable codes, ordinance, and use permit conditions. Thus, staff recommends approving the proposed amendment to the conditions of UP No. 21-0090, removing the limitation on hours of operation, which would allow the facility to operate 24 hours, 7 days a week.

Staff recommends **APPROVAL** of Use Permit No. 24-0045 with 16 conditions.