

STAFF EVALUATION

Case No.: Use Permit No. 22-00015

Planning Commission Date: July 20, 2023

City Council Date: August 9, 2023

Prepared By: Michael Hayes, Planning & Zoning Division Manager 728-5244

Reviewed By: Patricia Melochick, Senior Deputy City Attorney

General Information

Applicant Azad Haji

Property Owner(s)

Bensam Group Inc

Site Location

1405 E Pembroke Avenue [LRSN 12003335]



Requested Action

Use Permit for restaurant 3 to allow for indoor live entertainment and bring other existing operations into conformance with redefined restaurant uses in the zoning ordinance.

Description of Proposal

The applicant operates a restaurant, bar, and hookah lounge. The hookah smoking area is separated from the general bar and restaurant space. The applicant is proposing to have musical live entertainment and traditional belly dancing in the lounge area.

Existing Land Use

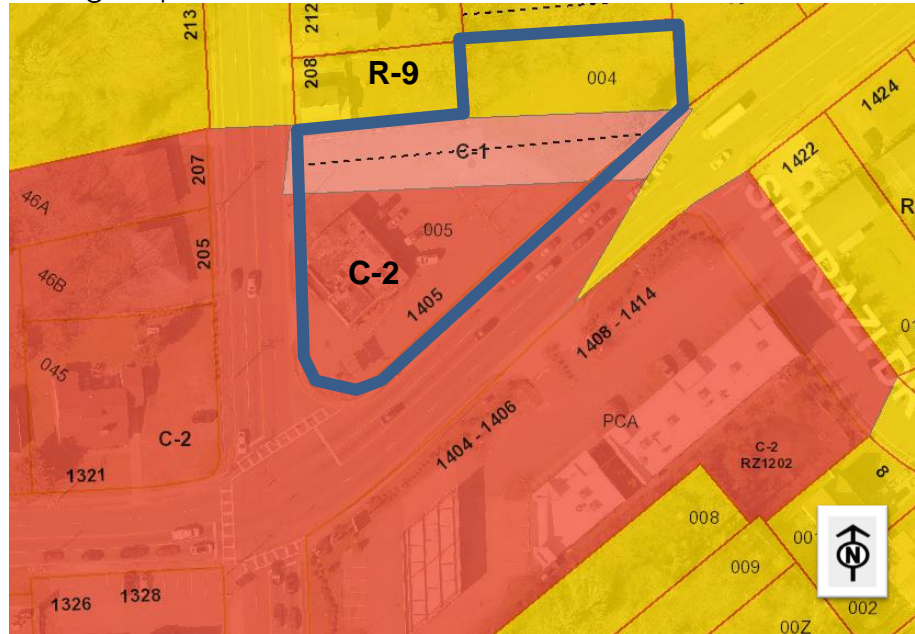
Restaurant with alcohol sales

<i>Current Zoning</i>	<p>The subject site is zoned C-2 limited commercial, C-1 neighborhood commercial, and R-9 one family residential districts. The portion of the property where the restaurant and associated parking is located is C-2 and C-1 which permits a restaurant 3 with an approved use permit.</p> <p>The site is operating under a use permit issued prior to the current restaurant definitions. A condition of that use permit does not allow live entertainment.</p>
<i>Applicable Regulations</i>	<p>The property is currently governed by an existing Use Permit (UP21-00002) related to a restaurant with an alcoholic beverage license. Please see the attached list of conditions for Use Permit No.21-00002 for the full set of conditions.</p>
<i>Previous Violations/ Complaints</i>	<p>The operation does not have any notices of violation related to the restaurant since receiving its Use Permit in June of 2021. Police calls for service are typical of the use, and generally sporadic and not related to violent offenses.</p> <p>However, the site is not in compliance with condition No.14 from the current Use Permit. This is the condition requiring the closing of the vehicle entrance on E. Pembroke Avenue closest to Woodland Road and signing the entrance on Woodland Road closest to E. Pembroke Avenue as right turn exit only.</p> <p>Additionally, staff has received two emails from neighboring property owners, including the commercial center on the opposite side of E Pembroke Avenue, who oppose this use permit application and expansion of the restaurant operation. Staff received a phone call from one other neighbor who also opposes the use permit and expansion of the use.</p>

Surrounding Land Use and Zoning

North: R-9 (One family Residential), houses
South: C-2 (Limited Commercial), gas station and strip center; R-9 (One Family Residential), houses
East: R-9 (One family Residential), houses
West: C-2 (Limited Commercial), houses; R-9 (One Family Residential), houses

Zoning Map:

*Public Policy*

The Hampton Community Plan (2006, as amended) recommends commercial use for the subject property as part of a commercial corridor in this area of East Pembroke Avenue near East Mercury Boulevard. The policies in the City's comprehensive plan related to this request support nurturing and redeveloping small businesses on underutilized commercial properties.

Listed below are policies related 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.

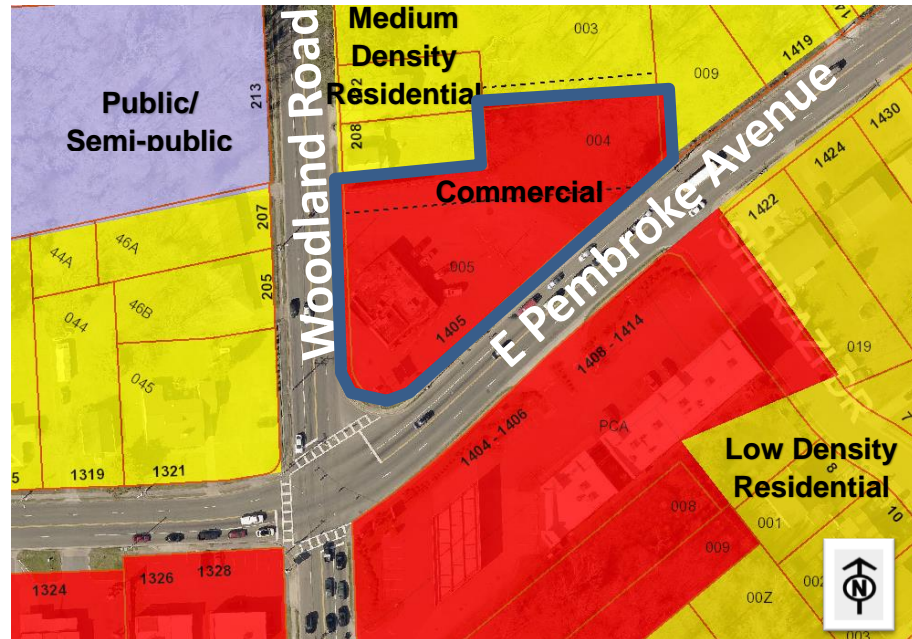
ED Policy 4: Nurture small and start-up businesses.

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 as mixed use.

Land Use Plan:



Parking/ Traffic

Based on the zoning ordinance standards, the parking is sufficient for the operation as proposed. If capacity is increased in the future, additional parking may be necessary.

The property is not compliant with a condition of the current use permit. The condition requires closing the vehicle entrance on Pembroke Avenue that is closest to Woodland Road. It also requires signing the exit on Woodland Road closest to Pembroke Avenue as right out only. These measures are to improve traffic safety.

Community Meeting

No community meeting has been scheduled at this time.

Analysis

Use Permit Application No.22-00015 is a request to expand the operations of a current restaurant at 1405 E. Pembroke Avenue. Specifically, the request is for restaurant 3 at 1405 E. Pembroke Avenue. The current restaurant is operating under a Use Permit approved (UP21-00002) by City Council prior to the most recent redefining of restaurant uses. The conditions of the current Use Permit prohibit live entertainment and outdoor dining. The applicant is specifically seeking to add live entertainment to the venue. If approved, Use Permit No.22-00015 would supersede Use Permit No.21-00002, and Use Permit No.21-00002 would become null and void.

In terms of restaurant operations, the applicant has not had any violations related to the restaurant operation since Use Permit No.21-00002 was approved in June 2021. However, one condition of the current Use Permit has not been met. Condition No.14 requires the

closing of the vehicular entrance on E. Pembroke Avenue closest to Woodland Road and signing the vehicular entrance on Woodland Road closest to E. Pembroke Avenue for right out traffic only. Neither of these requirements has been accomplished. Staff is recommending that this condition carry over as it addresses a safety issue, and that live entertainment not be permitted until the required improvements are made.

Staff has also received emails, which are included in the full package, from two neighbors, one of whom also spoke with staff on the phone, and one as a phone call from another neighbor. The concerns expressed by the neighbors were in regards to activity later at night. They cited parking overflowing, unauthorized use of the parking lot at the commercial center across E. Pembroke Avenue, noise, occasional fighting, and litter left in the area as key concerns. In sum, these are three requests to not approve this Use Permit application. Hampton Police Division staff have validated these concerns and have provided expertise in crafting and improving proposed conditions should this Use Permit be approved.

The Hampton Community Plan (2006, as amended) recommends commercial land use at this location. The plan also includes policies related to both protecting the Hampton's existing neighborhoods and supporting small and start up businesses, as well as encouraging investment in underutilized commercial properties.

The property contains three zoning districts, from closest to the intersection of E. Pembroke Avenue and Woodland Road going back on the property: Limited Commercial (C-2), Neighborhood Commercial (C-1), and One-Family Residential (R-9) Districts. The restaurant and its associated parking sit on the portion of the property zoned C-1 and C-2. Currently, none of the operation occurs on nor is the applicant requesting to expand onto the residentially zoned portion of the property.

Of note in the proposed conditions, staff has made it standard policy to include permissions for live entertainment and outdoor dining that are in line with what would be permitted via a Zoning Administrator Permit for restaurant 2. In short, any approval for a restaurant 3 would be at least as permissive as the more stringent restaurant 2 category, which does not require legislative approval. However, any activity that expands the capacity, such as adding outdoor dining, must also account for related necessities such as bathrooms under the building code and parking as required by the zoning ordinance.

Other key conditions will relate to the floor plan, which does not include a dance floor, location of live entertainment, and security. In this instance, the applicant has requested traditional belly dancing performance be permitted throughout the venue, and staff has supported this request in the conditions. Any other performance, such as a musician or DJ, must take place within the designated area behind the counter in the lounge area. Assuring clarity of the limits of live entertainment and that proper safety measures are required.

While there are not citations or a level of incidents to lead staff to recommend denial of the application, being additionally thoughtful about whether to approve this application and the conditions attached to an approval is warranted. Should the operation not meet the initial requirements of the conditions or violate the conditions at some point in the future, the Use Permit can be revoked.

Staff recommends **Approval** of Use Permit Application No. 22-00015 with fourteen (14) conditions.