

STAFF EVALUATION

To: Planning Commission

Prepared By: Allison Jackura
Reviewed By: Mike Hayes, AICP
Bonnie Brown

728-5233
728-5244
727-6157

Case No.: Use Permit No. 21-00002

Date: June 2, 2021

General Information

Applicant Azad Haji
Property Owner Angela Blackwell
Location 1405 E Pembroke Avenue [LRSN 12003335]



Requested Use Use Permit to allow hours of operation beyond 6 AM to 10 PM for a restaurant with a retail alcoholic beverage license without a drive through.

Description of Proposal The applicant is proposing expand operating hours of his restaurant and hookah bar, Pharaoh's Bar and Hookah. The establishment has a lounge area where food and beverage are served along with hookah, with a separate non-smoking dining area where no hookah is sold or used. The establishment currently can operate until 10 pm per an issued zoning administrator permit.

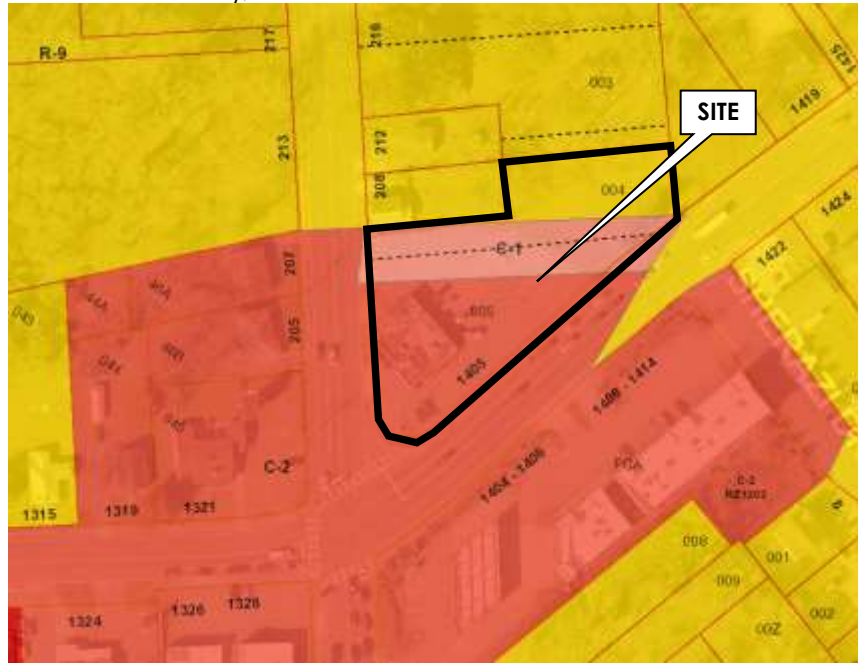
Existing Land Use Restaurant with a retail alcoholic beverage license with limited hours.

Zoning & Zoning History 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 with a

retail alcoholic beverage license to operate with limited hours under a zoning administrator permit but requires a use permit for hours beyond those allowed under the ZA permit. The applicant has obtained ZA20-00027 to operate until 10 PM.

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



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.

<i>Applicable Regulations</i>	The current zoning where the use is proposed, C-2, allows for a restaurant with a retail alcoholic beverage license operating beyond 10 PM 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.
<i>Traffic/Parking</i>	<p>The subject property currently has marked parking spaces within the existing parking lot which meets the required parking spaces of a restaurant use. Staff does not anticipate that the requested expansion of hours would cause a significant difference in the parking or traffic on site over current existing conditions.</p> <p>Circulation and site access are an identified issue, with there being three site access points or curb cuts along both Woodland Road and East Pembroke Avenue. Each street has a curb cut located much closer to the intersection and traffic signal than current Public Works standards would permit. Expanding operation into the late evening hours could exacerbate these existing conflicts. The applicant has indicated a willingness to block off the two curb cuts closest to the intersection to assist in preventing traffic incidents, especially in late hours when visibility may be reduced.</p>
<i>Community Meeting</i>	The applicant has not scheduled a community meeting at this time but has stated the intention of visiting all neighbors prior to the Planning Commission public hearing.

Analysis

Use Permit Application No. 21-00002 is a request for a Use Permit for a restaurant, without a drive through or drive in, with a retail alcoholic beverage license to operate beyond the hours of 6 AM to 10 PM. The subject property is located at 1405 E Pembroke Ave [LRSN: 12003335] totaling approximately 0.87 acres. The property is currently zoned C-2 limited commercial, C-1 neighborhood commercial, and R-9. The existing building and parking are located within the C-2 and C-1 districts which allows for the desired use subject to an approved use permit. This application was previously heard by the Planning Commission on April 15, 2021, and was deferred until this date to allow time for additional operation history to demonstrate compatibility with the neighborhood and compliance with city codes.

The Crabtown Raw Bar & Grill restaurant was previously located on this property, with Jack's Family restaurant being there prior to that. However, no restaurant was active at this location when the City of Hampton adopted the current zoning regulations related to operating a restaurant with a retail alcoholic beverage license. The Hookah Bar & Lounge, the restaurant associated with this use permit request, is currently permitted to operate under the approval of zoning administrator permit ZA20-00027. The hours of operation indicated on that permit are 12 PM to 10 PM Monday through Sunday.

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.

The Health department requires that any smoking areas within a restaurant have completely separated HVAC systems as well as entrances from the nonsmoking dining area, though the two

may have a door between the two areas. The existing building provides this separation, such that the lounge area can offer hookah along with food and drink to customers, while a separate dining area with its own entrance can offer just food and drinks to customers not wishing to enter the hookah smoking area.

There are some conditions of the site which could pose an issue to the harmonious operation of this use at this site if left unaddressed. The existing building contains 2,519 square feet of floor area excluding the kitchen and any freezer areas. Required parking is based upon this floor area, and indicates a need for between 34 to 41 parking spaces. The existing paved parking lot provides 38 parking spaces. There is additional green area at the rear which is currently zoned R-9 and should not be used for parking. Staff is recommending a condition, if the use permit application is granted, to ensure parking will only be in the marked spaces and any expansion would require a reevaluation of these conditions. Further, there are several site access points on both Woodland Road and East Pembroke Avenue which pose an on-going hazard for traffic circulation. Staff is recommending a condition to address this concern in a method proportional to the expected impact of the use. Specifically, staff would recommend indicating the access on Woodland Road closest to the intersection be marked for right-turn exit-only traffic, while the access on Pembroke Avenue closest to the intersection be blocked off to prevent ingress or egress.

At this time, the applicant is not requesting any outdoor dining or live entertainment be included in this consideration. The applicant is interested in pursuing a future use permit to allow live entertainment, but would first like to operate under extended hours to demonstrate the use is compatible within the neighborhood without the live entertainment. The applicant's requested hours of operation are from 12 PM to 12 AM Sunday through Saturday. If approved, staff would recommend permitting more expansive hours on weekend nights in order to be consistent with the Virginia Alcoholic Beverage Control Authority allowances on hours of operation while maintaining the requested hours for weekday nights given the proximity to residential homes. Therefore, staff would recommend hours be limited to 10 AM to 12 AM Sunday through Thursday, and 10 AM to 2 AM Friday and Saturday.

During the course of helping the applicant prepare and staff reviewing the use permit application for presentation to Planning Commission in April, staff was very clear regarding the current permitted hours of operation under the issued Zoning Administrator permit, that live entertainment was not a part of the allowed operation, and that extending those hours or having live entertainment required approval by City Council at a public hearing through the Use Permit process. Despite this, staff became aware of at least two occasions of non-compliance with existing restrictions. The restaurant hosted live entertainment in the form of belly dancing on Saturday, March 6. Staff met in-person with the applicant on March 12 to discuss that this is not permitted, and reiterated the restriction on operating hours. It was made clear that continued violations would be reason to not support approval of the application. Following that meeting, Planning staff was made aware that the Police Division had been called for a noise disturbance around 11 PM the evening of March 25, past the allowed 10 PM close time. The officers were denied entrance to the building by security but witnessed the business in operation. The officers were on site until around midnight as patrons left. A notice of violation was sent March 31 (VI-0090331). At the April 15 Planning Commission hearing, the applicant indicated that he would be willing to defer until the June 17 hearing date in order to demonstrate that he can operate without issues. Police have reported that there have been no further calls in the time since the April meeting.

Staff previously recommended and continues to recommend denial of the use permit. Given that the ordinance requires a year waiting period before a substantially similar application could be brought forward, staff found that a year period for the applicant to evidence that they can operate within the bounds of codes and ordinance is appropriate. This is the first use permit of its kind to come forward, and as such, staff recognizes that Planning Commission and City Council have the opportunity to establish, through their decisions on this case, guidance for staff in handling similar applications in the future. In the event Planning Commission and City Council would grant

USE PERMIT NO. 21-00002**STAFF EVALUATION**

the use permit, staff would recommend 17 conditions which are included for reference. If denied, a similar use permit application for this location may not be brought forward for a year from denial.

If approved, this use permit would be the first one issued under the authority granted by the Commonwealth in 2020, permitting the use permit to expire upon a change in operators. If the Planning Commission and City Council so choose, this authority allows them to grant this proposed restaurant to operate with suggested conditions and still ensure any future restaurants which may have different impacts will be reevaluated at that later date.

If granted, staff has identified several recommended 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 subject property. It is important to note that, for the first time, if the business operation changes and a new operator occupies the subject property, the use permit would not remain valid.
- Staff is recommending a condition restricting hours to Sunday through Thursday 10 AM-12 AM, Friday and Saturday 10 AM-2 AM.
- Conditions clarifying that no live entertainment, nor outdoor dining shall be permitted under this use permit.
- A site access condition stipulates that the curb cut closest to the intersection on East Pembroke Avenue should be blocked off to reduce conflicts there, and that the nearest curb cut to the intersection on Woodland Road be marked as an exit-only point.
- A security condition requiring that 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.

Based on the analysis of this proposal, staff recommends denial of Use Permit Application. In the event the application is granted, staff recommends approval of No. 21-00002 with 17 conditions.