



## Legislation Text

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**File #:** 21-0138, **Version:** 1

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Use Permit Application by Azad Haji to Operate a Restaurant without a Drive-Through with an Alcoholic Beverage License at 1405 E Pembroke Avenue [LRSN: 12003335]

### **Background Statement:**

This use permit application is a request to allow a restaurant with a retail alcoholic beverage license to operate beyond the hours of beyond 6 AM to 10 PM. The subject property, 1405 E Pembroke Avenue [LRSN 12003335], is zoned Limited Commercial (C-2) District, Neighborhood Commercial (C-1) District, and One Family Residential (R-9) District with the restaurant and associated parking located within the C-2 and C-1 districts. This application was originally heard by the Planning Commission on April 15, 2021. The Commission deferred the application to the June 17, 2021 meeting to allow time for additional operational history, allowing the applicant to demonstrate compatibility with the neighborhood and compliance with city codes after initially being found to operate beyond the permitted hours.

The existing business is Pharaoh's Bar and Hookah, which is currently permitted to operate until 10 PM under a zoning administrator permit as allowed for by the zoning ordinance. The applicant is proposing to expand the hours past 10 PM which requires the use permit. The previous uses of this property were also restaurants; Crabtown Raw Bar & Grill, and Jack's Family Restaurant. The Hampton Community Plan (2006, as amended) recommends commercial use for the subject property as part of a corridor in this area of East Pembroke Avenue. The policies in the City's comprehensive plan related to this request support nurturing and redeveloping small businesses on underutilized commercial properties.

The hookah portion of the restaurant operates similarly to a standard smoking section in a restaurant where the ventilation system is completely separate from the non-smoking dining area, with separate exterior entrances for each area and a self-sealing door between the two areas. Food and drink are served in the lounge area where hookah may be smoked.

There is currently adequate parking on site; however, there are several site access points on both Woodland Road and East Pembroke Avenue which pose an on-going hazard for traffic circulation. If approved, staff recommends a condition which requires the access point on Woodland Rd closest to the intersection is marked to be right-turn exit-only while the access point on Pembroke Ave closest to the intersection be blocked off to prevent exit or entrance at that point.

Currently, 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 at some point in the future. The applicant indicated he 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 recommends 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 preparing this use permit application package for presentation to the Planning Commission in April, staff was very clear regarding the allowed 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 the application moving forward. Following that meeting, staff was made aware that the police 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 barred from entering 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 the use permit, staff would recommend 17 conditions which are included for reference.

If granted, this use permit would be the first one issued under the new authority from 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.

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.

**Recommendations:**

Staff Recommendation:

Denial

Planning Commission Recommendation:

Approve with 17 conditions