

Planning Commission Public Hearing: February 25, 2021

Executive Secretary: George M. Homewood, FAICP, CFM

Planner: Susan Pollock Hart, CFM, CZA

Staff Report	Item No.	
Address	5957 E Virginia Beach Boulevard, Suites 17 & 18	
Applicant	Origami Asian Bistro (formerly Taste of China and 360 Asian Diner & Sports Bar)	
Request	Conditional Use Permit	Nightclub
Surrounding Area	North	C-R (Commercial-Regional): Ollie's Bargain Outlet, nTelos Wireless C-C (Commercial – Community): Upscale Men's Fashion
	East	C-C: H&R Block
	South	C-R: Costco
	West	C-R: New York Bus; Bingo Hall



A. Summary of Request

- The site is located within Military Crossing Shopping Center on the south side of E. Virginia Beach Boulevard just east of JANA Shopping Center.
- The site began operating in 2014 and has changed entertainment, floor plan and managers a few times.
- The Special Exception granted in 2017 expired two years from approval by City Council; the applicant is required to reapply.
- Due to continuing issues at the establishment, staff recommends that the request be **denied**.

B. Plan Consistency

The proposed Conditional Use Permit is consistent with *plaNorfolk2030*, which designates this site as commercial.

C. Zoning Analysis

i. Background:

- In 2014, 360 Sports Bar received a Special Exception and in February of 2015 they began operation as a nightclub.
- Almost immediately the City began to receive complaints about the establishment (see attached history).
- In an effort to address the overcrowding, use of promoters, change of management and other code violations, the City met with or attempted to meet with the business owner and manager on nine occasions.
- Continued violations lead to eight court appearances.
- In 2017, there was a change in managers and operation, so a new Special Exception was required.
- At that time, a 'sunset' clause was added as a condition which stated that the current Special Exception would expire in two years.
 - The applicant was put on notice that if the City continued to receive complaints and the owner and managers continued to violate the conditions in their Special Exception, the Special Exception would not be approved.
 - The two-year time-period was a probationary period to allow the owner and managers a chance to operate within the confines of the conditions stated in the Special Exception.
- Although the managers have frequently changed, the business has been under the same ownership since its inception.
- Due to the Pandemic, the establishment was closed for a portion of 2020, but just in the last six months (July to January 2020), the following police activity and calls for service have been documented:
 - Police activity:
 - July 1, 2020:
 - NPD Investigators made several arrests inside of Origami

- Charges against Cedric Hill (Applicant/Manager):
 - Possession with Intent to Distribute Marijuana
 - Transporting to Virginia
 - Possession of Firearms
 - Conspiracy
- November 24, 2020
 - Large service panel installed with no electrical permit; despite several notices to the owner, no permit has been submitted by the owner.
- December 5, 2020
 - Disorderly Disturbance - Security guard is requesting NPD assistance to clear the parking lot at 10:16 p.m. (closing time during pandemic)
- January 13, 2021
 - Crowd - Security requesting help clearing out a crowd of people after closing at 10:51 p.m.
- Calls for Service.
 - September 6, 2020
 - **Person with a Weapon** - People fighting and multiple persons with guns; shooting occurred
 - October 14, 2020
 - **Disorderly Disturbance** - Caller alleged underage drinking
 - October 18, 2020
 - **Shots Fired/Just Occurred** - Two people shooting at each other at the location
 - November 1, 2020
 - **Shots Fired/Just Occurred** - Shots fired from a vehicle
 - November 2, 2020
 - Norfolk Fire Marshal rescinded their Assembly Permit due to overcrowding/failure to keep count
 - November 8, 2020
 - **Disorderly Subject** - Male has a gun
 - December 5, 2020
 - **Disorderly Disturbance** - Security guard is requesting NPD assistance to clear the parking lot
 - January 13, 2021
 - **Crowd** - Security requesting help clearing out a crowd of people after closing

	360 Sports Bar 2014	Taste of China 2015	Origami 2017	Origami Proposed
Hours of Operation and for the Sale of Alcohol	10:00 a.m. until 2:00 a.m., Seven days a week	Same	Same	Same
Seating	179 seats indoor 0 seats outdoor 442 total capacity	219 seats indoors 70 seats outdoors 602 total capacity	52 seats indoors 379 standing 24 seats outdoors 436 total capacity	91 seats indoors 321 standing 24 seats outdoors 436 total capacity
Entertainment Options	Live band Disc Jockey Karaoke Comedian Poetry Reading Cultural Dance	Live Band Disc Jockey Karaoke Comedian Poetry Reading Cultural Dance Fashion Show	Same	Same

ii. Parking

- The site is located in the Suburban Character District, which requires one parking space per 150 square feet of enclosed building area for entertainment.
- The 8,923 square-foot proposed space must provide 59 parking spaces.
- Sufficient parking is provided in the shopping center.

iii. Flood Zone

The property is located in the X Flood Zone, which is a low-risk flood zone.

D. Mobility Analysis

- The site is near transit services with Hampton Roads Transit bus routes 20 (Virginia Beach) and 25 (Newtown) operating near the site.
- E. Virginia Beach Boulevard adjacent to the site is not an identified priority corridor in the *City of Norfolk Bicycle and Pedestrian Strategic Plan*.

E. Historic Impacts

The site is not located in any local, state, or federal historic district.

F. Public School Impacts

The proposed property is not within 1,000 feet of a Norfolk Public School.

G. AICUZ Impacts

N/A

H. Payment of Taxes

The owner of the property and business owner is current on all taxes.

I. Civic League

The applications were sent to the Lake Taylor and Glenrock civic leagues on January 15.

J. Communication Outreach/Notification

- Letters were mailed to all property owners within 300 feet of the property on February 10.
- Legal notification was placed in *The Virginian-Pilot* on February 11 and 18.

Recommendation

Staff recommends that the Conditional Use Permit request be **denied**. Since the establishment opened there have been issues with its operation including over-capacity, failure to keep count, change of managers and the use of promoters. Several meetings have been held with the business owner and various managers to advise them of the issues and address the City's concerns. The last Conditional Use Permit granted expired in 2-years thereby creating a probationary time to allow the applicants to operate in a responsible manner. Upon review of the police reports and calls for service, the business owner and managers have failed to operate the establishment in a safe and orderly manner.

However, should the Commission choose to recommend approval, the following conditions should be considered:

Conditions

- (a) The operation of the principal use of Nightclub must be conducted in accordance with the applicable performance standards that are set forth in section 4.2 of the Norfolk Zoning Ordinance.

- (b) The hours of operation for the establishment, for the on-premises sale of alcoholic beverages, and for live entertainment shall be limited to 11:00 a.m. until 2:00 a.m., seven days a week. No use of the establishment outside of the hours of operation listed herein shall be permitted.
- (c) The seating for the establishment shall not be less than 91 seats indoors, shall not be more than 24 seats outdoors, and the total occupancy, including employees, shall not exceed 436 people.
- (d) The business authorized by this ordinance shall be conducted in accordance with the Description of Operations set forth in "Exhibit A," attached hereto. The representations made in "Exhibit A" shall be binding upon all owners, operators and managers who operate and/or manage the premises covered by this ordinance. Should any owner, operator or manager desire to operate the business in a manner different than as represented in "Exhibit A," a new conditional use permit must be obtained. Where any limitation or representation contained in "Exhibit A" is inconsistent with any condition of this ordinance, the conditions of this ordinance shall govern.
- (e) The conditional use permit or permits granted herein that relate to retail alcoholic beverage control licensees shall terminate in the event of a change in ownership of the establishment and may be revoked in the event of a change in the operation or management of the establishment as described in the Description of Operations set forth in "Exhibit A," attached hereto, provided that no termination in the event of a change in ownership of the establishment shall be effective until 120 days after the change or until a new conditional use permit is granted showing the new owner, whichever is earlier. Notwithstanding the above, no violation of this condition shall be deemed to have occurred if the only change in management is a result of one or more of the members of the management team identified in the Description of Operations ceasing to work at the establishment.
- (f) No entertainment shall be permitted anywhere outside the building.
- (g) No smoking shall be permitted anywhere in the outdoor seating area. Signage notifying patrons of this restriction shall be conspicuously posted.
- (h) The outdoor seating area shall not obstruct the movement of pedestrians along sidewalks or through areas intended for public use.

- (i) Entertainment shall only be provided indoors and shall be limited to ~~to~~ disc jockey, live bands, karaoke, cultural dance, and fashion shows. and Cultural Dance, defined for the purposes of this ordinance alone as a form of dance unique in style and appearance to a specific cultural group. Examples include, but are not limited to, belly dance, flamenco dance, hula, and geisha dance. No form of dance which does not meet all of the following characteristics shall be considered cultural dance for purposes of this ordinance:
 - i. Cultural dancers shall not perform nude or semi-nude, but shall perform in a state of dress more modest than semi-nude, as those terms are defined herein.
 - ii. For the purposes of this ordinance, the term “nude” means to be undressed completely, and the term “semi-nude” means to be in any state of dress in which opaque clothing covers no more than the genitals, pubic region, buttocks, areola and nipple of the breast, as well as portions of the body covered by supporting straps or devices. Examples of “semi-nude” dress include but are not limited to a state of dress consisting of a bikini or equivalent clothing.
 - iii. Cultural dancers shall not physically touch or be physically touched by spectators while performing.
- (j) In addition to the above, the following restrictions shall apply to all cultural dance performances:
 - i. Cultural dancers shall not use the following items and accessories when performing, for safety reasons: swords, weapons of any kind, lit candles, or lit torches. Notwithstanding this provision, at the discretion of the grantee of this conditional use permit, dancers may use prop swords and prop weapons. For purposes of this ordinance, the adjective “prop” means a fake sword or weapon, similar to those used by actors on the stage, not designed for or capable of causing injury. Such “prop” swords or weapons shall be either made of wood, or if made of metal, shall be blunt with no cutting edge.
 - ii. At the discretion of the grantee of this conditional use permit, customers may tip dancers at the conclusion of a performance. Spectators shall not physically touch a dancer when tipping.
- (k) The provisions of this ordinance concerning cultural dance are not intended, nor shall they be applied, to impose any limitation or restriction on the content of cultural dance performances at the subject

property. Cultural dance performances, should they degenerate to the point of involving obscenity or nude or semi-nude dance performances, shall be subject to all the usual prohibitions upon such performances in bars and restaurants selling alcohol under the laws and regulations of the Commonwealth of Virginia and the ordinances and regulations of the City of Norfolk. These restrictions include but are not limited to such prohibitions upon obscene performances as are found in Chapter 28 of the Code of the City of Norfolk (1979), as amended, or Chapter 8, Article 5 of Title 18.2 of the Code of Virginia, (1950), as amended (both concerning obscenity). These restrictions also include all prohibitions upon nude and semi-nude dancing, designed to alleviate the negative secondary effects thereof, as authorized in such cases as *Barnes v. Glen Theatre, Inc.*, 501 US 560 (1991) and *City of Erie v. Pap's A.M.*, 529 US 277 (2000), as may be found in the statutes, regulations, or ordinances of the Commonwealth of Virginia and the City of Norfolk, including but not limited to Sections 28-11 and 28-12 of the Code of the City of Norfolk (1979), as amended, concerning public nudity and indecent exposure, and the regulations of the Alcoholic Beverage Control Board of the Commonwealth of Virginia, as amended.

- (l) The dance floor shall not exceed 625 square feet and shall be located as indicated on the basic floor plan attached hereto and marked as "Exhibit B." The dance floor shall be constructed of a different material than the primary floor material.
- (m) The layout of the establishment shall adhere to the specifications of the floor plans attached hereto and marked as "Exhibit B." Any tables, chairs, booths, stools or other movable furniture may be relocated provided that it conforms with all building code requirements.
- (n) No door to the establishment which opens onto or faces a public right-of-way shall be propped open during any time that entertainment is being provided.
- (o) During all hours of operation, the establishment operator shall be responsible for maintaining those portions of public rights-of-way improved by sidewalk and portions of any parking lot adjacent to the premises regulated by the conditional use permit so as to keep such areas free of litter, refuse, and both solid and liquid waste.
- (p) The establishment shall maintain a current, active business license at all times while in operation.
- (q) The establishment shall remain current on all food and beverage taxes,

business personal property taxes, and other local taxes which may become due while it is in operation.

- (r) The establishment shall maintain a designated driver program which shall provide, at minimum, that designated drivers may be served non-alcoholic beverages at no charge. The establishment shall describe the program in writing and its availability shall be made known to patrons by printing it either on the menu or a card placed on each table and the bar.
- (s) The violation of any condition, requirement, or limitation imposed by the Virginia ABC Commission shall be deemed a violation of this ordinance. Any conditional use permit granted by the ordinance may be revoked for any violation of a general or specific condition, including a condition incorporated by reference or arising from conditions, requirements, or limitations imposed on any aspect of the operation of the establishment by the ABC Commission or by Virginia law.
- (t) Neither the establishment nor any portion of it shall be leased, let, or used by any third party to stage an event for profit. No outside promoter shall be permitted to use, operate, rent, or host any event on the premises.
- (u) An ABC manager, employed and compensated by the applicant, shall be present at all events held on the premises. This manager shall supervise the event at all times. The ABC manager shall be present on the premises at least one hour prior to the beginning of the event and shall remain on the premises until the event is concluded and the establishment is secured and locked. If alcohol is not served or consumed, a responsible supervisor, employed and compensated by the applicant, shall perform this function.
- (v) In addition to the ABC manager or supervisor the applicant shall provide such additional paid staff as may be necessary to coordinate, supervise, and manage any event held on the premises.
- (w) The establishment manager shall notify the Commissioner of the Revenue no less than 72 hours prior to the commencement of any event at which a cover charge is to be collected or any event held by an Authorized Entity which leases, lets, or uses the establishment.
- (x) The establishment manager shall notify the Commissioner of the Revenue no less than 72 hours prior to the commencement of any event at which a cover charge is to be collected.

- (y) A copy of this conditional use permit ordinance and Exhibits shall be available on the premises at all times for inspection, and a notice indicating that this conditional use permit ordinance and all amendments are kept on the premises and are available for review by any member of the general public shall be posted in a visible location. The notice shall also contain information on where and how to report violations of conditions and shall include the address of the zoning administrator.

- (z) A binder or folder containing documentation relating to the operation of the establishment shall be kept on the premises at all times and shall be produced upon request made by any person. For purposes of this section, the documentation relating to the operation of the establishment shall include copies of the following:
 - (1) This ordinance;
 - (2) Any ABC license(s);
 - (3) Any occupancy permit(s);
 - (4) Certifications of all persons who work on the premises as a security guard;
 - (5) All fire code certifications, including alarm and sprinkler inspection records;
 - (6) Any health department permit(s);
 - (7) The emergency action plan required under the Fire Prevention Code;
 - (8) The names, addresses, and phone numbers of all persons who manage or supervise the establishment at any time;
 - (9) The establishment's designated driver program; and
 - (10) The establishment's Security Plan.

- (aa) The business shall provide in-house security or retain the services of a licensed security firm to provide security services at a rate of one security guard per 50 guest occupants on the property whenever occupancy shall 99 people or when otherwise required by at least 36 hours prior written notice of the Fire Marshal, Chief of Police, or any designee of either. After 8:00 p.m. each Friday and Saturday as well as during special events,

a security supervisor certified in accordance with the requirements of the Virginia Department of Criminal Justice Services shall be present on the property.

- (bb) The written security plan submitted to the City as part of the application for this permit and on file with the Department of Planning shall remain in full force and effect at all times while the establishment is in operation.
- (cc) This conditional use permit shall automatically expire 18 months from the effective date of this ordinance. Prior to the expiration date, but no sooner than twelve months from the effective date of this ordinance, the property owner or manager may begin the application process for a new conditional use permit.
- (dd) The establishment shall not be allowed to operate until such time:
 - a. A floor plan prepared by a design professional is submitted and approved by the City.
 - b. Any and all outstanding building and fire code issues have been addressed.

Attachments:

General standards and considerations for Conditional Uses
Overview map
Location map
Zoning map
Application
Notice to the Lake Taylor and Glenrock Civic Leagues

**360 Sports Lounge/Taste of China/Origami
History**

1/7/2016	Planning Staff received complaint from commercial operator in shopping center that establishment had changed owners/operators/ provided flyer with promoter information at location	
1/9/2016	Fire Marshal responded at the request of NPD; Establishment was shut down due to possible overcrowding and fight	
3/16/2016	Fire Marshal received complaints about promoters and charging to use parking lot (VIP section)	
3/17/2016	Court case; Failure to meet requirements of Special Exception	Cont. to 7/25 to get new SE
3/17/2016	Meeting with Mr. Zhang; complaint from commercial operator in shopping center about use of promoters; overcrowding issues	
3/18/2016	Flyers found/provided to City Attorney for promoters at establishment	
3/23/2016	Request by City Planning to move to revoke Special Exception	
3/24/2016	City attorney's Office provided notice to cease entertainment until Mr. Zhang provided a detailed plan on how he was going to control his entertainment	
3/30/2016	Meeting with Mr. Zhang; Issues with promoters; failure to keep count	
4/5/2016	Summons issued by NPD: Failure to meet requirements of Special Exception	
4/5/2016	Court Case: Failure to meet requirements of Special Exception	Cont. to 5/24/2016
4/12/2016	Single cigarettes being sold	
4/29/2016	Multiple flyers found/provided to City Attorney's Office advertising promoters	
5/24/2016	Court Case: Failure to meet Special Exception requirements	Cont. to 7/12/2016
6/8/2016	Received required structural report for work done without permits: Equipment suspended from the underside of roof structure	
7/12/2016	Court Case: Failure to meet Special Exception requirements	Cont. to 8/23/2016
8/23/2016	Court Case: Failure to meet Special Exception requirements	Cont. to 10/11/216
9/22/2016	Request meeting with Mr. Zhang, no response	
10/4/2016	Requested meeting with Mr. Zhang; his attorney indicated he would not be able to attend	
10/10/2016	Meeting with Mr. Zhang; he failed to bring managers, meeting to be rescheduled	

10/11/2016	Court Case: Failure to meet Special Exception requirements	Cont. to 2/14/2016
11/22/2016	Requested meeting with Mr. Zhang; didn't hear back from applicant	
1/26/2017	ABC contacted City Attorney to inform of drugs at establishment, VIP parking, bottle service (\$2.00 per bottle), smoking marijuana in parking lot	
2/14/2017	Court Case; Failure to meet Special Exception requirements	Cont. to 4/25/2017
2/27/2017	Requested meeting with Mr. Zhang.	
3/2/2017	Again, requested meeting with Mr. Zhang	
4/18/2017	Meeting with Mr. Zhang to discuss bottle service, overcrowding, smoking marijuana in establishment, charging for VIP valet parking	
4/28/2018	Summons issued for Fire Code Violations: Failure to keep count, suppression over 1 year out of date, blocked exits	
6/5/2018	Court date: Sedric Hill charged with failure to keep count, failure to keep fire protection system up to date, blocked exit	Cont. to 9/25/2018
6/23/2018	Complaint from Glenrock Civic League about promoter Eric Bellinger at the establishment w/ tickets being sold on ticketmaster	