

3. The 2011 Traffic – Parking Report Submitted by the Applicant is Founded on False Assumptions and Should Have Been and Should Be Disregarded.¹ In its original filing for the conditional use granted by this Board in 2011-059, the Applicant submitted a “Traffic Parking Report.”² On its surface the Traffic Parking Report appeared to be submitted in good faith, but further analysis reveals it was misleading and materially inaccurate.

Specifically, the Applicant’s Conditional Use application (also included in the Staff Report) was for “flexible, indoor/outdoor consumption area of 6,637 square feet to be located in the HNC-3 zoning district only.” The Traffic Parking Report admittedly ignores the applicable HNC-3 zoning standard for trip analysis, as it turns out, through fallacious reasoning and misapplication of applicable criteria. The Traffic Parking Report falsely argued that the traffic congestion and parking problems in the surrounding neighborhoods would decrease from conversion from the almost nonexistent commercial retail use to restaurant use, which the Staff Report accepted without comment. But, the Traffic Parking Report makes an admission in footnote 1 of the Report. (where the Report also admits ignoring the standard required for analyzing trip generation in HNC-3 zoning areas):

“The HNC-3 zoning district requires trip generation to be measured in terms of trips per 1,000 sq. ft. of gross leasable floor area per day. However, for restaurants and other establishments with significant outdoor activity area, the ITE indicates trip generation by floor area is an inaccurate measure of intensity, **due to the additional intensity associated with the non-floor area (i.e. outdoor) portions of the site.** To mitigate the potential inaccuracy, gross leasable area used, instead of just the gross leasable floor area, and includes indoor and outdoor activity, thereby incorporating the additional potential intensity of the outdoor (non-floor area) uses.” (Emphasis added.)

As noted in the Staff Report, in considering applications for conditional use, the prior zoning exceptions relative to restaurants allowed on the Property “a 40-seat restaurant with 2,285 square feet of consumption area” (At page 3 of 12) Between December 7, 2011 (when the Resolution was signed by the Board) and March 17, 2015, when the staff granted the Minor Modification, the Property’s restaurant activities if any were relatively small, non-intensive and unobtrusive. The Minor Modification converted the almost nonexistent retail use of 802-804 Whitehead Street wholly to a bar/restaurant³ use, seeking to increase the seating from 40 seats to 150 seats. Nearly all of the additional seating was situated outside the original structure. The building permit submitted by the Applicant after the Minor Modification identifies the only permit entry since the Minor Modification as:

“COMMERCIAL OCCUPANCY CHANGE FROM 40 SEAT RESTAURANT (AT 324 PETRONIA) TO 150 SEAT RESTAURANT (804 WHITEHEAD). CONNECT RETAIL SPACE TO CONSUMPTION AREA+”

¹ The information, position and arguments stated in this section are also incorporated into some of the Neighborhood Owner’s point by point responses (**Exhibit 4**) by reference to the “Traffic Parking Report Response”

² A Copy is attached to the November 17, 2011 Staff Report filed herewith as **Exhibit 3**.

³ Given the Applicant’s current commercial activities on the Property the Applicant’s liquor/bar sales appear to materially exceed the Applicant’s food sales defining it as a bar that serves food. That is not the HNC-3 conditional use contemplated in the HNC-3 Petronia Street corridor District.

The Applicant still has not applied for nor been granted building permits for the major improvement changes necessary to pursue the Applicant's transition from a restaurant with 40 seats to 150 seats allowed conditionally in the Resolution, according to what the Applicant submitted with its current Applications and the Assessor's website.

Since the Minor Modification, the Applicant has operated the restaurant, including outdoors music, earlier and later than the hours allowed for in the Resolution. These increased hours have greatly increasing the trips, congestion and parking strain for the surrounding residential and commercial neighbors. On August 5, 2019, following the filing of the Opposition the Applicant changed the starting time to 9:00A.M. But this was after years of noncompliance with the Resolution. Given the Applicant's past operational violations of every one of the conditions in the Conditional Use, and despite neighboring property owner complaints, it smacks of it being a ploy while the Applicant's current Applications are under consideration.

A critical analysis of the Traffic Parking Report shows it only achieved trip numbers below 50 per 1,000 sq. ft. of leasable square feet by submitting results so materially deviating from reality that with hindsight the Report is seen to have been designed with the intent of arriving at inaccurately low trip numbers. The Traffic Parking Report's author's support for ignoring the HNC-3 required trip generation analysis was a claim it was done to "mitigate the potential inaccuracy" because the Applicant's proposed outdoor use is much more intense than inside use. But, the conditional use application was for "a restaurant with indoor and outdoor consumption area of 165⁴ seats on the proposed site." According to the Traffic Parking Report the "proposed site" is 6,637 square feet, but that is not consistent with the Board's Staff's finding in their Minor Modification letter stating the overall approved consumption area of the Conditional Use granted by the Board in Res. 2011-059 is only 5,836 square feet, which arguably should have been used. The Applicant's Traffic Parking Report calculated the total proposed restaurant trips per day for 165 seats as shown in the Traffic Parking Report to be 471.9 restaurant trips per day. It then added to that total number of restaurant trips attributable to the Conditional use permitted 5,836 square feet of restaurant space (e.g., adding 139.13 additional trips per day attributed by the Traffic Parking Report to all non-restaurant uses of all parcels of the Property) for a total of 611.03 proposed trips per day.

Using the required leasable restaurant square footage as required for an HNC-3 zoning district would use either 6,637 sq. ft. or 5,836 sq. ft. Without justification the Traffic Parking Report increases the square footage it uses 17,500 square feet to calculate trips by using all square footage of the Property (even the square footage where restaurant use is prohibited). This added an extra 10,863 sq. ft. to the divisor used in the Traffic Parking Report, even though the added 139.13 trips associated with this maneuver amounts to only 22% of the total trip generations.

If analyzed correctly, dividing just the restaurant trips the Traffic Parking Report claims to expect $(471.9^5 \text{ restaurant trips per day} / (6,637 \text{ sq. ft.} = 1,000 \text{ sq. ft.} = 6.637) = 71.1014 \text{ trips per day}$ of traffic congestion and residential and commercial neighbors traffic and parking nightmares. If the maximum approved consumption space (5,836 sq. ft.) is used it shows more intensity (e.g.,

⁴ Applicant's 165 seat request was reduced by the Board in the Resolution to 150 seats.

⁵ If 150 seats were substituted in the Report's calculation it would be $150 \times 2.86 = 429$ for weekdays.

73.50 Trips per day).⁶ The misleading Traffic Parking Report is the only reason the trips per day were lower in the report than 50 trips per day maximum. The 34.92 trips predicted in Traffic Parking Report came from watering down the true restaurant trips per day intensity by ignoring the required HNC-3 district formula for assessing trips per day. Had the Traffic Parking Report been on the level the Conditional Use request would have been DOA. Because of this the neighborhood's traffic congestion and parking situation has become a nightmare since 2016.

The parking analysis is even more specious because there was almost no commercial traffic generated by retail activities on the Property. The Bahama Market was a failure, and even the Applicant acknowledges it ended in the early 2000's. The few sporadic carts following that period hardly produced numbers used in the Report to claim there would be a reduction in traffic and parking needs in the area. Using the Traffic Parking Report the Applicant convinced the Board to eliminate most of the minimally required 17 on-site parking spaces the Staff Report concluded were needed for the requested Conditional Use increase to 150 seats.

The Applicant has since taken over many of those mandated parking spaces for garbage and other commercial uses. In all, since the Minor Modification, the increased trip intensity and Applicant's failure to provide the required parking spaces has increased use of the limited street parking available to the residential owners and legitimate HNC-3 commercial businesses along the Petronia Street corridor. This has caused the neighborhood residences and surrounding businesses to suffer from the increased traffic congestion far exceeding the number of maximum trips per day permitted in the HNC-3 District.

⁶ (429 restaurant trips per day/ (6,637sq ft.=1,000sq ft.=6.637) =64.63 trips per day) still over the maximum permissible for HNC-3. If the real leasable consumption space of 5,836 sq. ft. was used with the lower 150 seats the it would be 73.50 trips per day.