

**SPECIAL PERMIT NO. SP-02-06**

**ORLEANS ROOM, LLC/GOLDEN CABARET**

**FINAL ORDER OF MANATEE COUNTY HEARING OFFICER SUSAN HARTMANN SWARTZ ON BEHALF OF MANATEE COUNTY, APPROVING SPECIAL PERMIT NO. SP-02-06 TO ALLOW A DRINKING ESTABLISHMENT AT 105 CORTEZ ROAD WEST, IN A GC (GENERAL COMMERCIAL) ZONING DISTRICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners of Manatee County adopted the Manatee County Land Development Code, Manatee County Ordinance 90-01, as amended (hereinafter "the Land Development Code"); and

**WHEREAS**, pursuant to the Land Development Code, a Hearing Officer has the authority to grant special permits; and

**WHEREAS**, Orleans Room, LLC/Golden Cabaret<sup>1</sup> has requested a special permit for a drinking establishment in a GC (General Commercial) zoning district; and

**WHEREAS**, on November 20, 2002, Hearing Officer Susan Hartmann Swartz held a public hearing to receive the staff, applicant, and public comment and argument regarding the proposed special permit for Orleans Room, LLC/Golden Cabaret; and

**WHEREAS**, in accordance with this public hearing, both staff and the applicant have submitted post-hearing memoranda; and

**WHEREAS**, having reviewed the comment received by the Hearing Officer subsequent to issuance of the Notice of Intent with attached draft Final Order; and

**WHEREAS**, after considering the staff report presented, evidence, documentation, testimony, comment, argument, opinions, agreements and stipulations of the parties, as well as all other matters presented at the above-referenced public hearing, along with the post-hearing memoranda, the Hearing Officer hereby makes the following Findings of Fact, Conclusions of Law, and Order.

**NOW, THEREFORE**, the Final Order regarding Special Permit No. SP-02-06 requested by Orleans Room, LLC/Golden Cabaret, states as follows:

**Section 1. Findings of Fact.**

- A. This request is for a special permit for a drinking establishment at 105 Cortez Road West, in the old Steak and Ale building, in a GC (General Commercial) zoning district.

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<sup>1</sup> Orleans Room, LLC is the property owner and applicant for this special permit. Golden Cabaret is the proposed name of the business. The name Solid Gold Cortez Cabaret is another name that has been used in the materials related to this special permit request.

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- B. The site was used as a bar and restaurant in the past. It has been more than five (5) years since that restaurant was in operation.
- C. Surrounding land uses and zoning are restaurants, retail, a golf course, and Cortez Road. The zoning districts are GC, PDMU, and NC-M.
- D. The Future Land Use Category is R/O/R (Retail/Office/Residential).
- E. The proposed use is consistent with the R/O/R Future Land Use Category, which allows a range of commercial, residential, and office uses.
- F. The establishment of the proposed drinking establishment is not detrimental or an endangerment to the public health, safety, or welfare, with the stipulations as proposed.
- G. The establishment of the proposed use will not impede the normal and orderly development of the area. Much of the property surrounding the site is developed with commercial, restaurant, and retail uses.
- H. The site plan as submitted provides for adequate ingress and egress to the site in a manner that minimizes traffic congestion. The site has a frontage road. It is expected that this portion of Cortez Road will be improved by both the County and the State within the next five years.
- I. As conditioned herein, the proposed use of a drinking establishment is consistent with the community character of the immediate neighborhood.
- J. As conditioned herein, the proposed use minimizes adverse effects, including visual impacts, of the proposed use on adjacent property.
- K. Extensive public opposition was expressed regarding this proposed special permit.
- L. However, there was no competent substantial evidence that the requested special permit does not meet the required standards of Land Development Code Sections 708 and 505 and in particular, 505.2; or that it is adverse to the public interest.

**Section 2. Conclusions of Law.**

- A. Pursuant to the Land Development Code, the Hearing Officer has jurisdiction over the parties and subject matter in this proceeding.
- B. The applicant has the burden of proving entitlement to the special permit it seeks. *See Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla. 1986); *Florida Department of Transportation v. J.W.C. Company, Inc.*, 396 So.2d 778 (Fla. 1st DCA 1981).
- C. Once the applicant has met this burden, the burden shifts to the opposing party to demonstrate by competent substantial evidence that the special permit does not meet the required standards and is adverse to the public interest. *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla. 1986); *see also Florida Power & Light*

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*Co. v. City of Dania*, 761 So.2d 1089, 1091-92 (Fla.2000); *Florida Min. & Materials Corp. v. City of Port Orange*, 518 So.2d 311 (Fla. 5th DCA 1987).

- D. As conditioned herein, this request complies with the criteria and standards set forth in Land Development Code, Sections 505 and 708.
- E. There are no distance or other requirements as this is a special permit use.
- F. The Hearing Officer is cognizant of the concerns voiced by the public. However, this request is for a special permit. It is not for a rezoning. The decision to approve a special permit cannot be based on a popularity poll. The opinions of neighbors by themselves are insufficient to support a denial of a proposed development. *BML Investments v. City of Casselberry*, 476 So.2d 713 (Fla. 5th DCA 1985), *rev. den.*, 486 So.2d 595 (Fla.1986); *Conetta v. City of Sarasota*, 400 So.2d 1051 (Fla. 2d DCA 1981).
- G. A drinking establishment on the subject property has been preapproved by ordinance as a specially permitted use. Any issue is with the ordinance, not with the applicant's request for the special permit.
- H. In light of the evidence presented, there is no legally permissible basis upon which to deny the requested special permit. Hence, denial thereof would be unreasonable, arbitrary, and capricious.
- I. Land Development Code Section 505.1 states that, "Each Special Permit may require the imposition of individualized conditions to ensure that the use is appropriate at a particular location." Land Development Code Section 505.4.3 also authorizes the imposition of certain individualized conditions. However, no legal authority or other case law has been furnished to the Hearing Officer that states that conditions may be imposed that are more stringent than those set forth in an already existing applicable ordinance (in this case, the Manatee County Noise Ordinance).

**Section 3. Order.** Based upon the foregoing, a special permit is hereby approved and issued to Orleans Room, LLC/Golden Cabaret for the property located at 105 Cortez Road West, more particularly described in Exhibit "A" attached hereto and incorporated herein, for a drinking establishment, subject to the following conditions:

- A. This special permit shall not be effective until it has been recorded in the Public Records of Manatee County, Florida by the applicant and a copy of the recorded Order is received by the Planning, Permitting and Inspections Department.
- B. The site plan submitted with this application, attached as Exhibit "B" hereof, shall be part of this approval.
- C. The applicant shall install a solid 6-foot (6') decorative, opaque fence along the southwest, south, and southeast property lines of the permitted property. It may meander as needed in order to avoid the existing trees and may be installed on the top bank of the ditch on the west, as determined in the field. That portion of the fence which crosses the existing asphalt parking area of the east side of the property shall be chain link and contain a chain link gate with emergency locks for

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emergency services access. The description for the fence shall be shown on the Final Site Plan. The fence shall be installed prior to the issuance of any certificate of occupancy or temporary certificate of occupancy for the project.

- D. The applicant shall install high intensity outdoor lighting within the parking lot aimed towards the parking and away from adjacent properties.
- E. The applicant shall provide a lighting plan with submittal of the Final Site Plan that shows the shielding of on-site night lighting and security lighting designed to ensure that no off-site glare or spill-over lighting is directed along the northern property line. Spill-over lighting along the northern property line shall be limited to a maximum of 3 lux (0.3 foot candles). In addition, pole and building mounted lights shall be limited to 20 feet (20') in height within the site and directed to the interior of the development using full cut-offs or a well-shield type of luminary.
- F. The applicant shall perform an acoustical analysis by a qualified professional to determine if any soundproofing is necessary to keep all of the noise generated within the building in conformance with the Manatee County Noise Ordinance, as measured at the property line. Details of such soundproofing, if required, shall be provided to the planning staff prior to issuance of a certificate of occupancy.
- G. Sounds and/or vibrations from the establishment at all times shall not exceed objective measurements as shown below, taken in accordance with appropriate ANSI and/or ASTM standards using a real time analyzer that meets ANSI standards for type 1 or type 2.  
  
Noise: 55dba between the hours of 7:00 a.m. and 10:00 p.m. measured at the property line of the noise source.  
  
Vibration: Shall be governed by Land Development Code, section 723.3.3.
- H. As set forth in the Manatee County Noise Ordinance, sounds and/or vibrations at the property line of the establishment shall not exceed a level that disturbs the peace, or that may be harmful or injurious to the health and welfare of a reasonable person with normal sensitivities, or which unreasonably interferes with the enjoyment of life, property, or outdoor recreation of nearby residents.
- I. The establishment's parking lot areas shall be secured during each night of operation of the business with security personnel who shall patrol the parking lot areas at regular intervals. The security personnel outside shall be off-duty deputies or licensed security service personnel. There will be at least one security person on patrol during each night of operations. The security personnel shall be used during each night of operation of the business from 7:00 p.m. to closing. The applicant shall also employ security personnel to maintain order inside the establishment. The type of security person hired to monitor the inside of the establishment may be employed at the applicant's discretion. During hours of operation, there will be at least one club security person on duty inside the establishment. If the Manatee County Sheriff's Office verifies that more security personnel are needed to keep the peace and control the noise, the Planning Director shall have the ability to require additional security personnel. The security personnel will be employed to maintain

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crowd and noise control so as not to unreasonably interfere with the enjoyment of life, property or outdoor recreation of neighboring residents, or cause harm or injury to the health and welfare of a reasonable person with normal sensitivities.

- J. All landscaping shall be upgraded to meet current Code standards and irrigation installed as needed. This shall be shown on the Final Site Plan for this project.
- K. All nuisance exotic species shall be removed from the site prior to issuance of a certificate of occupancy for this project.
- L. The building shall meet all applicable fire codes, including installation of a sprinkler system, if required by the fire code.
- M. Fire hydrants shall be shown on the Final Site Plan and shall be located no more than fifty feet (50') from the fire department connection.
- N. All dumpsters and associated screening consisting of combustible fencing shall have a minimum separation from the nearest building and overhang of ten feet (10').
- O. No use of neon for lighting, shall be allowed other than to outline the building and use on the free standing sign. There shall be no use of neon for graphic depictions of objects or persons, on either the building or any signage. There shall be no neon extending above the roofline of the building. The neon shall not be visible from south of the property.
- P. The applicant shall resurface the existing driveways and parking lot. This shall be indicated on the Final Site Plan.
- Q. Access from the north driveway onto the frontage road shall be limited to right-in/right-out only. A six-inch (6") high directional curb island within that driveway entrance shall be shown on the Final Site Plan.
- R. Prior to Final Site Plan approval, concurrency must be met relative to fire flow, potable water, and drainage design.
- S. The applicant shall offer valet parking for the patrons. The valet station shall be shown on the Final Site Plan.
- T. The south building exit shall be an emergency exit only.
- U. After completion of the intersection improvements, the applicant shall make application to FDOT for a driveway permit, if required, to construct a driveway on Cortez Road.

**Section 4. Severability.** In the event that any portion or section of this Order is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of the special permit, which shall remain in full force and effect.

**Section 5. Effective Date.** The effective date of this special permit shall be upon execution of this Order and its recordation in the Official Records by the applicant with the Office of the Clerk of the Circuit Court and receipt of a copy of the recorded Order by the Planning Department.

**ORDERED ON BEHALF OF MANATEE COUNTY**, this 7<sup>th</sup> day of February, 2003.

MANATEE COUNTY, FLORIDA

  
SUSAN HARTMANN SWARTZ, as  
Manatee County Hearing Officer

ATTEST: R. B. SHORE  
Clerk of the Circuit Court

  
Deputy Clerk

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**EXHIBIT "A"**

**LEGAL DESCRIPTION:**

**PARCEL: A**

COMMENCE AT THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 35 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA; THENCE S 00° 03' 01" E. ALONG THE EAST LINE OF SAID SECTION 11, 67.95 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF CORTEZ ROAD (STATE ROAD 684) SAID POINT LYING ON THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 2814.79 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 64.07 FEET (CHORD S. 87°21' 10" W., 64.07); THENCE S.00° 03' 01" E. ALONG A LINE 64.00 FEET FROM AND PARALLEL WITH THE EAST LINE OF SAID SECTION 11, SAID LINE ALSO BEING THE WEST RIGHT-OF-WAY OF FIRST STREET (64.00 FEET WIDE) AS DESCRIBED IN O.R. BOOK 867, PAGE 573, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, A DISTANCE OF 356.11 FEET TO THE SOUTHEAST CORNER OF LANDS DESCRIBED IN O.R. BOOK 789, PAGE 695; THENCE S 89° 27' 19" W., PARALLEL WITH THE NORTH LINE OF SAID SECTION 11, A DISTANCE OF 94.00 FEET FOR A POINT OF BEGINNING; THENCE S 00° 03' 01" E., A DISTANCE OF 93.47 FEET; THENCE S. 89° 27' 19" W., A DISTANCE OF 174.20 FEET TO THE WEST LINE OF THE EAST 1/4 OF THE NE 1/4 THE 1/4; THENCE N 00° 02' 00" W. ALONG SAID WEST LINE 426.36 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF CORTEZ ROAD, SAID POINT LYING ON THE ARC OF A CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 2914.79 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE 83.71 FEET (CHORD N. 83° 44' 30" E., 83.71 FEET) TO THE POINT OF REVERSE CURVE, SAID CURVE BEING CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 2814.79 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE 91.55 FEET (DEED 91.56 FEET) (CHORD N. 83° 50' 41" E., 91.55 FEET (DEED 91.56 FEET) TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN O.R. BOOK 789, PAGE 695; THENCE S° 00° 03' 01" E., ALONG THE WEST LINE OF SAID LANDS DESCRIBED IN O.R. BOOK 789, PAGE 695, 350.17 FEET (DEED - 350.00 FEET) TO THE SOUTHWEST CORNER OF SAID LANDS SAID POINT ALSO BEING THE POINT OF BEGINNING, BEING AND LYING IN SECTION 11, TOWNSHIP 35 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA. TOGETHER WITH AND EASEMENT FOR INGRESS AND EGRESS BEING 50 FEET WIDE, MORE OR LESS, OVER THE ADJACENT PROPERTY TO THE EAST, SAID EASEMENT ALSO SET FORTH IN AFORESAID DDE RECORDED IN O.R. BOOK 789, PAGE 695 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 11 TOWNSHIP 35 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE NORTHEAST CORNER OF THE AFOREMENTIONED SECTION 11 AND RUN THENCE ALONG THE EAST BOUNDARY OF SAID SECTION 11, S. 00° 03' 01" E., 67.95 FEET, TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF CORTEZ ROAD; THENCE ALONG SAID RIGHT-OF-WAY LINE 64.07 FEET, ALONG THE ARC OF A CURVE, DEFLECTING TO THE LEFT, HAVING A RADIUS OF 2814.79 FEET, AND A CHORD BEARING AND DISTANCE OF S. 87° 21' 10" W., 64.07 FEET TO A POINT OF BEGINNING; THENCE ALONG A LINE 64.00 FEET WEST OF AND PARALLEL WITH THE AFOREMENTIONED EAST BOUNDARY OF SECTION 11, S. 00° 03' 01" E., 50.08 FEET; THENCE 94.27 FEET, ALONG THE ARC OF A CURVE DEFLECTING TO THE LEFT, HAVING A RADIUS OF 2764.79 FEET AND A CHORD BEARING AND DISTANCE

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OF S 85° 39' 54" W., 94.27 FEET; THENCE N. 00° 03' 01" W., 50.02 FEET, TO A POINT ON THE AFOREMENTIONED SOUTHERLY RIGHT-OF-WAY LINE OF CORTEZ ROAD; THENCE ALONG SAID RIGHT-OF-WAY LINE, 94.26 FEET, ALONG THE ARC OF A CURVE, DEFLECTING TO THE RIGHT, HAVING A RADIUS OF 2814.79 FEET AND A CHORD BEARING AND DISTANCE OF N. 85° 44' 29" E., 94.25 FEET, TO THE POINT OF BEGINNING.

LESS THE FOLLOWING DESCRIBED PARCEL B:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 35 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA; THENCE S 00° 03' 01" E., ALONG THE EAST LINE OF SAID SECTION 11, 67.95 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF CORTEZ ROAD (STATE ROAD 684) SAID POINT LYING ON THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 2814.79 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 64.07 FEET (CHORD S. 87°21' 10" W., 64.07 FEET); THENCE S. 00° 03' 01" E. ALONG A LINE 64.00 FEET FROM AND PARALLEL WITH THE EAST LINE OF SAID SECTION 11, SAID LINE ALSO BEING THE WEST RIGHT-OF-WAY OF FIRST STREET (64.00 FEET WIDE) AS DESCRIBED IN O.R. BOOK 867, PAGE 573 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, A DISTANCE OF 356.11 FEET TO THE SOUTHEAST CORNER OF LANDS DESCRIBED IN O.R. BOOK 789, PAGE 695 FOR A POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING S. 00° 03' 01" E. ALONG SAID RIGHT-OF-WAY LINE 181.59 FEET TO THE SOUTH LINE OF THE NORTH 608.00 FEET OF THE NE 1/4 OF THE NE 1/4 OF SECTION 11; THENCE S. 89° 27' 19" W. ALONG SAID SOUTH LINE, SAID SOUTH LINE BEING PARALLEL WITH THE NORTH LINE OF SAID SECTION 11, A DISTANCE OF 268.42 FEET TO THE WEST LINE OF THE EAST 1/4 OF THE NE 1/4 OF THE NE 1/4; THENCE N 00° 02' 00" W. ALONG SAID WEST LINE 88.13 FEET, THENCE LEAVING SAID WEST LINE, N 89° 27' 19" E., A DISTANCE OF 174.20 FEET; THENCE N. 00° 03' 01" W., A DISTANCE OF 93.47 FEET ; THENCE N 89° 27' 19" E., A DISTANCE OF 94.00 FEET TO THE POINT OF BEGINNING, BEING AND LYING IN SECTION 11, TOWNSHIP 35 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA.

CONTAINING 75,834.99 SQ. FT., MORE OR LESS.

TOGETHER WITH AN INGRESS/EGRESS AND PARKING EASEMENT OVER THE NORTH 73.47 FEET OF THE EAST 94.00 FEET OF PARCEL B

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**EXHIBIT "B"**

SITE PLAN SUBMITTED WITH APPLICATION

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R.B. SHORE CLERK OF CIRCUIT COURT MANATEE COUNTY FL.