

**SPECIAL PERMIT NO. SP-03-08**

**NB 85 ASSOCIATES & WR-1 ASSOCIATES/LINKSTER'S TAP ROOM**

**FINAL ORDER OF MANATEE COUNTY HEARING OFFICER SUSAN HARTMANN SWARTZ ON BEHALF OF MANATEE COUNTY, GRANTING SPECIAL PERMIT NO. SP-03-08, TO ALLOW A DRINKING ESTABLISHMENT IN THE PDMU/WP-E/ST ZONING DISTRICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

FILED FOR RECORD  
B. SHORE

2004 JAN 23 AM 8:43

**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

MANATEE CO. FLORIDA

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

**WHEREAS**, NB 85 Associates & WR-1 Associates have requested a special permit for a drinking establishment; and

**WHEREAS**, on December 17, 2003, Hearing Officer Susan Hartmann Swartz held a public hearing to receive the staff, applicant, and public comment and argument regarding the proposed special permit; and

**WHEREAS**, after considering the staff report presented, evidence, documentation, testimony, comment, argument, as well as all other matters presented at the above-referenced public hearing; and

**WHEREAS**, no comments having been timely submitted to the Hearing Officer subsequent to issuance of the Notice of Intent with attached draft Final Order, 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-03-08 requested by NB 85 Associates & WR-1 Associates states as follows:

**Section 1. Findings of Fact.**

- A. The site is located in an existing unit, unit #8201, in the shopping center commonly known as University Center, on the northwest corner of University Parkway and I-75, at 8201 Cooper Creek Boulevard. The shopping center consists of ±55.6 acres.
- B. The site is in the PDMU/WP-E/ST (Planned Development Mixed Use/Watershed Protection -- Evers Overlay/Special Treatment Overlay) zoning district.
- C. The Future Land Use Category is MU/WO (Mixed Use/Watershed Overlay).
- D. Surrounding land uses and zoning are as follows:
  - (1) North is property zoned PDMU/WP-E/ST, developed with B.J.'s Wholesale Club.

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- (2) South is University Parkway. Across University Parkway is vacant land in Sarasota County, with DRI approval for commercial development.
  - (3) East is I-75.
  - (4) West across Cooper Creek Boulevard is property zoned PDMU/WP-E/ST, developed with a variety of restaurants.
- E. The request is for a special permit for a drinking establishment.
- F. There are no proposed expansions to either the building or parking areas.
- G. The applicant plans only interior renovations to the building.
- H. The floor plan submitted with the application shows an existing covered concrete patio with proposed seating, indoor seating, a bar area, two pool tables, two video games, and accessory office and storage space.
- I. Manatee County Comprehensive Plan Policy 2.2.1.21.4 requires special approval for most projects located within the MU Future Land Use category. This project received special approval when the shopping center was originally approved.
- J. The proposal is compatible with the area and consistent with the Comprehensive Plan and the MU/WO (Mixed-Use/Watershed Overlay) Future Land Use Category.
- K. As conditioned herein, the establishment of the proposed drinking establishment is not detrimental or an endangerment to the public health, safety, or welfare.
- L. The establishment of the proposed use will not impede the normal and orderly development of the area.
- M. The applicant has complied with the requirements for Level of Service review.
- N. The site plan for the proposed use shows adequate measures for ingress and egress in a manner that minimizes traffic congestion.
- O. The proposed use is consistent with the community character of the immediate neighborhood.
- P. Development of the proposed use will not have a substantial adverse effect on a known archaeological, historical, or cultural resource located on or off the parcel proposed for development.
- Q. As conditioned herein, the design of the proposed use minimizes adverse effects, including visual impacts, on adjacent property.
- R. As conditioned herein, adequate provisions have been made for buffers, landscaping, public open space, or other improvements associated with the use.

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## **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 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. A drinking establishment is considered a retail commercial use.
- E. The Land Development Code, Section 708.3.3, allows drinking establishments by special permit in this zoning district.
- F. As conditioned herein, this proposed use is compatible with the area and consistent with the Manatee County Comprehensive Plan and in particular, Policies 2.2.1.21.1 and 2.2.1.21.2, which allow a range of uses which encompass this use, within the MU (Mixed Use) Future Land Use Category.
- G. As conditioned herein, the proposed use complies with the criteria and standards set forth in the Land Development Code, Section 505, Special Permits.
- H. As conditioned herein, the proposed use meets all other applicable standards and requirements set forth in the Land Development Code.

**Section 3. Final Order.** Based upon the foregoing, a special permit is hereby approved and issued to NB 85 Associates & WR-1 Associates for the property located at unit #8201, at 8201 Cooper Creek Boulevard (shown in Exhibit "A" hereof), 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 approved only as a preliminary site plan. Administrative approval of the final site plan shall be required subsequent to the Hearing Officer's approval of the special permit.
- C. There shall be no outdoor entertainment or loudspeakers on the premises.

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- D. All parking and landscaping shall meet current Land Development Code standards, including automatic irrigation installed to provide 100% coverage for the new plant materials. This shall be approved with the final site plan.


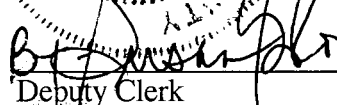
**Section 4. Severability.** In the event that any portion or section of this Order is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of the special permit, which shall remain in full 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 23rd day of January, 2004.

MANATEE COUNTY, FLORIDA

  
SUSAN HARTMANN SWARTZ, as  
Manatee County Hearing Officer

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

**EXHIBIT "A"**

**LEGAL DESCRIPTION:**

Located at University Center, unit #8201, at 8201 Cooper Creek Boulevard

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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.