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MANATEE COUNTY, FL.

SEP 2 11 13 AM '98

SPECIAL PERMIT NO. SP-98-04  
MARK A. SHEPARD/TEMPTATIONS

FINAL ORDER OF MANATEE COUNTY HEARING OFFICER JAMES A. PAULMANN ON BEHALF OF MANATEE COUNTY GRANTING SPECIAL PERMIT NO. SP-98-04, TO ALLOW A 4-COP (BEER, WINE & LIQUOR, CONSUMPTION ON PREMISES) ALCOHOLIC BEVERAGE LICENSE AT AN EXISTING ADULT ENTERTAINMENT ESTABLISHMENT. LOCATED AT THE SOUTHEAST CORNER OF U.S. 41 NORTH AND MENDOZA ROAD (3824 U.S. HIGHWAY 41 NORTH) IN A GC (GENERAL COMMERCIAL) ZONING DISTRICT (± 1.39 ACRES); PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. FINANCE DEPARTMENT

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

WHEREAS, pursuant to the Land Development Code, Manatee County Ordinance 90-01, as amended, the Hearing Officer has the authority to grant Special Permits; and

WHEREAS, Mark A. Shepard/Temptations has requested a Special Permit to allow a 4-COP (Beer, Wine & Liquor, Consumption on Premises) Alcoholic Beverage License at an existing Adult Entertainment Establishment, located at the southeast corner of U.S. 41 North and Mendoza Road (3824 U.S. Highway 41 North) in a GC (General Commercial) zoning district (±1.39 acres); and

WHEREAS, on August 6, 1998 the aforementioned Hearing Officer held a public hearing to receive the staff, applicant and public comment and argument regarding the proposed Special Permit for Mark A. Shepard/Temptations.

NOW, THEREFORE, the Final Order regarding Special Permit No. SP-98-04 requested by Mark A. Shepard/Temptations states as follows:

Section 1. Findings of Fact. The aforementioned Hearing Officer, after considering comment, argument, evidence, documentation and staff report presented, as well as all other matters presented at the Public Hearing above referenced, hereby makes the following Findings of Fact:

A. This request is for approval of a 4-COP (Beer, Wine & Liquor Consumption on Premises) Alcoholic Beverage License at an existing Adult Entertainment Establishment.

B. The facility is currently selling beer and wine for consumption on premises, under a 2-COP license. This facility has maintained a 2-COP license with no interruption since 1985. The Land Development Code requires Special Permit approval in order to obtain a 4-COP alcoholic beverage license.

C. This site is currently zoned GC (General Commercial), which allows the establishment of a 4-COP license.

D. The Future Land Use Category for this site is ROR (Retail/Office/Residential), which allows for small commercial uses under Policy 2.2.1.16.2 of the Manatee County Comprehensive Plan.

E. This site is located at the southeast corner of the intersection of U.S. 41 North and Mendoza Road. To the north is property zoned GC (General Commercial); developed with retail sales (bait shop/fishing tackle). To the south is property zoned GC, developed with a used car lot. To the

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east is property zoned RDD-6 (Residential Duplex Dwelling - 6 dwelling units per gross acre), developed with a duplex. To the west, across U.S. 41 is vacant property zoned GC.

Section 2. Conclusions of Law. Based upon the prior Findings of Fact and considering the testimony, evidence, documentation and the staff report presented, the above referenced Hearing Officer hereby makes the following Findings of Law:

A. This Hearing Officer has jurisdiction over the parties and subject matter in this proceeding pursuant to the Land Development Code.

B. The applicant has the burden of proving entitlement to the Special Permit it seeks. 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. The proposed use is consistent with Policy 2.2.1.16.2 of the Manatee County Comprehensive Plan, which allows for this small commercial use in the ROR (Retail/Office/Residential) Future Land Use Category.

D. The proposed use is consistent with Policy 2.6.4 of the Manatee County Comprehensive Plan, requiring compatibility between adjacent land uses.

E. The establishment of the proposed use, as conditioned herein, will not impede the normal and orderly development of the area. The properties surrounding the proposed site are developed with a variety of residential and commercial uses.

F. The site plan, as submitted, provides for adequate ingress and egress to the site in a manner that minimizes traffic congestion. The site plan depicts two (2) existing driveways, one intersecting with U.S. 41 North, and one intersecting with Mendoza Road.

G. The proposed use of a 4-COP license is consistent with the community character of the immediate neighborhood, as conditioned herein.

H. As conditioned herein, the proposed use minimizes adverse effects, including visual impacts, of the proposed use on adjacent property.

I. There is adequate mature landscaping on site to fulfill the buffer and landscaping requirements of the Land Development Code.

J. The proposed use is not an intensification of the present use and, therefore, does not violate Section 1102.1 of the Manatee County Land Development Code.

K. This request meets all the standards set forth in the Manatee County Land Development Code, Section 708.3.3, Drinking Establishments.

Section 3. Order. Based upon the foregoing, a Special Permit is hereby approved and issued to Mark A. Shepard/Temptations for the property located at 3824 U.S. Highway 41 North (the southeast corner of U.S. 41 North and Mendoza Road, and more particularly described in Exhibit "A" attached hereto and incorporated herein, for a 4-COP (Beer, Wine & Liquor, Consumption on Premises) Alcoholic Beverage License at an existing Adult Entertainment Establishment, subject to the following conditions:

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A. This Special Permit will 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 Department.

B. The Plot Plan submitted with this application shall be part of this approval.

C. Future amendments to the Special Permit, including the site plan, shall be reviewed by the Planning Director in accordance with Section 505.7 of the Land Development Code.

D. This Special Permit shall automatically terminate if it is determined, after a hearing by a Special Master, the Code Enforcement Board, or a court of competent jurisdiction, that there has been a violation of Section 2-2.5.72 of the Manatee County Code of Laws at the subject premises, and the subject premises has not come into compliance with Section 2-2.5-72 of the Manatee County Code of Laws within five days of such determination. Section 2-2.5-72 reads as follows:

No portion of the human genital or pubic region, the cleavage of the human buttocks, or the areola of the human female breast shall be displayed or exposed on a licensed premises where alcoholic beverages are sold, dispensed, permitted, or consumed.

E. The consumption of alcoholic beverages shall be limited to the area inside the building.

F. There shall be no outside entertainment or outside loudspeakers associated with this Special Permit.

Section 4. Severability. In the event that any portion or section of this Order is determined to be invalid, illegal or unconstitutional by courts of competent jurisdiction, such decisions 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 2nd day of September, 1998.

MANATEE COUNTY, FLORIDA

BY:   
James A. Paulmann, as  
Hearing Officer for Manatee County

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

  
Deputy Clerk

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EXHIBIT "A"

LEGAL DESCRIPTION:

West 60' of Lot 6 and all of Lots 7, 8, 9 and 10, Block 3, PALMETTO GOLF CORPORATION  
SUBDIVISION, as recorded in Plat Book 2, Page 120, Public Records of Manatee County, Florida.

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EXHIBIT "B"

SITE PLAN SUBMITTED WITH APPLICATION

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R.D. SHORE CLERK OF CIRCUIT COURT MANATEE COUNTY FL  
FILED AND RECORDED 09/11/98 9:10AM 4 of 4