

**REVISED SPECIAL PERMIT
NO. SP-99-16(R)
JOHN BANYAS/CORTEZ KITCHEN**

FILED FOR RECORD
R. B. SHORE

2004 MAY 28 PM 2: 07

**FINAL ORDER OF MANATEE COUNTY HEARING OFFICER
MARK D. SINGER ON BEHALF OF MANATEE COUNTY
GRANTING A REVISED SPECIAL PERMIT NO. SP-99-16(R), TO
ALLOW A 2-COP (BEER & WINE, CONSUMPTION ON
PREMISES) ALCOHOLIC BEVERAGE LICENSE FOR AN
EXISTING 40-SEAT RESTAURANT WITH OUTDOOR SEATING
AND OUTDOOR AMPLIFIED ENTERTAINMENT IN THE
LM/HA/CH (LIGHT MANUFACTURING/ HISTORICAL AND
ARCHAEOLOGICAL, AND COASTAL HIGH HAZARD OVERLAY
DISTRICT) ZONING DISTRICT (±11.11 ACRES); PROVIDING
FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

CLERK OF DISTRICT COURT
MANATEE CO. FLORIDA

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, Mark D. Singer, as the Hearing Officer has the authority to grant Special Permits; and

WHEREAS, on May 1, 2000, Special Permit NO. SP-99-16 was issued by Hearing Officer Mark D. Singer and recorded at BK 1656 PG 941-944, in the Official Records of Manatee County, Florida, permitting a 2-cop (beer & wine, consumption on premises) license for an existing 40-seat restaurant with outdoor seating with unamplified and background entertainment during certain hours; and

WHEREAS, John Banyas has requested a Revised Special Permit to allow outdoor amplified sound at an existing 40-seat restaurant with outdoor seating in the LM/HA/CH (Light Manufacturing/Historical and Archaeological and Coastal High Hazard Overlay Districts) zoning district (± 11.11 acres); and

WHEREAS, on April 21, 2004 the aforementioned Hearing Officer held a public hearing to receive the staff, applicant and public comment and argument regarding the proposed Revised Special Permit for John Banyas.

NOW, THEREFORE, after consideration of the application for a Revised Special Permit No. SP-99-16(R) requested by John Banyas, the Hearing Officer makes the following Findings of Fact and Conclusions of Law and issues the Final Order 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 and subsequently submitted with the permission of the Hearing Officer, hereby makes the following Findings of Fact:

- A. On May 1, 2000, Special Permit No. SP-99-16 was issued by Hearing Officer Mark D. Singer permitting a 2-cop (beer & wine, consumption on premises) license for an existing 40-seat restaurant with outdoor seating with unamplified entertainment during certain hours.

- B. This request is for approval of a Revised Special Permit for a 2-COP (Beer & Wine, Consumption on the Premises) Alcohol Beverage License for an existing 40-seat restaurant with outdoor seating and outdoor amplified entertainment during certain hours.
- C. The site is located in the Cortez Fishing Village, on the west side of 119th Street West, at 4528 119th Street West.
- D. The property to the east is vacant land zoned A-1 (Suburban Agricultural) and RSF-4.5/CH, to the west is property zoned LM/HA/CH with an existing restaurant. To the south, on property zoned LM/HA/CH, is an existing fish processing plant and Sarasota Bay. To the north, across the parking lot, is a single-family home on property zoned LM/HA/CH.
- E. The property is owned by John Banyas.
- F. Cortez Bait and Seafood was established on this site in 1981 and was operated as both a commercial fish house and a wholesale/retail fish market.
- G. The current land use of the property is a retail seafood market and a 40-seat restaurant with outdoor seating.
- H. The existing restaurant provides outdoor seating on an existing deck located on the south side of the building adjacent to the waterfront.
- I. The Future Land Use Category for this site is IL (Industrial - Light).
- J. The site is zoned LM/HA/CH (Light Manufacturing/Historic Area/Coastal High Hazard Overlay) which allows the establishment of a 2-COP license in conjunction with a restaurant.

Section 2. Conclusions of Law. Based upon the prior Findings of Fact and considering the testimony, evidence, documentation and the staff report presented, and a review of the applicable provisions of the County Comprehensive Plan and Land Development Code, the above referenced Hearing Officer hereby makes the following Conclusions of Law:

- A. This Hearing Officer has jurisdiction over the parties and subject matter in this proceeding pursuant to Section 505 of 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 existing use is consistent with Policy 2.2.1.18.2 of the Manatee County Comprehensive Plan, which allows for this type of retail commercial use and appropriate water-dependent, water-related, and water-enhanced commercial uses in the IL (Industrial - Light) Future Land Use Category.

- D. This request can be found consistent with Policy 2.10.4.2 of the Manatee County Comprehensive Plan, which prohibits the establishment of commercial development inconsistent with commercial locational criteria, but provides an exemption for appropriate water-dependent, water related, and water-enhanced commercial uses. A restaurant with beer and wine sales and outdoor entertainment is considered a water-enhanced use; the existing fish processing plant and retail market are water-related uses.
- E. The proposed use is not detrimental to, nor will it endanger, the public health, safety, or general welfare.
- F. The establishment of the use will not impede the normal and orderly development and improvement of surrounding properties for uses permitted in the zoning district.
- G. As conditioned herein, the proposed amendment to this use is consistent with the community character of the immediate neighborhood. Much of the property surrounding the site is developed with a variety of residential and industrial uses. The residential uses are screened from outdoor usage areas and noise impacts will be reduced, as conditioned.
- H. The existing site provides for adequate ingress and egress in a manner that minimizes traffic congestion.
- I. This site meets all the standards set forth in the Manatee County Land Development Code, Section 708.3.2, Restaurants with Consumption on Premises, except for Section 708.3.4, Outdoor Sales, which requires that all outdoor sales or consumption on premises of alcoholic beverages within 200 feet of residentially zoned or used property obtain Special Permit approval. The outdoor deck on this property is approximately 195 feet from the property line of the residential use to the north. Thus, a Special Permit was required for this use. That approval was granted with the issuance of Special Permit SP-99-16.
- H. The site is in compliance with all provisions of the Manatee County Land Development Code, particularly Section 732.4, which addresses standards for major earthmoving uses.

Section 3. Order. Based upon the foregoing, a Revised Special Permit is hereby approved and issued to John Banyas for the property located at 4528 119th Street West (in the Cortez Fishing Village on the west side of 119th Street West), and more particularly described in Exhibit "A" attached hereto and incorporated herein, for a 2-COP (Beer & Wine, Consumption on premises) Alcoholic Beverage License for a 40-seat restaurant, subject to the following conditions:

- A. This Revised 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 Department. Upon recording, the Revised Special Permit shall supercede Special Permit SP-99-16 execute on May 1, 2000, and recorded at BK 1656 PG 941-944, in the Official Records of Manatee County, Florida, in all respects.

- B. The site plan submitted with this application, attached hereto as Exhibit "B" and incorporated herein, shall be part of this approval.
- C. This Revised Special Permit for a 2-COP alcoholic beverage license is approved as an accessory use to a proposed 40-seat restaurant. It shall automatically terminate if seating is increased or if the restaurant use is terminated.
- D. As provided herein, outdoor amplified entertainment shall be allowed on the existing deck located on the south side of the building adjacent to the waterfront. Only amplified entertainment by single acts, duos or trios shall be permitted. However, in no instance shall drumming be allowed. No bands with four or more participants will be permitted.
- E. Permissible hours of outdoor amplified entertainment are as follows:
- | | |
|-----------|--------------------|
| Thursdays | 6:00 PM - 10:00 PM |
| Friday | 6:00 PM - 10:30 PM |
| Saturday | 6:00 PM - 10:30 PM |
| Sunday | 2:00 PM - 7:00 PM |
- F. Sound levels shall not exceed 50 dBA as measured from the property line of the Permittee.
- G. Outdoor unamplified and background entertainment shall not be permitted between the hours of 11:00 p.m. and 7:00 a.m. the following morning, on Sunday through Thursday, inclusive, except the day prior to a legal holiday, or between the hours of 11:59 p.m. and 10:00 a.m. the following morning, on Friday, Saturday, and the day prior to a legal holiday.
- H. Foundation landscaping meeting the requirements of Section 715.3.3 of the Manatee County Land Development Code shall be installed adjacent to the retail market/restaurant building prior to issuance of Certificate of Occupancy for the restaurant.

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 decisions shall in no manner affect the remaining portions or sections of the Revised Special Permit which shall remain in full force and effect.


Section 5. Effective Date. The effective date of this Revised 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 Court and receipt of a copy of the recorded Order by the Planning Department.

ORDERED ON BEHALF OF MANATEE COUNTY this 26th day of May, 2004.

MANATEE COUNTY, FLORIDA

BY: 

Mark D. Singer, as
Hearing Officer for Manatee County



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



Deputy Clerk

EXHIBIT "A"

LEGAL DESCRIPTION:

COMMENCE AT THE NE CORNER OF U.S. GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 35 SOUTH, RANGE 16 EAST; THENCE SOUTH ALONG THE EAST LINE OF SAID U.S. GOVERNMENT LOT 3 A DISTANCE OF 1,099.35 FEET FOR A POINT OF BEGINNING; THENCE CONTINUE SOUTH ALONG SAID EAST LINE 1,693 FEET MORE OR LESS, TO THE SOUTHWESTERLY BOUNDARY OF THE PARCEL SO CONVEYED BY DEED #21153 FROM THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA TO THE CORTEZ COMPANY; THENCE N 66° W, ALONG SAID SOUTHWESTERLY BOUNDARY, A DISTANCE OF 700 FEET, MORE OR LESS TO THE WESTERNMOST CORNER OF THE PARCEL SO CONVEYED BY SAID DEED; THENCE N 24° E, ALONG THE NORTHWESTERLY BOUNDARY OF THE PARCEL SO CONVEYED BY SAID DEED, A DISTANCE OF 1,003.70 FEET TO AN EXISTING SEAWALL; THENCE N 03° 19' 12" W, ALONG SAID SEAWALL, 249.53 FEET; THENCE NORTH ALONG THE EXTENSION OF SAID SEAWALL 12.0 FEET; THENCE EAST 36.0 FEET; SOUTH 12.0 FEET; THENCE EAST 70.0 FEET; THENCE N 57° 52' 46" E, 40.0 FEET TO THE POINT OF BEGINNING. TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND PARKING ACROSS THE FOLLOWING DESCRIBED LANDS: COMMENCE AT THE NE CORNER OF U.S. GOVERNMENT LOT 3, SECTION 3, TOWNSHIP 35 SOUTH, RANGE 16 EAST; THENCE SOUTH ALONG THE EAST LINE OF SAID U.S. GOVERNMENT LOT 3 A DISTANCE OF 1,054.55 FEET FOR A POINT OF BEGINNING; THENCE CONTINUE SOUTH ALONG SAID EAST LINE 44.8 FEET; THENCE S 57° 52' 46" W, 40.0 FEET; THENCE WEST 70.0 FEET; THENCE NORTH 12.0 FEET; THENCE WEST 36.0 FEET; THENCE NORTH 37.7 FEET; THENCE N 86° 05' 40" E, 140.0 FEET TO THE POINT OF BEGINNING. THE ABOVE LYING AND BEING IN SECTION 3, TOWNSHIP 35 SOUTH, RANGE 16 EAST, MANATEE COUNTY, FLORIDA.

EXHIBIT "B"

SITE PLAN SUBMITTED WITH APPLICATION