

**SPECIAL PERMIT NO. SP-99-16
JOHN BANYAS/CORTEZ BAIT & SEAFOOD**

FILED FOR RECORD
R.B. SHORE
CLERK OF COURT
MANATEE CO. FLORIDA
MAY 1 10 27 AM '00

FINAL ORDER OF MANATEE COUNTY HEARING OFFICER MARK D. SINGER ON BEHALF OF MANATEE COUNTY GRANTING SPECIAL PERMIT NO. SP-99-16, TO ALLOW A 2-COP (BEER & WINE, CONSUMPTION ON PREMISES) ALCOHOLIC BEVERAGE LICENSE FOR A 40-SEAT RESTAURANT. LOCATED IN THE CORTEZ FISHING VILLAGE ON THE WEST SIDE OF 119TH STREET WEST AT 4528 119TH STREET WEST, IN A LM/HA/CH (LIGHT MANUFACTURING/HISTORICAL AND ARCHAEOLOGICAL, AND COASTAL HIGH HAZARD OVERLAY DISTRICTS) ZONING DISTRICT (±1.23 ACRE); 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; 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, John Banyas has requested a Special Permit to allow a 2-COP (Beer & Wine, Consumption on Premises) Alcoholic Beverage License for a 40-seat restaurant, located in the Cortez Fishing Village on the West side of 119th Street at 4528 119th Street West, in a LM/HA/CH (Light Manufacturing/Historic Area/Coastal High Hazard overlays) zoning district (±1.23 acres); and

WHEREAS, on April 19, 2000 the aforementioned Hearing Officer held a public hearing to receive the staff, applicant and public comment and argument regarding the proposed Special Permit for John Banyas.

NOW, THEREFORE, the Final Order regarding Special Permit No. SP-99-16 requested by John Banyas 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 2-COP (Beer & Wine, Consumption on Premises) Alcoholic Beverage License for a 40-seat restaurant.
- B. Cortez Bait and Seafood was established on this site in 1981, and has operated as both a commercial fish house and a wholesale/retail fish market.
- C. The proposed restaurant will provide outdoor seating on an existing deck located on the south side of the building adjacent to the waterfront.
- D. This site is zoned LM/HA/CH (Light Manufacturing/Historic Area/Coastal High Hazard overlays) which allows the establishment of a 2-COP license in conjunction with a restaurant.
- E. The Future Land Use Category for this site is IL (Industrial Light).
- F. This site is located in Cortez Fishing Village, on the west side of 119th Street West, at 4528 119th Street West. 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.

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 Conclusions of Law:

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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 2.2.1.18.2 of the Manatee County Comprehensive Plan, which allows for this type of retail commercial use and appropriate water-dependent, water-related, and water-enhanced uses in the IL (Industrial-Light) Future Land Use Category.

D. This request can also 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 is considered a water-enhanced use and the existing fish processing plant and retail market are water-related uses.

E. The establishment of the proposed 2-COP Alcoholic Beverage License is not detrimental or an endangerment to the public health, safety, or general welfare. This facility, which includes a retail fish market and a fish processing plant, has been at this location since 1981. A 2-COP Alcoholic Beverage License may be considered accessory to the restaurant. Beer and wine sales at this location, as conditioned, are expected to have little impact on the surrounding properties.

F. 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 a variety of residential and industrial uses. The residential uses will be screened from outdoor usage and noise impacts will be significantly reduced, as conditioned.

G. The site plan, as submitted, provides for adequate ingress and egress to the site in a manner that minimizes traffic congestion.

H. As conditioned herein, the proposed use of an accessory 2-COP license for a proposed 40-seat restaurant is consistent with the community character of the immediate neighborhood.

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

J. This request 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 is needed for this use.

Section 3. Order. Based upon the foregoing, a Special Permit is hereby approved and issued to John T. Banyas/Cortez Bait & Seafood 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 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 site plan submitted with this application, attached hereto as Exhibit "B" and incorporated herein, shall be part of this approval, but shall only be approved as a Preliminary site plan. Administrative sign-off of the Final Site Plan shall be required subsequent to the Hearing Officer's approval of the Special Permit.

C. This 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 the seating is increased or if the restaurant use is terminated.

D. There shall be no outdoor amplified live entertainment. 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

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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.

E. 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 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. This Special Permit shall be effective when it has been recorded in the Public Records of Manatee County, Florida and a copy of the recorded Order is received by the Planning Department.

ORDERED ON BEHALF OF MANATEE COUNTY this 1 day of May, 2000.

MANATEE COUNTY, FLORIDA

BY:


Mark D. Singer, as
Hearing Officer for Manatee County

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



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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 3°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

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