



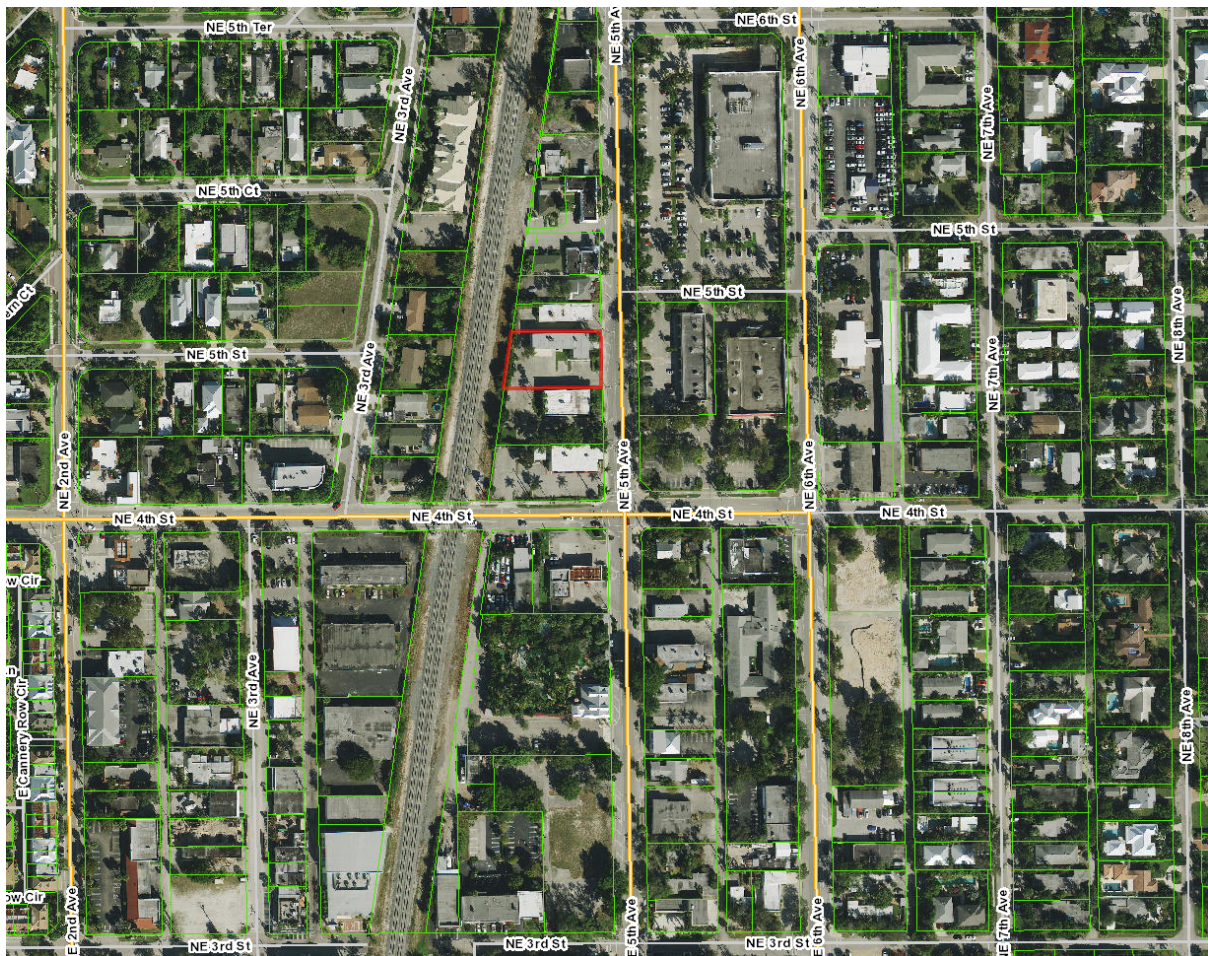
## HOPPORTUNITIES TAPROOM

Amendment to Land Development Regulations Application

Conditional Use Application

Class IV Site Plan Modification Application

430 Ross Girls, LLC and 440 Ross Girls, LLC (“Owner”) are the owners of the +/- 0.3835 acre parcel located at 440 NE 5<sup>th</sup> Avenue within the City of Delray Beach, Palm Beach County, Florida (“City”) and whose parcel control number is 12-43-46-09-33-001-0040 (“Property”). The Property is designated as a Mixed Use, Commercial Core (“CC”) on the City’s Future Land Use Map and is zoned Central Business District (“CBD”) within the Central Core Sub-district.





Previously, the Property was used as a gym and for retail. Presently, Hopportunities Taproom, Inc. (“Applicant”) is a tenant of Owner and operates a stand-alone bar (“Taproom”) on the Property. The Taproom consists of self-serve, Florida craft and independent beer, wine, kombucha, coffee, retail snacks, and merchandise – mostly sourced locally. It operates more like a social club rather than a bar and has family and pet friendly facilities, themed event nights (trivia, bingo, karaoke, painting, comedy night, etc.), and fundraisers benefitting local City charities. Local City artists are featured on the interior walls of the Taproom. The current hours of operation are:

- Monday - 4pm to 10pm;
- Tuesday, Wednesday – 4pm to 11pm;
- Thursday, Friday, Saturday – 2pm to midnight; and
- Sunday – 1pm to 8pm.

The Applicant desires to amend the land development regulations in order to create a new conditional use category in the CBD for standalone bars, which would allow the outdoor consumption of alcohol in an accessory outdoor use area (“Project”). In the event that the proposed amendment to the land development regulations is approved, the Applicant is also submitting a corresponding Conditional Use and Class IV Site Plan Modification applications for concurrent review. No exterior improvements other than a fence and movable, aesthetic décor are proposed for the Project.

On June 1, 2021, this firm, on behalf of the Applicant, appeared before the City Commission and requested a change to the City’s Code of Ordinances to allow the outdoor consumption of alcohol at standalone bars, which has been long been prohibited. In response, the City Commission directed City staff to develop generally applicable regulations governing outdoor alcohol consumption. Since then, Applicant has been collaborating with City staff to propose a more comprehensive approach to regulating outdoor consumption of alcohol. On January 10, 2022, this firm appeared before the City’s Downtown Development Authority (“DDA”) Board on behalf of the Applicant. The DDA unanimously voted to approve and recommend the Applicant’s proposed text amendment with two suggested changes: (1) expanding the eligibility criteria to standalone bars serving alcohol (rather than just beer and wine); and (2) eliminating the distance limitation requirement to residentially zoned districts.



---

## Justification for Amendments to the Land Development Regulations

In accordance with the City’s Land Development Regulation (“LDR”) Section 2.4.5(M), the Applicant proposes the following amendment to the City’s LDRs (see Exhibit A for a draft of the proposed ordinance):

| <b><u>Code Section</u></b>                                                                                                                                     | <b><u>Proposed Amendment</u></b>                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Delray Beach Land Development Regulations, Chapter 4, Article 4.4, Section 4.4.13(C), Table 4.4.13(A) – Allowable Uses and Structures in the CBD Sub-Districts | To allow an accessory outdoor use area associated with standalone bars in the central core sub-district by conditional use (“Proposed Use”) |

### Accessory Outdoor Use Associated with Standalone Bars

The Applicant proposes to amend the City’s LDRs to allow standalone bars to operate an accessory outdoor use area subject to conditional use approval and City staff’s comprehensive approach to regulating the outdoor consumption of alcohol as proposed in Ordinance No. 35-21.

Prior to COVID-19, Applicant surveyed existing customers and found a consistent demand for an outdoor space for activities and socializing, particularly in the Florida winter. While most studies focus on the profitability of outdoor patios for restaurants, there is a consistent theme that ancillary outdoor spaces can boost a business’ profitability in the food and beverage industry.<sup>1</sup> For small business owners, this could mean the difference between surviving and thriving. More importantly, the Taproom’s consumers strongly prefer the outdoors and tend to patronize the Taproom longer when they can socialize outside.

In this COVID-19 era, utilizing outdoor space is now required to help small businesses continue operating safely, particularly the hardest hit businesses which include bars. As different variants of COVID-19 emerge, bars may be required to implement social distancing strategies. Additional outdoor space will allow bar owners to maximize social distancing and safely accommodate the maximum number of occupants permitted. Moreover, under the current Code, bar owners are required to operate their use within an enclosed space. Enclosed spaces increase the risk of COVID-19 contamination. Incorporating an outdoor space that transitions the enclosed space into the outdoor space will ventilate the enclosed space, thereby increasing airflow and reducing the risk of cross-contamination.

---

<sup>1</sup> <https://myemail.constantcontact.com/Are-Outdoor-Patio-Enhancements-Worth-the-Investment-for-Restaurant---Bar-Owners-.html?soid=1120289682590&aid=kcmutVhZwGs>



As a result, with or without the threat of a pandemic, outdoor use areas can benefit small business owners in several ways. First, owners who operate bars can meet the demand of patrons. Second, providing small business owners another resource, such as an outdoor space, strengthens their overall business efforts. Third, outdoor use areas can increase the health and safety of our residents and guests.

### Consistency with the City's Comprehensive Plan

The aforementioned proposed amendment to the LDRs is consistent with the City's Comprehensive Plan ("Comp Plan"). The Economic Prosperity Element of the Comp Plan includes Objective ECP 2.1 – Small Business Growth, which states that it is the City's objective to support efforts to strengthen the small business-entrepreneurial ecosystem to provide for more in-area resources and services. Allowing a small business, such as Applicant, to utilize more space to meet the demand and safety precautions of its patrons is consistent with strengthening small businesses with resources. Moreover, because Applicant is a small business that supports other small businesses, the strengthening of the small business entrepreneurial ecosystem is greater. Similarly, Policy ECP 2.5.1 requires supporting organizations and entities to promote social responsibility within their business. Currently, social responsibility is everyone's responsibility on a global scale. Outdoor use areas for an enclosed bar promotes health and safety types of social responsibility. Policy ECP 5.5.9 requires strengthening small business and retail opportunities beyond Atlantic Avenue and the downtown corridor by expanding support for businesses to relocate off of Atlantic Avenue. Restrictions within the CBD are primarily intended for downtown/Atlantic Avenue, whereas the subject Property is beyond the proximity of Atlantic Avenue. Loosening restrictions for small businesses outside of the downtown area strengthens opportunities in accordance with this policy.



---

## Justification for Conditional Use and Site Plan Modification

Pursuant to LDR Section 2.4.5(E)(5), the City Commission must make findings that establishing the conditional use will not:

- a) Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;
- b) Hinder development or redevelopment of nearby properties.

An accessory outdoor use will not have a significant and detrimental effect upon the stability of the neighborhood because the proposed outdoor use is intentionally limited to prevent detrimental effects through the adoption of regulations regarding the outdoor consumption of alcohol. The Proposed Use is contained within the subject property, and thus will not hinder development or redevelopment of nearby properties.

LDR Section 2.4.5(E)(5) also requires the City Commission to make findings pursuant to the provisions of Chapter 3's Performance Standards. These criteria found in LDR Section 3.1.1 are also applicable to the findings required for a Class IV Site Plan modification, which are:

- A. Future Land Use Map:** The Proposed Use is a commercial use, and thus consistent with the property's future land use – Mixed Use, Commercial Core. The Proposed Use is permitted (with restrictions) within the CBD and thus consistent with the zoning district.
- B. Concurrency:** There is nothing proposed in these applications that would trigger a concurrency review. The City already provides service and facilities to this Property. The proposed accessory outdoor use does not impact service and facilities any differently than the existing use because there is no increase in the intensity of use. Thus, the Project meets the concurrency requirements defined in Objective B-2 of the Future Land Use Element of the City's Comprehensive Plan.
- C. Consistency:** The Proposed Use is consistent with the City's future land use and zoning. The Project does not propose any new development or redevelopment. It also does not contemplate any variances. Thus, the Project is overall consistent with the Standards for site plan actions pursuant to the performance standards in LDR Section 3.2.
- D. Compliance with LDRs:** The Project is compliant with the City's LDRs. As discussed above, the Proposed Use coupled with proposed restrictions meet the intent of the LDRs. No variances or waivers from the LDRs are requested.



## Exhibit A

| Table <a href="#">4.4.13</a> (A)—Allowable Uses and Structures in the CBD Sub-Districts                                                                              |                                      |                   |            |                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-------------------|------------|-----------------------------------|
|                                                                                                                                                                      | Central Core                         | Railroad Corridor | Beach Area | West Atlantic Neigh. <sup>5</sup> |
| General retail uses and/or facilities, as in GC district (4.4.9) <sup>1 2</sup>                                                                                      | P                                    | P                 | P          | P                                 |
| Business, professional, and medical uses, as in GC district (4.4.9)                                                                                                  | P                                    | P                 | P          | P                                 |
| Services and facilities, as in GC district (4.4.9), excluding drive-through facilities                                                                               | P                                    | P                 | P          | P                                 |
| Multiple-family dwellings <sup>3</sup>                                                                                                                               | P                                    | P                 | P          | P                                 |
| Community residences                                                                                                                                                 | See <a href="#">4.4.13</a> (C)(4)(a) |                   |            |                                   |
| Nursing homes, abused spouse residences, continuing care facilities, and assisted living facilities that do not comport with the definition of "community residence" | P                                    | P                 | P          | P                                 |
| Live/work units (see <a href="#">4.3.3</a> (KKK))                                                                                                                    | P                                    | P                 | P          | P                                 |
| Hotels, motels, and residential-type inns <sup>3</sup> (see <a href="#">4.3.3</a> (M) and <a href="#">4.3.3</a> (X))                                                 | P                                    | P                 | P          | C                                 |
| Bed and breakfast inns (see <a href="#">4.3.3</a> (Y))                                                                                                               | P                                    | P                 | P          | C                                 |
| Public Parking Garages, as mapped on a Regulating Plan                                                                                                               | P,S                                  | P,S               | P,S        | P,S                               |
| Fabrication and/or Assembly                                                                                                                                          | -                                    | P                 | -          | -                                 |
| Wholesaling, Storage, and Distribution <sup>4</sup>                                                                                                                  | -                                    | P                 | -          | -                                 |
| Contractor and trade services                                                                                                                                        | -                                    | P                 | -          | -                                 |
| Automobile brokerage, including vehicle display within an enclosed structure                                                                                         | -                                    | P                 | -          | -                                 |
| Tattoo Establishments (see <a href="#">4.3.3</a> (ZB) (Ord. No. 33-16, <a href="#">§ 4</a> , 11-15-16)                                                               | P,A                                  | P,A               | P,A        | P,A                               |
| Family day care homes (see <a href="#">4.3.3</a> (T))                                                                                                                | A                                    | A                 | A          | A                                 |
| Home occupations (see <a href="#">4.3.3</a> (K))                                                                                                                     | A                                    | A                 | A          | A                                 |
| Mechanical parking lifts (see <a href="#">4.6.9</a> (D)(11) and <a href="#">4.6.9</a> (F)(4))                                                                        | A,S                                  | A                 | A,S        | A,S                               |
| Parking areas, passenger drop-off, loading/unloading                                                                                                                 | A,S                                  | A,S               | A,S        | A,S                               |
| Automated parking garages                                                                                                                                            | -                                    | S                 | -          | -                                 |



| Table <a href="#">4.4.13</a> (A)—Allowable Uses and Structures in the CBD Sub-Districts                                               |                    |                   |                 |                                   |
|---------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------|-----------------|-----------------------------------|
|                                                                                                                                       | Central Core       | Railroad Corridor | Beach Area      | West Atlantic Neigh. <sup>5</sup> |
| Refuse and service areas                                                                                                              | A,S                | A,S               | A,S             | A,S                               |
| Recreational facilities (for a multiple-family development)                                                                           | A                  | A                 | A               | A                                 |
| Services and repair (incidental to the principal use)                                                                                 | A,S                | A                 | A,S             | A,S                               |
| Single-family dwelling (occupied by owner, proprietor, or employee of the principal use)                                              | A                  | A                 | A               | A                                 |
| Storage of inventory (not shared or leased independent of the principal use)                                                          | A,S                | A                 | A,S             | A,S                               |
| Automobile repair                                                                                                                     | -                  | C                 | -               | -                                 |
| Child care Facilities (see <a href="#">4.3.3</a> (E)) and adult day care facilities (see <a href="#">4.3.3</a> (F))                   | C                  | C                 | C               | C                                 |
| Commercial recreational facilities, such as bowling alleys and skating rinks                                                          | C                  | C                 | C               | C                                 |
| Drive-through facilities (serving banks, financial institutions, retail uses, etc.) <sup>2</sup> See <a href="#">4.4.13</a> (J)(7)(a) | C                  | C                 | C               | C                                 |
| Food Preparation and/or Processing including bakeries and catering                                                                    | -                  | C                 | -               | -                                 |
| Funeral homes, including accessory uses such as a chapel or crematory                                                                 | C                  | C                 | C               | C                                 |
| Gasoline stations (See <a href="#">4.4.13</a> (J)(7)(b) and/or car washes (See <a href="#">4.4.13</a> (J)(7)(c))                      | C                  | C                 | -               | -                                 |
| Large family child care homes (see <a href="#">4.3.3</a> (TT))                                                                        | C                  | C                 | C               | C                                 |
| Dry-cleaning Processing Plants                                                                                                        | -                  | C                 | -               | -                                 |
| Segway tours and Segway sales (see <a href="#">4.3.3</a> (ZZZZ))                                                                      | C                  | C                 | C               | C                                 |
| Theaters, excluding drive-ins                                                                                                         | C                  | C                 | C               | C                                 |
| Veterinary Clinics                                                                                                                    | C                  | C                 | C               | C                                 |
| 24-hour or late-night businesses, within 300 feet of residential zoned property [see <a href="#">4.3.3</a> (VV)]                      | C                  | C                 | C               | C                                 |
| Urban Agriculture [ <a href="#">4.3.3</a> (D)] excluding outdoor Urban Farms                                                          | P, A               | P, A              | -               | P, A                              |
| Outdoor Urban Farms [ <a href="#">4.4.3</a> (D)]                                                                                      | C                  | C                 | C               | C                                 |
| <b>Outdoor Use Area for Standalone Bars<sup>6</sup></b>                                                                               | <b><u>C, A</u></b> | <b><u>-</u></b>   | <b><u>-</u></b> | <b><u>-</u></b>                   |



| Table <a href="#">4.4.13</a> (A)—Allowable Uses and Structures in the CBD Sub-Districts                            |                 |                      |               |                                         |
|--------------------------------------------------------------------------------------------------------------------|-----------------|----------------------|---------------|-----------------------------------------|
|                                                                                                                    | Central<br>Core | Railroad<br>Corridor | Beach<br>Area | West<br>Atlantic<br>Neigh. <sup>5</sup> |
| <b>LEGEND:</b> P = Principal Use A = Accessory Use C = Conditional Use - = Prohibited Use S = Secondary Street Use |                 |                      |               |                                         |

<sup>1</sup> Sales of automotive parts, lawn care equipment, firearms, or secondhand material (other than verifiable antiques) are not allowed on properties facing a designated Required Retail Street on the Regulating Plan or anywhere within the West Atlantic Neighborhood.

<sup>2</sup> Drive-thru and Drive-in restaurants are not permitted within the CBD.

<sup>3</sup> For density limits, see Table [4.4.13](#)(C).

<sup>4</sup> Not self-storage facilities; products and materials shall not exceed 55 gallons of any substance which is listed on the Generic Substances List of the Palm Beach County Wellfield Protection Ordinance (Ref.: Palm Beach County LDC, [Article 9](#), Section 9.3)

<sup>5</sup> See [Section 4.4.13](#)(C)(4)(a) for limits on commercial use locations in the West Atlantic Neighborhood Sub-district.

<sup>6</sup> Accessory Outdoor Use Areas for Standalone Bars are also subject to the rules regulating the outdoor consumption of alcohol in Section 4.3.3(V)(5) and Section 4.6.6(B).