



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### Pour and Famous

| Meeting                   | File No.  | Application Type                      |
|---------------------------|---|---------------------------------------|
| May 16, 2022              | 2021-009-USE-PZB                                    | Conditional Use (Late-Night Business) |
| Property Owner            | Applicant   | Agent                                 |
| Del Harbour Ventures, LLC | Delray Spirits, LLC D.B.A –<br>Pour and Famous, LLC | Zach Purdo                            |

### Request

Provide a recommendation to the City Commission regarding a Conditional Use request to establish a Late-Night Business until 2:00 am for Pour and Famous, located at 524 West Atlantic Avenue, on the south side of West Atlantic Avenue between SW 5<sup>th</sup> Avenue and SW 6<sup>th</sup> Avenue.

### Background

The subject property was developed in 1956 as the Clearview Lounge, a standalone bar; the original, concrete-block building remains on the property. The bar has functioned under several different names including Vintage Tap, Bearded Rooster, and most recently Pour and Famous. The subject property has a Land Use Map (LUM) designation of Commercial Core (CC) and a zoning designation of Central Business District (CBD), within the West Atlantic Neighborhood Sub-District.



A Class III Site Plan Modification associated with the conversion of the bar to a restaurant and expansion of the use area for outdoor dining was approved by the Site Plan Review and Appearance Board (SPRAB) in November 2020. The City Commission appealed the SPRAB decision and conducted a de novo review of the request at its meeting of December 8, 2020. The request was approved with the conditions that the hours of the outdoor dining area be limited to no later than 10:00 pm, Sunday – Thursday and 11:00 pm, Friday and Saturday and that additional landscaping be provided along the rear of the property to provide buffering for the abutting residential property. The certified plans for the Class III Site Plan modification provide the occupancy data for the site as a restaurant. The interior occupancy seat capacity is noted as 45 people, with the exterior occupancy seat capacity noted as 60 people, for a total seat capacity of 105 people.

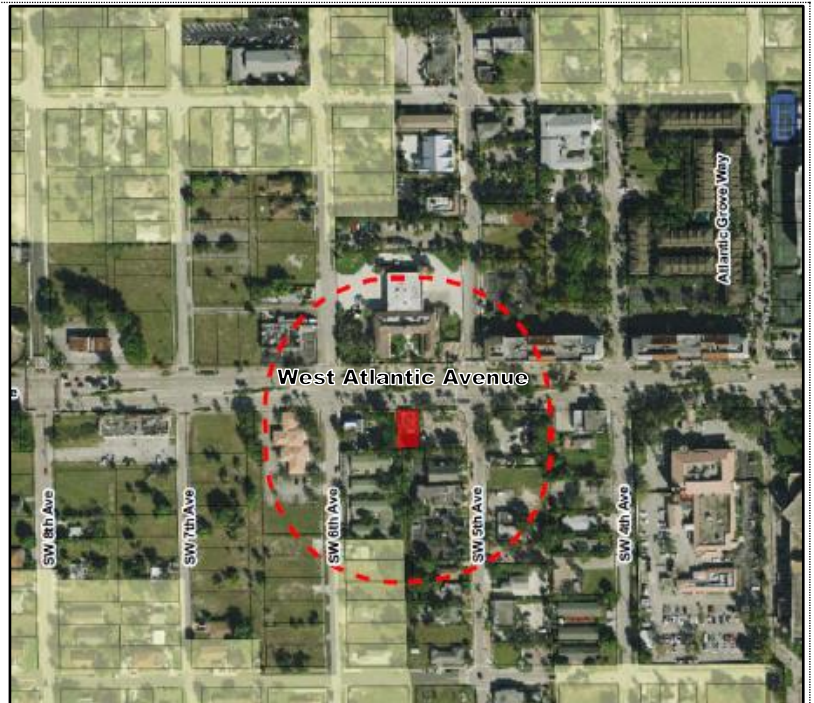
After completing the necessary building improvements, which included the build out of the kitchen and a new ADA restroom, Pour and Famous officially opened as a restaurant in December 2021.

### Project Description

The applicant is requesting a conditional use approval to operate as a 24-hour or Late-Night Business after midnight until 2:00 AM, seven days a week, for the indoor dining area of the restaurant, which consists of 1,300 square feet. A full description of the proposal is provided in the applicant's justification statement (attached). The request does not include expanding the hours of operation for the 1,336 square foot outside dining area.

Land Development Regulations (LDR) Section 4.3.3(VV)(2)(a) requires that any 24-Hour or late-night business located or proposed to be located within a 300-foot straight line route from any residentially zoned property shall obtain a conditional use permit from the City for the operation of such use. The map to the right shows the location of Pour and Famous (identified in red) and the 300-foot radius around the property boundary, which overlaps with residentially zoned property (identified in yellow) to the south.

While the request to extend the hours of operation until 2:00am is associated with a restaurant use, it is important to note that the restaurant may not change its operations to any other use, particularly a bar or nightclub, at any time without jeopardizing the approved restaurant use. The LDR definition of a Bona Fide Restaurant, which is provided below, specifies how a restaurant must operate during all hours.



#### RESTAURANT (BONA FIDE).

- (a) A bona fide restaurant shall mean an establishment engaged primarily in the service of food where the sale or service of alcoholic beverages is incidental to the sale and service of food. A cafeteria or fast food establishment shall be deemed a bona fide restaurant for the purposes of zoning classification. All other establishments must meet the following criteria:
1. A bona fide restaurant must, during all hours of operation, continually offer food service consisting of full course meals;
    - a. Full course meals shall include a salad or vegetable, entrée and dessert.
  2. A bona fide restaurant must have full kitchen facilities, which are located in a completely enclosed room, under roof of the main structure, or in an interior court and food preparation staff capable of preparing and serving full course meals during all hours of operation.
  3. A bona fide restaurant must have a customer service area consisting of tables, chairs or customer counters. The tables or customer counters within the customer service area must be of adequate size to accommodate the service of full course meals.
  4. In order for tables, chairs or customer counters to be included in the customer service area, the service of full course meals must be available at each seat or chair at each table or customer counter in accordance with the following:
    - a. The total number of seats or chairs at the tables, customer counters and bars within the customer service area must be sufficient to accommodate the maximum occupant load of the restaurant;
    - b. The full occupant load shall be determined in accordance with the provisions of the standard Florida Building Code or its successor code.
  5. A bona fide restaurant must have the appropriate license issued by the state as well as all municipal or county permits required by law, and must meet all local zoning requirements.

#### Review and Analysis

Pursuant to **Land Development Regulations (LDR) Section 2.4.5(E)(1), Establishment of a Conditional Use:** Rule, the City Commission, by motion, after review and recommendation for approval by the Planning and Zoning Board may approve or reject a request for a conditional use.

A recommendation of approval by the Planning and Zoning Board is required for the item to be considered by the City Commission. Conditional use requests that do not receive a recommendation of approval by the Planning and Zoning Board do not move forward to the City Commission for consideration. The City Commission meeting date will be determined following a recommendation of approval.

Pursuant to **LDR Section 2.4.5(E)(4), Conditions**, conditions may be imposed pursuant to Section 2.4.4(C). In addition, limitations on the hours of operation and/or the longevity of the use may be imposed.

**LDR Section 2.4.4(C)**, Imposition of conditions. In granting approval to any development application, the granting body may impose whatever conditions it deems necessary in order to insure:

- The compatibility of the use with nearby existing and proposed uses.
- Concurrency.
- Consistency with objectives and policies of the Comprehensive Plan.
- The fulfillment of requirements of these Regulations which should have or could have been fulfilled prior to the approval action but which were not, due to conditions beyond the control of the applicant.
- The fulfillment of requirements of these Regulations which could have been fulfilled prior but remain outstanding; thus, providing that they will be accommodated in a later stage of processing.

In consideration of the request, the board has the ability to impose any conditions it deems necessary to ensure that there is minimal to no impact on with the surrounding neighborhood and future development. Conditions can include the hours of operation and limiting the days of the week that the business can be open until the requested time.

Pursuant to **LDR Section 2.4.5 (E)(5), Establishment of a Conditional Use: Findings**, in addition to provisions of Chapter 3, the City Commission must make findings that establishing the conditional use will not:

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

The request is to establish a late-night business for the inside portion of the restaurant to operate until 2:00 am. The applicant is required to seek conditional use approval because two residential properties zoned Medium Density Residential (RM) are located within a 300-foot radius. The provisions in LDR Section 4.3.3(VV), 24 hour or Late-Night Businesses, not only require the subject conditional use “to minimize impacts upon residentially zoned properties from such uses”, but also require the submittal of a security plan, information regarding buffering, and additional findings to ensure sufficient and appropriate measures will be taken to protect both the business and the neighborhood. A review of Section 4.3.3(VV) is provided further in this report.

Pour and Famous is located on the south side of West Atlantic Avenue between SW 5th Avenue and SW 6th Avenue. The establishment is surrounded by CBD on all sides, with the exception of the City of Delray Beach Fire Department across West Atlantic Avenue to the north (zoned Community Facilities). To the east is Libby Wesley Park, built in 2010, which is used for special events throughout the year. Straughn Funeral Home and multifamily residential complex (also owned by the applicant) are located to the south. The two, 9-unit buildings have been newly renovated with storm rated windows that the applicant indicates provide a measure of noise protection.

| Adjacent Zoning, Land Use, and Use |                    |                      |  |
|------------------------------------|--------------------|----------------------|--|
|                                    | Zoning Designation | Land Use Designation | Use  |
| North                              | CF                 | CF                   | Fire Station                                     |
| South                              | CBD                | CC                   | Multi Family Residence and Straughn Funeral Home |
| East                               | CBD                | CC                   | Bear's Restaurant                                |
| West                               | CBD                | CC                   | Libby Wesley Park                                |

The “Vision” of the West Atlantic Avenue Redevelopment Plan was the gateway to employment opportunities, a safe, clean, well landscaped environment, and a thriving historical and cultural area with a combination of business, residential and cultural opportunities. New development, redevelopment, and preservation continue to be encouraged in the West Atlantic Area. In addition, pursuant to LDR 4.4.13(A)(3); the purpose and intent of the West Atlantic Neighborhood Sub-district is to preserve and enhance existing neighborhoods, while promoting a pedestrian friendly commercial area along West Atlantic Avenue that contains a mix of residential, commercial, and civic function. The Pour and Famous building was built as a bar, and until recently, functioned as a standalone bar since 1956; new mixed use development such as Atlantic Grove and civic functions such as the Libby Wesley Park and the Delray Beach Fire Station have been built around it to contribute to the enhancement of the neighborhood. The current owner of Pour and Famous saw the need to modify the business to function as a restaurant, in order to utilize their outdoor area and offer food choices as an amenity for nearby residents and visitors alike.

While the West Atlantic Redevelopment Plan articulates a desire for business revitalization, the vision has not been fully executed, Residents in and around the downtown support the expansion of commercial uses, but additional review and consideration is required to ensure that when extended hours of operation (which are relatively untested in the West Atlantic neighborhoods) are requested within 300 feet of residentially zoned property, the proposed use benefits the community rather than creating a nuisance. Patrons exiting the



establishment during the extended hours, particularly during the week (Sunday through Thursday) when nearby residents have a traditional work week, could potentially have a negative impact on the residential properties and neighborhood that are in the surrounding area. One potential cause for concern is the absence of on-site parking. On street parking is available, and several public parking lots are located nearby on SW 4<sup>th</sup> Avenue. The need to park further away adjacent to residentially zoned properties may introduce late-night noise.

Pursuant to **LDR Section 3.1.1, Required Findings**, prior to the approval of development applications, certain findings must be made in a form which is part of the official record. This may be achieved through information on the application, the staff report, or minutes. Findings shall be made by the body which has the authority to approve or deny the development application.

**(A) Land Use Map.** The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Land Use Map.

The subject property has a Land Use Map (LUM) designation of Commercial Core (CC), and a zoning designation of CBD, which are consistent with each other. The restaurant use, inclusive of the outdoor dining area, is allowed by right in the CBD West Atlantic Neighborhood Sub District, but the late-night hour after midnight is subject to conditional use approval.

**(B) Concurrency.** Concurrency as defined by Objective NDC 3.1 of the Neighborhoods, Districts, and Corridors Element of the adopted Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CIE-2, Level of Service Standards, of the Capital Improvements Element of the adopted Comprehensive Plan of the City of Delray Beach.

The concurrency review for Streets and Traffic, Solid Waste, Water and Sewer and Drainage were all analyzed under the Class III Site Plan Modification and found to be in compliance; see information below. There are no time restrictions identified for any of these items.

Water and Sewer: Water Service is available via an existing 8" water main along Atlantic Avenue and Sewer Service is available per the Capacity letter provided by the City of Delray Beach via an 8" lateral along SW 6<sup>th</sup> Avenue. Pursuant to the City's Comprehensive Plan, treatment capacity is available at the City's Water Treatment Plant and the South-Central County Wastewater Treatment Plant for the City at build-out.

Streets and Traffic: It is noted that the site is located within the City's Transportation Concurrency Exception Area (TCEA), which encompasses the CBD and OSSHAD zoning districts. In 2020, the request to expand and establish an outdoor dining area was determined to meet the Traffic Performance Standards of Palm Beach County.

Solid Waste: The restaurant generates approximately 33.81 tons of solid waste per year. The Solid Waste Authority has indicated that its facilities have sufficient capacity to accommodate all development proposals until 2047.

Drainage: Drainage improvements are not necessitated by the request.

**(C) Consistency.** Compliance with performance standards set forth in Chapter 3 and required findings in LDR Section 2.4.5(D)(5) for the Rezoning request shall be the basis upon which a finding of overall consistency is to be made. Other objectives and policies found in the adopted Comprehensive Plan may be used in making a finding of overall consistency.

Pursuant to **LDR Section 3.2.1, Basis for determining consistency**, the performance standards set forth in this Article either reflect a policy from the adopted Comprehensive Plan or a principle of good planning practice. The performance standards set forth in the following sections as well as compliance with items specifically listed as required findings in appropriate portions of Section 2.4.5 shall be the basis upon which a finding of overall consistency [Section 3.1.1(C)] is to be made. However, exclusion from this Article shall not be a basis for not allowing consideration of other objectives and policies found in the adopted Comprehensive Plan in the making of a finding of overall consistency.

The following policies apply to the conditional use request:

## **Neighborhoods, Districts, and Corridors Element**

**Policy NDC 1.1.14** *Continue to require that property be developed or redeveloped or accommodated, in a manner so that the use, intensity and density are appropriate in terms of soil, topographic, and other applicable physical considerations; encourage affordable goods and services; are complimentary to and compatible with adjacent land uses; and fulfill remaining land use needs.*

**Objective NDC 1.3, Mixed-Use Land Use Designations** *Apply the mixed-use land use designations of Commercial Core, General Commercial, Transitional, Congress Mixed-Use, and Historic Mixed-Use to accommodate a wide range of commercial and residential housing opportunities appropriate in scale, intensity, and density for the diverse neighborhoods, districts, and corridors in the city.*

**Policy NDC 1.3.5** *Use the Commercial Core land use designation to stimulate the vitality and economic growth of the city while simultaneously enhancing and preserving the cultural and historic downtown area.*

**Objective NDC 2.2 Downtown and Surrounding Neighborhoods** *Protect and enhance the “Village by the Sea” character of the downtown and neighborhoods located east of I-95.*

## **Housing Element**

**Objective HOU 1.1 Neighborhood Character** *Support and respect the diverse and distinct character of Delray Beach’s neighborhoods.*

**Policy HOU 1.1.12** *Require that proposals for new development illustrate compatibility with adjacent neighborhoods with respect to noise, odors, dust, traffic volumes and circulation patterns in terms of their potential to negatively impact the safety, habitability and stability of residential areas. If it is determined that a proposed development will result in a degradation of any neighborhood, the project shall be modified accordingly or denied.*

**Objective HOU 1.3 Unique Neighborhoods** *Protect existing residential areas by fostering development and redevelopment that is consistent with the unique character of the neighborhood.*

The subject property’s CC land use and CBD zoning support an active, mixed use, downtown environment, which includes a variety of commercial uses mixed-in with residential uses. The Downtown Master Development Plan and the West Atlantic Master Plan support businesses that are primarily oriented towards serving the local neighborhood. Although Pour and Famous may attract guests from other areas, its downtown location is pedestrian and bicycle friendly and could attract residents that live in the surrounding area.

The extended hours of operation (until 2:00am) are requested for the indoor dining area only, and the outdoor dining area is already limited to an earlier time by the City Commission’s approval of the Class III Site Plan Modification in 2020. However, the Board may request additional modifications or improvements to the site or request to comply with Policy HOU 1.1.12 to ensure the neighborhood is protected from potential impacts.

**(D) Compliance with the LDRs.** *Whenever an item is identified elsewhere in these Land Development Regulations (LDRs), it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in Section 2.4.5 and in special regulation portions of individual zoning district regulations.*

**Pursuant to LDR Section 4.3.3(VV), 24 hour or Late-Night Businesses:** The purpose and intent of the regulations is to:

- a) To promote the health, safety and general welfare of the citizenry
- b) To provide conditions upon the use of 24-Hour or late-night businesses in order to minimize impacts upon residentially zoned properties from such uses.

**Pursuant to LDR Section 4.3.3(VV)(2)(a),** *Any 24-Hour or late-night business located or proposed to be located within a 300-foot straight line route from any residentially zoned property shall obtain a conditional use permit from the City for the operation of such use. The distance shall be measured from the nearest point of the property on which the 24-Hour or late-night business is or will be located to the nearest point of a residentially zoned property.*

Pursuant to **LDR Section 4.3.3(VV)(2)(b), Conditions**, the following conditions shall apply to all 24-Hour or late-night businesses seeking conditional use approval when located within 300 feet from a residentially zoned property.

**1) Security plan:** *A 24-Hour or late-night business shall submit a security plan detailing the manner in which the business intends to address the security of the establishment, its patrons, employees and nearby residents. A convenience business as defined in Section 812.171, Florida Statutes (2000), as may be amended from time to time, is exempted from filing a security plan with the City pursuant to this subsection. However, convenience businesses shall comply with all applicable provisions of Sections 812.101-812.175, Florida Statutes (2000), as may be amended from time to time. A security plan shall include, at a minimum, a detailed description of the following:*

- a. external lighting; and,*
- b. other external security measures, such as security cameras or other similar measures; and,*
- c. internal security measures, such as drop safes, silent alarms, security personnel or other similar measures.*

The security plan includes fourteen security cameras for the interior and exterior of the property that are located at all entry and exit points including windows. The alarm is activated when the business is closed, and the video recording is maintained for five years. The applicant has specified that all procedures for opening, closing, and building maintenance are documented daily to track any problematic areas to correct. External lighting is provided on the photometric plan and provides two new lampposts in the rear of the property, one wall mounted light fixture on the rear door and one new lamppost to the west of the property. An emergency exit and life safety plan are provided with access to the rear of the property and through a limited access easement to SW 6<sup>th</sup> Avenue.

The application justification statement, life safety plan, landscape plan and photometric plan are provided. The security plan details were not subject to review by the Police Department during review of the conditional use request.

**2) Buffering:** *A 24-hour or late-night business shall provide adequate buffering to minimize the effects of noise and to act as a visual buffer to the property from nearby residential districts.*

The property is enclosed with a six-foot wood fence on the south of the property and a metal fence on the east and west portion of the property. The Class III Site Plan Modification was approved with the condition that the Senior Landscape Planner work with the applicant to add more landscaping to the rear of the property to buffer the potential noise from the surrounding areas. As a result, there were pavers that were removed along the fence line to the rear of the property to accommodate the additional landscaping. The landscaping consists of Podocarpus on all three sides and the Queen Emma, Green Bamboo, Wart Fern and Ficus Green Island were added to the rear to help buffer any additional noise.

**Pursuant to LDR Section 4.3.3(VV)(2)(c) Findings:** *In addition to any findings required by Section 2.4.5(E) of the Land Development Regulations, and any other required findings, the following specific findings shall be made in order for any 24-Hour or late-night business to be approved for a conditional use:*

- 1. That the use will be consistent with Housing Element Policy HOU 1.1.12 of the adopted Comprehensive Plan of the City of Delray Beach.*
- 2. That the submitted security plan contains measures adequate to reasonably protect the safety of patrons, employees and nearby residents.*
- 3. That the amount and type of proposed buffering is adequate to minimize the effects of noise impacts upon surrounding uses and nearby residential properties and to act as a visual buffer to the property from surrounding uses and nearby residential properties.*

The proposed late-night business requests to be open past midnight until 2am, seven days a week. In consideration of Policy HOU 1.1.12, the Board should consider if the extended hours are compatible, and at a frequency of seven days a week. The areas of concern would include impacts on the neighborhood resulting from noise, traffic volumes and circulation resulting from the extended hours. The security plan is thorough and provides video recording, lighting, and other measures to ensure both the business, its employees, and the patrons, at least while on-site, are protected. At the time of approval with the Class III Site Plan Modification, the

additional buffering through the installation of new landscaping was required. In September 2021, City Staff went out to the site to inspect and confirmed at that time that the required landscaping was installed and compliant with the approval. However, the landscaping does not appear to have been properly maintained. While this would be an issue of code enforcement, the Board can consider that even though the extended hours of operation are limited to the indoor restaurant area, additional buffering to that which was already required could be required.

#### Board Considerations

The Board should consider the following:

- If the proposed extended hours comply with the intent of Policy HOU 1.1.12 and illustrates compatibility and will not result in a degradation of the adjacent neighborhood;
- If the extended hours of operation until 2am should be allowed to occur seven days a week; and
- If additional buffering should be installed in the rear of the property to absorb noises and provide additional screening.

#### Review By Others

The **Downtown Development Authority (DDA)** reviewed the request at its meeting on May 9, 2022; the recommendation will be provided to the Board during Staff's presentation.

The **Community Redevelopment Agency (CRA)** received notice of the request on its April report.

#### Board Action Options

- Move to recommend **approval** to the City Commission, a Conditional Use request for Pour and Famous, to allow a 24-hour or Late-Night Business at 524 West Atlantic Avenue to be open until 2:00AM for the inside portion of the restaurant, finding that the request is consistent with the Land Development Regulations and the policies of the Comprehensive Plan.
- Move to recommend **approval** to the City Commission, a Conditional Use request for Pour and Famous, to allow a 24-hour or Late-Night Business at 524 West Atlantic Avenue, to be open until 2:00AM for the inside portion of the restaurant, finding that the request is consistent with the Land Development Regulations and the policies of the Comprehensive Plan, **subject to conditions**.
- Move to recommend **denial** to the City Commission, a Conditional Use request for Pour and Famous, to allow a 24-hour or Late-Night Business at 524 West Atlantic Avenue to be open until 2:00AM for the inside portion of the restaurant, finding that the request is inconsistent with the Land Development Regulations and the policies of the Comprehensive Plan.
- Continue with direction.**

#### Public and Courtesy Notices

X \_Courtesy Notices were sent to:

- Delray Beach Chamber of Commerce
- Ebony Delray
- Lincoln Park
- West Settlers
- Paradise Heights

X Public Notice was posted at the property 7 calendar days prior to the meeting.

X Public Notice was mailed to property owners within a 500' radius 10 days prior to the meeting.

X Courtesy Notice was mailed to the HOA representative 10 days prior to the meeting.

X Public Notice was posted to the City's website 10 calendar days prior to the meeting.

X Public Notice was posted in the main lobby at City Hall 10 working days prior to the meeting.

X Agenda was posted at least 5 working days prior to meeting.