

LIVINGSTON & SWORD, P.A.

Attorneys At Law

September 4, 2022

Ray Tyner
Deputy Development Director
City of Palm Coast
Palm Coast, Florida 32164

Subject: JDI Palm Coast, LLC
Application for Rezoning to Master Planned Development (MPD)

Dear Mr. Tyner:

Please find enclosed an application to rezone the property described in the application to MPD. In addition to the application for rezoning, which is enclosed with this letter, the requirements for the application are being submitted along with this letter via the City's Online Development Services portal.

An application for rezoning requires an analysis based upon the review findings as outlined in subsection 2.05.05 and subsection 2.06.03 of the Unified Land Development Code. This letter is a preliminary analysis of the criteria and will be supplemented and finalized before the application is considered by the Planning and Land Development Regulation Board after we receive and respond to staff comments to the application.

The review findings and analysis for subsection 2.05.05 are as follows:

- A. The proposed development must not be in conflict with or contrary to the public interest.

Rezoning the property to MPD is not in conflict with or contrary to the public interest. The property is already subject to an existing PUD, which is being modified pursuant to the proposed Development Agreement. The proposed zoning entitlements and plan of development are compatible with the existing multi-family tower and consistent with the property's Mixed Use designation on the Future Land Use Map.

- B. The proposed development must be consistent with the Comprehensive Plan and the provisions of this LDC.

The property is within the Mixed Use future land use designation. The proposed zoning district is consistent with that designation as well as the relevant goals and objectives in the City of Palm Coast's comprehensive plans. The project

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proposes a mixture of residential and non-residential uses, including marina support facilities, residential and townhomes, as well as a hotel, restaurant and bar. The proposed densities and intensities for the project are consistent with Policy 1.1.1.3 and Objective 1.1.2 of the Future Land Use Element. Specifically, Policy 1.1.2.2 permits deviations from density and intensity standards "to promote and encourage creatively planned projects".

Objective 1.1.2 of the Future Land Use Element of the Comprehensive Plan ("FLUE") encourages the use of innovative land development regulations by permitting Master Planned Developments ("MPD") in any FLUM designation. Policy 1.1.1.3 allows for 20% of the total land area in the City with a Mixed Use Future Land Use Map (FLUM) designation to be residential and 33% of the residential units developed in these areas to occur at a density equal to or greater than 15 units per acre. The FLUE allows deviations in the permitted uses, intensities and densities on land zoned MPD.

The Harborside MPD proposes a maximum density greater than 15 units per acre. This is permitted because the property is designated Mixed Use on the FLUM, is already in the PUD zoning district under the existing PUD as recorded in Official Records Book 1253, Page 1924 (the "PUD") (which already permits residential density greater than 15 units per acre) and the pending application proposes to rezone the property to MPD. Policy 1.1.2.2 of the FLUE provides:

Permitted densities and intensities within a MPD shall generally follow those allowed within the corresponding zoning districts associated with the land use designation assigned to the property. Deviations from these density and intensity standards may be permissible in order to promote and encourage creatively planned projects and in recognition of special geographic features, environmental conditions, economic issues, or other unique circumstances.

First, it must be noted that this policy was already utilized for the entitlements approved in the existing PUD. Excerpts from the PUD are enclosed with this letter. Due to the justifications provided by the prior owner/developer, the City approved the PUD to allow for a deviation from the maximum Floor Area Ratio of 0.55 to 0.67. This permitted a project that combined multiple residential buildings with a "condominium hotel" and a significant intensity of non-residential uses along with the marina and supporting uses. To support the increased intensity of the project the prior developer constructed a stormwater system and 525 space parking structure. Unfortunately, after a single 8-story, 72-unit residential tower was constructed the market was impacted by the Global Financial Crisis and the remaining portions of the project were not developed.

The Harborside MPD proposes a creatively planned mixed use project with a reduction in the non-residential intensity and modest increase in the residential density. This will allow for a mixed use project that is financially feasible and fully utilizes the infrastructure already constructed pursuant to the PUD. The

increased density is justified under Policy 1.1.2.2 for the foregoing reasons and the following:

Promotes and Encourages Creatively Planned Projects

The Harborside MPD is a creatively planned mixed use project that includes a synergistic mix of uses including hotel, restaurant & bar, retail /ship store, office / dockmaster, marina with wetslips, fueling and ancillary supporting services, and sufficient density of residential uses to make the project financially feasible; particularly if hotel use ultimately proves to be infeasible.

Geographic/Natural Features

The project site was developed as a hotel and marina long before the City of Palm Coast existed. After the hotel exceeded its useful life and was demolished it was planned and significantly built out as one, if not the single most, dense master plans in the City of Palm Coast. The portions built to date include an 8-story residential building (believed to be the tallest building in the City) and a parking garage with 525 parking spaces (believed to be the only multi-level parking garage in the City). The PUD and resultant project were only possible by application of Policy 1.1.2.2. The parcel size and development area predated the incorporation of the City of Palm Coast, which must be taken into account when considering an appropriate use for this exceptionally unique location.

The unique, double-waterfront location, fronting both entrance to the saltwater canals from the Intracoastal Waterway ("ICW") and the ICW itself, is the perfect and only remaining location in the City to create walkable density at a level which complements surrounding existing uses on both sides of the ICW. The existing PUD and the elements of it which have been constructed are the most clear, convincing and substantial evidence that this location at the confluence of two navigable waterways offering direct access to the ICW plus views of the Atlantic Ocean at even moderate heights should be, and in fact already has been, approved and developed to a density in excess of 15 units per acre according to Policy 1.1.2.2. Projects in the immediate vicinity of the Harborside project are also more densely developed than is typically found elsewhere within either the City limits or Flagler County as a whole. For example, nearby and within the City limits there is an abundance of 4-story, tightly spaced residential buildings, including directly across Palm Harbor Parkway from the project site. The densely developed Yacht Harbor Village is directly across the ICW in unincorporated Flagler County.

Economic Issues

The City maximizes its benefit from the unique intersection of two navigable waterways via a mix of uses with an orientation around the waterfronts. However, mixed use developments are extremely expensive, complicated and time consuming – much more so than conventional single use development. The waterfront location of this site makes it both highly desirable and very expensive. Expensive to purchase, develop and maintain. Not merely expensive to purchase.

But also to develop and maintain. Far more expensive than other non-waterfront locations.

The existing and proposed mix of uses, marina, waterfront dining and the infrastructure and parking necessary to accommodate them are not now and have not historically been profitable endeavors for developers. They are not financially viable now nor are they likely to be in the foreseeable future in light of the enormous cost to develop and maintain without even considering the cost to acquire the underlying land. But these amenities provide a material public benefit and are enjoyed by the community at large as well as the residents and their guests of the mixed-use project. They create a sense of place, a neighborhood feel with authenticity. They create community. But they are also “money losers”. But with a thoughtful mix of uses and densities, they can become “loss leaders” such that the whole is greater than the sum of the parts.

To offset the unavoidably high cost of a mixed use project of this type, other financially viable uses must be developed. Otherwise, these amenities cannot be developed much less maintained for the life of the project. In the project location residential is the only use which is both appropriate and financially viable. More specifically, residential uses must be developed at a level necessary to attain “economies of scale” from both a development cost and operating cost perspective. Such economies of scale are not attainable on this site at a density of only 15 units per acre.

The 432 requested residential units (of which 72 exist today) is necessary to attain reasonable economies of scale in development costs – which are elevated due to the coastal, waterfront location and necessary sustainability measures including storm resistance. Similarly, the requested unit quantity is necessary to operate efficiently a first-class residential project without overburdening residents with excessive, unsustainable ongoing costs for repairs, maintenance and the like.

In order to feasibly develop a mixed-use project with some degree of public benefit in the form of waterfront dining and recreation, residential density as requested must be permitted because of the site-specific requirements of construction and the more general costs of operation.

Other Unique Circumstances

The application is to allow modifications to a previously approved mixed use project providing residential, hospitality, marina and outdoor recreation uses. To best bolster mixed-use projects, a sufficient residential density is necessary to provide stability and predictability to the overall plan from a use and activity standpoint. Commercial uses and users frequently come and go but residential uses are a constant, predictable, stabilizing element. A case in point is European Village, which has had material struggles over time with stability in its retail and other non-residential spaces. Additional residential uses provide sustainable

activity and pedestrian life to what may otherwise be perceived as a bit of a ghost town.

Finally, as noted above, the infrastructure constructed to accommodate the intensity permitted in the PUD by application of Policy 1.1.2.2 must be taken into account. These unique features of the project site, namely the stormwater infrastructure and parking garage, were constructed with the increased intensity allowed only because of Policy 1.1.2.2. Any deviation from the PUD plan should ensure that the existing capacity of this infrastructure is utilized both to prevent waste and to prevent an undue burden being placed on existing residents of the 72-unit residential tower who could be left to bear the lion's share of the cost to operate and maintain such immense infrastructure. The proposed Harborside MPD does just that by increasing the residential density as allowed by Policy 1.1.2.2 without sacrificing the mixed use nature of the project, which will also include the marina, marina supporting uses and a retail ships store, restaurants and bars, and a hotel if allowed by market conditions.

- C. The proposed development must not impose a significant financial liability or hardship for the City.

The proposed development will not impose any financial liability or hardship on the City. In fact, the development will contribute impact fees to offset the impacts on City infrastructure and services. After the property is developed it will also increase the residential and non-residential tax base of the City as well as provide additional sales tax revenue.

- D. The proposed development must comply with all other applicable local, state, and federal laws, statutes, ordinances, regulations, or codes.

Development of the property will be in compliance with all relevant laws and regulations as part of the development review and approval process.

The review findings and analysis for subsection 2.06.03 are as follows:

- A. Whether the rezoning is consistent with all adopted elements of the Comprehensive Plan and whether it furthers the goals and objectives of the Comprehensive Plan.

The requested rezoning is consistent with the property's Mixed Use future land use designation. It is also consistent with and furthers the goals and objectives of all relevant adopted elements of the City's Comprehensive Plan as explained in more detail above.

- B. Its impact upon the environment or natural resources.

The proposed development is within an existing mixed use development, which has already addressed environmental and natural resources on site and in

the immediate area. The proposed development avoids and minimizes impacts to these resources.

C. Its impact on the economy of any affected area.

The proposed development will have a positive impact on the economy of the affected area.

D. Its impact upon necessary governmental services such as schools, sewage disposal, potable water, drainage, fire and police protection, solid waste, or transportation systems.

The proposed development will contribute all applicable impact fees for sewage disposal, potable water, drainage, fire, police protection, solid waste, or transportation, less any credits for previously paid but unused capacity reservations for water and sewer. The residential components of the project will contribute impact fees for schools as well as any proportionate fair share mitigation obligation that may be required to address any student station needs created by the development.

E. Any changes in circumstances or conditions affecting the area.

The surrounding area is and remains planned as a mixed use area suitable for the proposed mixture of residential and non-residential uses.

F. Compatibility with proximate uses and development patterns, including impacts to the health, safety, and welfare of surrounding residents.

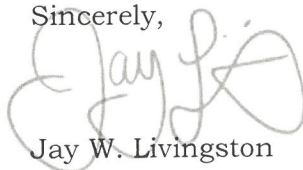
The proposed development is compatible with the surrounding uses and development patterns. The eastern portion of the property is limited to townhouse with higher density residential uses to the west. This will ensure compatibility with the existing multi-family tower and avoid any conflicts with the non-residential uses proposed for the western portion of the property. It will also avoid non-residential traffic in the residential areas of the project. The location for the proposed hotel, restaurant, bar and marina support facilities will further these compatibility goals while also ensuring commercial visibility from the adjacent Palm Harbor Parkway.

G. Whether it accomplishes a legitimate public purpose.

The proposed development will provide a mixture of residential and non-residential uses to serve the onsite residents as well as the neighborhood and City as a whole. It will also ensure the long term viability of the marina, which is and has been a landmark in the City of Palm Coast since before the incorporation of the City.

Please contact me if you have any questions, comments or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay W. Livingston". The signature is stylized with a large, looped "J" and a distinct "W".

Jay W. Livingston

CC: JDI Palm Coast, LLC



- GENERAL APPLICATION:**
- | | | |
|--|--|---|
| <input type="checkbox"/> Nonstatutory Land Division/Parcel Reconfiguration | <input checked="" type="checkbox"/> Rezoning | <input type="checkbox"/> Special Exception |
| <input type="checkbox"/> Subdivision Master Plan | <input type="checkbox"/> Preliminary Plat | <input type="checkbox"/> Vacating Plat |
| <input type="checkbox"/> Master Site Plan | <input type="checkbox"/> Nonresidential Controlling Master Site Plan | <input type="checkbox"/> Final Plat |
| <input type="checkbox"/> Technical Site Plan | <input type="checkbox"/> Site Plan Addition | <input type="checkbox"/> Development Order Modification |
| <input type="checkbox"/> Variance | <input type="checkbox"/> Parking Flexibility | |
| <input type="checkbox"/> Wireless Communication Facility (new structure) | | |

CD Plus Application #: _____ Application Submittal Date: _____
Fee Paid: \$ _____ Date of Acceptance: _____
Employee Name Accepting Application (print name): _____
Rejected on _____ Rejected by: _____
Reason for Rejection: _____

A. PROJECT NAME: Harborside

B. LOCATION OF SUBJECT PROPERTY (PHYSICAL ADDRESS): _____
15 Palm Coast Resort Blvd, Palm Coast, FL 32137, 120 Palm Coast Resort Blvd, Palm Coast, FL 32137

C. PROPERTY APPRAISER'S PARCEL NUMBER(s): _____
38-11-31-0000-01030-0000; 38-11-31-7103-000FD-0000

D. LEGAL DESCRIPTION: _____ Subdivision Name: N/A Section: 38-39 Block: N/A Lot
Phase Two, Bldg "D", Phase Three, Bldg "C", Phase One, Bldg "E"

E. SUBJECT PROPERTY ACRES / SQUARE FOOTAGE: 17.6426 acres in total

F. FUTURE LAND USE MAP DESIGNATION: Mixed Use EXISTING ZONING DISTRICT: MPD
OVERLAY DISTRICT: District 2

G. FLOOD ZONE: AE, X COMMUNITY PANEL NUMBER: 0129 DATE: 6/6/2018

H. PRESENT USE OF PROPERTY: Air / Marina (2000); Condo Parking Garage (2804)

I. DESCRIPTION OF REQUEST / PROPOSED DEVELOPMENT (MAY ATTACH ADDITIONAL SHEETS): _____
MPD / Mixed-Use Development

J. PROPOSED NUMBER OF LOTS: 5 lots (1-5) + 1 tract (A)

K. CHECK APPROPRIATE BOX FOR SITE PLAN:

- ☐ Tier 1 (up to 40,000 sq. ft. / 40 units)
☐ Tier 2 (up to 100,000 sq. ft. / 100 units)
☒ Tier 3 (exceeding 100,000 sq. ft. / 100 units)

L. LIST BELOW ANY APPLICATIONS CURRENTLY UNDER REVIEW OR RECENTLY APPROVED ASSOCIATED WITH THIS APPLICATION.
N/A

M. WATER/SEWER PROVIDER: City of Palm Coast

N. IS THERE AN EXISTING MORTGAGE? ☒ Yes ☐ No

General Application (sheet 1 of 2)

**OWNER:**

Name: JDI Palm Coast LLC
 Mailing Address: P.O. Box 64
 Little Rock, AR 72203
 Phone Number:
 E-mail Address:

APPLICANT / AGENT:

Name: Livingston & Sword, P.A.
 Mailing Address: 391 Palm Coast Pkwy SW, #1
 Palm Coast, FL 32137
 Phone Number: 386-439-2945
 E-mail Address: jay.livingston314@gmail.com

MORTGAGE HOLDER:

Name: Chambers Bank
 Mailing Address: P.O. Box 609
 Danville, AR 72833
 c/o: Philip Alexander
 Phone Number: 479-495-4625
 E-mail Address: philipalexander@chamber-bank.com

ENGINEER OR PROFESSIONAL:

Name: CPH, Inc.
 Mailing Address: 520 Palm Coast Pkwy SW
 Palm Coast, FL 32137 c/o
 Jason Kellogg
 Phone Number: 386-445-6569
 E-mail Address: jkellogg@cphcorp.com

PLANNER:

Name:
 Mailing Address:
 Phone Number:
 E-mail Address:

TRAFFIC ENGINEER:

Name:
 Mailing Address:
 Phone Number:
 E-mail Address:

SURVEYOR:

Name:
 Mailing Address:
 Phone Number:
 E-mail Address:

LANDSCAPE ARCHITECT:

Name:
 Mailing Address:
 Phone Number:
 E-mail Address:

ATTORNEY:

Name: Livingston & Sword, P.A.
 Mailing Address: 391 Palm Coast Pkwy SW, #1
 Palm Coast, FL 32137
 Phone Number: 386-439-2945
 E-mail Address: jay.livingston314@gmail.com

DEVELOPER OR DOCKMASTER:

Name:
 Mailing Address:
 Phone Number:
 E-mail Address:

I HEREBY CERTIFY THAT ALL INFORMATION ON THIS APPLICATION IS CORRECT:
 Signature of owner OR person authorized to represent this application

Signature(s)

Printed or typed name(s)

NOTARY: This instrument was acknowledged before me on this 31 day of May, 2022 byJay Livingston who is/are personally known to me or who has/have produced

as identification.

R. K. Lewis

Signature of Notary Public, State of Florida



(SE) Arlusty GOODWIN
 MY COMMISSION # HH 254380
 EXPIRES: June 8, 2028

General Application (sheet 2 of 2)

9.3 Parking.

Development Type	Off street Parking
Hotel Condominium	One space per room ($209 \times 1 \text{ space} = 209 \text{ spaces}$) Total: 209 spaces
Resort Condominium Units	<ul style="list-style-type: none"> One and one half space per two (2) and three (3)-br units ($162 \text{ 3-br units} \times 1.5 = 243$); Two spaces per four (4) br units $7 \text{ 4-br units} \times 2 = 14$; Total: 257 spaces
Hotel related activities	4 spaces per 1000 square feet (188 spaces) to include hotel and harbor master employees <ul style="list-style-type: none"> $47,000 \text{ SF} / 1,000 \text{ SF} \times 4 = 188$ Total: 188 Spaces
Total Required for all uses:	654 Spaces

9.4 Maximum Impervious Surface Ratio ("ISR") – The maximum ISR for the Project shall be 0.70.

9.5 Maximum Floor Area Ratio ("FAR") – The maximum FAR for the Project shall be 0.67, FAR is defined as the total horizontal floor area of a building based on exterior dimensions and applied to all full stories designed or intended for occupancy or use, but excluding open or screened porches and entries, attached or detached structures that enclose mechanical or electrical equipment, attic areas with a headroom of less than 7 feet, parking structures, and basement space where the ceiling is not more than an average of 48 inches above the finished grade elevation of the lot.

The underlying Mixed Use Future Land Use Map designation allows a maximum FAR of 0.55. An increase to 0.67 is permissible under Comprehensive Plan Future Land Use Element Policy 1.1.2.2, which states:

- Permitted densities and intensities within a PUD shall generally follow those allowed within the corresponding zoning districts associated with the land use designation assigned to the property. Deviations from these density and intensity standards may be permissible in order to promote and encourage creatively planned projects and in recognition of special geographical features,

environmental conditions, economic issues, or other unique circumstances.

The FAR for the Project is consistent with Future Land Use Element Policy 1.1.2.2 of the City of Palm Coast Comprehensive Plan in that the Project:

- Promotes and encourages a creatively planned icon resort project.
- Recognizes the special and unique location of the site at the "intersection" of Club House Drive and the Intracoastal Waterway, and near the Palm Coast Parkway Bridge. As such, it is the only non-highway oriented hotel, conference and meeting facility in the City.
- Recognizes the need to update the hotel facility and amenities, including conference and meeting space, to attract business guests to the City, which will provide economic benefits to City businesses.
- Recognizes the need to update the hotel facility and amenities to attract tourists, which will also provide economic benefits to City businesses.
- Minimizes adverse impacts to the environment through creatively-designed landscaping and lighting design.
- Enhances the City's overall quality of life.

Further, under Future Land Use Element Policy 1.1.1.3, up to 25 percent of the land area within the Mixed Use designation citywide may be developed at an intensity greater than 0.55 FAR.

9.6 Finished Floor Elevations - The minimum finished floor elevations for livable heated or cooled area shall be at least one (1) foot above the site's 100-year flood elevation. Garage structures and unlivable spaces, may be constructed at or above the site's 100-year flood elevations, contingent upon provisions being made to allow inflow and outflow of surface water in the unlivable areas.

9.7 Administrative Deviations - The Planning Manager for the City may administratively approve deviations up to ten (10) percent of the criteria contained herein. Deviations of greater than ten (10) percent of the criteria contained herein may be approved by the Planning and Land Development Review Board (PLDRB); provided, however, that administrative deviations to ISR and FAR maximum standards may not be granted.

10.0 Permits and Certificates of Occupancy

Immediately upon the issuance of a Development Order for a Phase of horizontal construction and upon receipt of a bond for that Phase's site improvements, the City will accept applications for Building Permit(s) for specific buildings or facilities to be constructed in that phase, so as to permit simultaneous horizontal and vertical construction, provided the Developer has obtained the necessary State