



AGENDA REPORT
September 5, 2019

Marker 24 Marina, LLC; and Marker 24 Development, LLC, request a CUP for Mitigating a Non-Conforming Commercial Marina in an RU-1-11 zoning classification. (19PZ00080) (District 2)

SUBJECT:

Marker 24 Marina, LLC; and Marker 24 Development, LLC, request a modification to an approved CUP for Mitigating a Non-Conforming Commercial Marina in an RU-1-11 zoning classification. The property is 5.97 acres, located on the west side of South Banana River Drive, approximately 200 feet north of Orris Avenue. (1357, 1360, and 1385 South Banana River Drive; and 1880 West Virginia Avenue) (19PZ00080) (District 2)

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to consider a modification to an approved CUP for Mitigating an Non-Conforming Commercial Marina, in an RU-1-11 zoning classification.

SUMMARY EXPLANATION and BACKGROUND:

The applicant is seeking a modification to an approved CUP (Conditional Use Permit) for mitigating a nonconforming use for a 104-berth marina. The new request contemplates the southeast corner of the site for dry storage and marina services and removal of two areas in the northeast and western portions of the site, totaling 2.91± acres, for incorporation into a residential subdivision application separate from this request. Consequently, the proposed CUP would apply to 5.97± acres, reduced from 8.88± acres.

This new CUP application accounts for the use of 104 slips (18 dry and 86 wet), expansion of an existing commercial building from 1,478 square feet to a 2-story 2,214 square-foot building, 45 parking spaces (combination of paved and stabilized), a relocated dumpster pad southeast of the commercial building, a parking lot, an approximate 5,300 square-foot covered boat slip area, a pump-out station located at the north end of the north/south marina dock, proposed relocation of the boat ramp to be constructed next to the marina office, the retention of a boat lift at the southeast area of the marina, the creation of a proposed five-foot wide wooden boardwalk along the eastern basin's edge, a proposed five-foot wide sidewalk easement and 10-foot wide right-of-way easement along South Banana River Drive east of the four residential lots being removed from the CUP,

and continuation of a proposed site plan to develop a bath/restroom facility in the northwest portion of the site.

Under the prior application, 13PZ-00008, the applicants stated they would provide 67 parking spaces. The applicant has currently proposed 45 parking spaces to meet the proposed needs of the project due to the reduction of live-aboard parking needs. The County's parking code only requires 44 parking spaces. Nine of the proposed parking spaces appear to be in an area that may be typically gated and locked. Parking lot layout and drive aisle width will need to be evaluated during the site plan process. Forty-four spaces would be required for the uses described in the proposed CUP. Staff has requested, but not received a traffic analysis certified by professional engineer. Sec. 62-3606 (b)(1)(b) requires that building expansions meet parking requirements for additional floor area.

Such CUP (Conditional Use Permit) may be: 1) approved subject to the conditions of Section 62-1937; 2) approved subject to the conditions of 62-1937 and conditions imposed by the Board above and beyond the requirements of Section 62-1937; or 3), denied.

The Board may also wish to consider timing for required conditions in relation to proposed uses and site planning, permitting, and certificates of occupancy issuance for those improvements prior to allowed use. The Board may wish to consider whether the availability of 9 parking spaces located in an area that may be typically gated and locked creates a parking deficiency impacting the surrounding residential area.

On August 19, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval based on the proposed conditions submitted by the applicant with the additions of the existing southern privacy fence to be replaced with a wall, and the modifications to Conditions 13 & 14 that there be no docking of boats on the boardwalk, and that a new one-lane boat ramp shall not increase capacity and shall not be constructed until after the existing boat ramp is removed.

ATTACHMENTS:

Description

- Administrative Policies**
- Staff Comments**
- GIS Maps**
- Applicant Proposed Conditions 08/19/19**
- Concept Plan Submitted 08/12/19**
- Landscape Plan Submitted 08/07/19**
- Concept House Submitted 08/07/19**
- West to East Rendering 08/19/19**
- Traffic Analysis 08/19/19**
- East to West Rendering 08/19/19**
- Public Comment**
- Planning and Zoning Board Minutes 08/19/19**
- Addendum to Staff Report 8-22-19**

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

Administrative Policy 1

The Brevard County zoning official, planners and the director of the Planning and Development staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

Administrative Policy 2

Upon Board request, members of the Brevard County Planning and Development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;
 2. actual development over the immediately preceding three years; and
 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

Criteria:

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with, (a), all written land development policies set forth in these administrative policies; and (b), the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element, and transportation elements of the comprehensive plan.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Administrative Policy 8

These policies, the staff analysis based upon these policies, and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits, and vested rights determinations.

Section 62-1151(c) of the Code of Ordinances of Brevard County directs, "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application.”

CONDITIONAL USE PERMITS (CUPs)

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

- (c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
 - b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
 - c. Noise levels for a conditional use are governed by Section 62-2271.

- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

"The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.”

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

DEFINITIONS OF CONCURRENCY TERMS

Maximum Acceptable Volume (MAV): Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

Current Volume: Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

Volume with Development (VOL W/DEV): Equals Current Volume plus trip generation projected for the proposed development.

Volume/Maximum Acceptable Volume (VOL/MAV): Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV): Ratio of volume with development to the Maximum Acceptable Volume.

Acceptable Level of Service (CURRENT LOS): The Level of Service at which a roadway is currently operating.

Level of Service with Development (LOS W/DEV): The Level of Service that a proposed development may generate on a roadway.

Resolution 19PZ00080

On motion by Commissioner Lober, seconded by Commissioner Pritchett, the following resolution was adopted by a unanimous vote:

WHEREAS, Marker 24 Marina, LLC; and Marker 24 Development, LLC have requested a CUP (Conditional Use Permit) for Mitigating a Non-Conforming Commercial Marina, in an RU-1-11 (Single Family Residential) zoning classification, on property described as: See Attached; and

WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved with the following conditions: 1.) Remove all portions of the residential lots and portions of Marker 24 Community from the scope of the CUP; 2.) The use of the property shall be limited as described herein; 3.) The use of the property shall be limited to office space with light retail and bathroom/laundry facility, its existing use as a commercial/recreational marina; 4.) Existing six-foot masonry wall located on the north property line as depicted on the sketch will remain in place and shall be maintained; 5.) The marina shall be limited to 104 slips and the marina shall no longer allow full-time liveaboards except for two slips for security purposes only/i.e. dockmaster; 6.) Existing south privacy fence will be replaced with six-foot concrete masonry wall; 7.) No hardening or bulkheading of basin walls unless all applicable permits are obtained from regulating authorities; 8.) A new bath/laundry facility will be constructed on the north end of the basin next to main dock; 9.) No expansion of the basin unless all applicable permits are obtained from regulating authorities; 10.) Any expansion must meet all fire and safety codes; 11.) The owner shall maintain the private sewer system currently in place, which is for marina use only, and any bathroom or laundry facility will be connected to private sewer system; Additionally, the owner shall maintain all existing pump out sites currently on site; 12.) The owner will be required to pay all applicable impact fees upon submission of any application for a building permit if required; 13.) A five-foot wide wooden boardwalk will be installed along the east side of basin to connect the main dock parking to the marina office facility, no boat docking shall be permitted on the boardwalk; 14.) A new one-lane boat ramp will be constructed next to marina office. The new boat ramp shall not increase capacity, and shall not be constructed until after the existing ramp is removed; 15.) The existing boatyard will remain for service and maintenance of boats during the hours of 8:00 a.m. to 5:00 p.m.; 16.) The owner shall be responsible for cleaning and maintenance of the basin culverts and baffles on the northern portion of the basin marina property; 17.) The hours of operation of the marina office shall be from 6:00 a.m. to 9:00 p.m. and said hours shall be posted; 18.) The owner shall require that all activities comply with County performance standards. The owner shall post that no motor repairs shall be performed after 9:00 p.m.; 19.) The owner shall maintain the adjacent bascule bridge owned and operated by the owner in good working condition, and shall cooperate with any requests by the County and/or FDOT (Florida Department of Transportation) to inspect the bridge; 20.) The owner shall provide educational information, including in-water signs and an educational kiosk regarding manatee protection and no wake zones as coordinated with appropriate State and County agencies; 21.) Relocation of existing dumpster shall be southeast of marina office; and

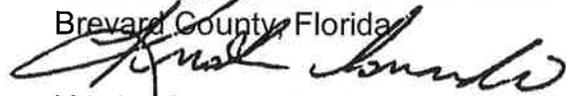
WHEREAS, the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested CUP for Mitigating a Non-Conforming Commercial Marina, in an RU-1-11 zoning classification, be approved with the following conditions: 1.) Remove all portions of the residential lots

and portions of Marker 24 Community from the scope of the CUP; 2.) The use of the property shall be limited as described herein; 3.) The use of the property shall be limited to office space with light retail and bathroom/laundry facility, its existing use as a commercial/recreational marina; 4.) Existing six-foot masonry wall located on the north property line as depicted on the sketch will remain in place and shall be maintained; 5.) The marina shall be limited to 104 slips and the marina shall no longer allow full-time liveaboards except for two slips for security purposes only/i.e. dockmaster; 6.) Existing south privacy fence will be replaced with six-foot concrete masonry wall; 7.) No hardening or bulkheading of basin walls unless all applicable permits are obtained from regulating authorities; 8.) A new bath/laundry facility will be constructed on the north end of the basin next to main dock; 9.) No expansion of the basin unless all applicable permits are obtained from regulating authorities; 10.) Any expansion must meet all fire and safety codes; 11.) The owner shall maintain the private sewer system currently in place, which is for marina use only, and any bathroom or laundry facility will be connected to private sewer system; Additionally, the owner shall maintain all existing pump out sites currently on site; 12.) The owner will be required to pay all applicable impact fees upon submission of any application for a building permit if required; 13.) A five-foot wide wooden boardwalk will be installed along the east side of basin to connect the main dock parking to the marina office facility, no boat docking shall be permitted on the boardwalk; 14.) A new one-lane boat ramp will be constructed next to marina office. The new boat ramp shall not increase capacity, and shall not be constructed until after the existing ramp is removed; 15.) The existing boatyard will remain for service and maintenance of boats during the hours of 8:00 a.m. to 5:00 p.m.; 16.) The owner shall be responsible for cleaning and maintenance of the basin culverts and baffles on the northern portion of the basin marina property; 17.) The hours of operation of the marina office shall be from 6:00 a.m. to 9:00 p.m. and said hours shall be posted; 18.) The owner shall require that all activities comply with County performance standards. The owner shall post that no motor repairs shall be performed after 9:00 p.m.; 19.) The owner shall maintain the adjacent bascule bridge owned and operated by the owner in good working condition, and shall cooperate with any requests by the County and/or FDOT (Florida Department of Transportation) to inspect the bridge; 20.) The owner shall provide educational information, including in-water signs and an educational kiosk regarding manatee protection and no wake zones as coordinated with appropriate State and County agencies; 21.) Relocation of existing dumpster shall be southeast of marina office. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of September 5, 2019.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



Kristine Isnardi, Chair
Brevard County Commission

As approved by the Board on September 5, 2019.

ATTEST:



SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – August 19, 2019

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and

Legal Description

A parcel of land lying west of the west right-of-way line of South Banana River Drive, as said right-of-way is shown on the plat of Banana River Drive subdivision recorded in Plat Book 3 at Page 11 of the Public Records of Brevard County, Florida, the same being a portion of tracts 15, 16, and 17, all as shown on the aforesaid plat of Banana River Drive subdivision, said parcel being more particularly described as follows: Begin at the intersection of the west right-of-way line of South Banana River Drive with the north line of said Tract 15; thence run S89deg46'33"W along the north line of said tract 15 for 390.90 feet; thence leaving the north line of said Tract 15 run south for 66.80 feet to a point on the edge of the Banana River Marina as defined by this legal description, prepared by this surveyor; thence run the following courses and distances along the edge of the Banana River Marina; N89deg59'44"W for 25.73 feet; N28deg05'42"W for 24.88 feet; N46deg15'20"W for 11.77 feet; N63deg35'41"W for 10.92 feet; N85deg56'21"W for 11.71 feet; S76deg32'34"W for 10.18 feet; S53deg01'59"W for 11.13 feet; S35deg56'31"W for 13.71 feet; S14deg45'51"W for 27.95 feet; S00deg00'18"E for 59.65 feet; S05deg28'18"E for 45.58; S03deg30'18"W for 75.05 feet; S10deg18'40"E for 34.12 feet; S27deg38'05"E for 35.88 feet; S80deg06'18"E for 31.30 feet; N64deg03'45"E for 41.37 feet; N25deg09'55"E for 26.48 feet; S78deg42'04"E for 7.49 feet; S06deg00'54"E for 54.67 feet; S00deg12'10"E for 69.33 feet; S15deg41'57"E for 41.71 feet; S05deg59'09"E for 25.89 feet; S33deg32'10"W for 21.77 feet; N81deg46'51"W for 20.58 feet; N32deg29'44"W for 28.78 feet; N73deg21'25"W for 32.53 feet; S85deg03'34"W for 25.30 feet; S35deg10'16"W for 23.51 feet; S01deg45'00"E for 25.30 feet; S06deg02'49"W for 42.35 feet; S06deg23'13"E for 19.43 feet; S48deg01'01"E for 29.18 feet; S75deg32'58"E for 40.04 feet; N61deg47'17"E for 44.87 feet; N82deg11'14"E for 21.47 feet; S47deg34'18"E for 19.59 feet; S25deg18'34"E for 49.73 feet; S55deg58'23"E for 55.94 feet; thence leaving the edge of the Banana River Marina run S00deg45'35"W for 32.96 feet to the south line of said Tract 17; thence run N89deg45'56"E for 311.52 feet along the aforesaid south line to the west right-of-way line of South Banana River Drive thence run N02deg38'04"W for 328.36 feet; thence run S87deg29'43"W for 115.28 feet to the edge of the Banana River Marina, thence run the following courses and distances along the edge of the Banana River Marina; N70deg32'56"W, 23.41 feet; S77deg31'46"W for 35.11 feet; N79deg30'12"W for 10.22 feet; N19deg48'14"W for 14.34 feet; N06deg27'23"E for 13.03 feet; N18deg06'58"W for 14.97 feet; N19deg25'05"E for 11.55 feet; N42deg31'07"E for 10.96 feet; N56deg56'50"E for 11.53 feet; N65deg30'00"E for 16.15 feet; N50deg55'27"E for 21.86 feet; N35deg31'41"E for 13.06 feet; N04deg55'50"E for 9.99 fee; N06deg01'41"W for 11.42 feet; N02deg48'51"W for 204.60 feet to a point that is 47 feet south of and parallel with the north line of said Tract 15; thence run N89deg46'33"E along a line that is parallel with the north line of said Tract 15 for 125.11 feet to the west right-of-way line of South Banana River Drive thence run N02deg38'04"W along said west right-of-way line for 47.04 to the point of beginning of this parcel of land, containing 6.04 acres more or less. Located on the west side of S. Banana River Drive, approx. 200 ft. north of Orris Ave. (1357, 1360, and 1385, S. Banana River Dr.; and 1880 West Virginia Ave, Merritt Island)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. **The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.**



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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 Viera, Florida 32940
 (321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS
 19PZ00080**

**Marker 24 Marina, LLC; and Marker 24 Development, LLC
 CUP (Conditional Use Permit) for Mitigating a Non-Conforming Use (Commercial Marina)
 in an RU-1-11 (Single-Family Residential) Zoning Classification**

Tax Account Number: 3018251
 Parcel I.D.: 25-37-06-CX-00-15.08
 Location: 1357, 1360, and 1385 South Banana River Avenue; and 1880 West Virginia Avenue, Merritt Island (District 2)
 Acreage: 5.97 acres

Planning and Zoning Board: 08/19/19
 Board of County Commissioners: 09/05/19

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	RU-1-11 with CUP for mitigating a non-conforming marina	Remove CUP over west and northeast portions of the site and add new area at the southeast corner of the site
Potential*	104-berth marina	104-berth marina
Can be Considered under the Future Land Use Map	Yes, Residential 4	Yes, Residential 4

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

Background and Purpose of Request

The applicant is seeking a modification to an approved CUP for mitigating a nonconforming use for a 104-berth marina. The purpose of the request is to allow for a new residential subdivision design, with 15 lots on the west side of the marina (1.86± acres), and four proposed lots on the east side fronting Banana River Drive (1.05± acres). These residential areas are proposed for removal from the previously approved 2013 CUP for marina. The overall CUP (Conditional Use Permit) area would be reduced from 8.88± acres to 5.97± acres.

The four residential lots proposed on the east side of the marina separate the northerly parking area, access to the existing docks, and restrooms from the remainder of the marina, necessitating an additional driveway access to Banana River Drive along the northerly boundary of the site and four new driveways for the residential lots. There is no internal vehicular access shown from the northerly portion of the marina to the southerly portion.

This new CUP application accounts for the use of 104 slips (18 dry and 86 wet), expansion of an existing commercial building from 1,478 square feet to a 2-story 2,214 square-foot building, 45 parking spaces (combination of paved and stabilized), a relocated dumpster pad southeast of the commercial building, a parking lot, an approximate 5,300 square-foot covered boat slip area, a pump-out station located at the north end of the north/south marina dock, proposed relocation of the boat ramp to be constructed next to the marina office, a new fuel dock to be installed to provide fuel to marina tenants and community boaters, the retention of a boat lift at the southeast area of the marina, the creation of a proposed five foot wide wooden boardwalk along the eastern basin's edge, a proposed five foot wide sidewalk easement and 10 foot wide right-of-way easement along S Banana River Drive east of the four residential lots being removed from the CUP, and continuation of a proposed site plan to develop a bath/restroom facility in the northwest portion of the site. Building permit **19BC03571** for replacement/upgrade of the office building has been issued, but does not include second story improvements. Building permit **19BC14291** for the bathroom is currently under review.

Under the prior Board approval, **13PZ-00008**, the applicant was seeking to install a private sewer with a force main system and to relocate and expand existing bathroom and laundry facilities for the occupants of the marina. The Board granted approval of this request contingent upon 17 identified conditions. The new owners wish to modify several of the previously identified conditions to allow for the new separate subdivision plan and marina plan. The proposed CUP language identifies 21 conditions.

The previously approved conditions and revisions or deletions are noted as follows:

1. The use of the property shall be limited as described herein;
Applicant agreed in proposed condition #2.
2. The use of the property shall be limited to office space and a bathroom/laundry facility, its existing use as a commercial/recreational marina, and potential single-family residential development with no other commercial uses on the west side of South Banana River Drive;

Applicant revisions:

Remove all portions of the residential lots and portions of Marker 24 Community from the scope of the CUP (proposed condition #1).

The use of the property shall be limited to office space with light retail and bathroom/laundry facility, its existing use as a commercial/recreational marina (proposed condition #3).

A new bath/laundry facility will be constructed on the north end of the basin next to main dock (proposed condition #8)

A five foot wide wooden boardwalk will be installed along the east side of basin to connect the main dock parking to the marina office facility (new condition #13).

Existing private boat ramp will be removed and a new private boat ramp will be constructed adjacent to the marina office (proposed condition #14).

3. A 6-foot masonry wall shall be constructed along the north property line as depicted on the sketch plan, per Section 62-1937. The wall must be completed prior to use of the bathroom/laundry facility;

Applicant revisions:

Existing six foot masonry wall located on the north property line as depicted on sketch will remain in place and shall be maintained (proposed condition #4).

Existing south privacy fence will be maintained by owner (proposed condition #6)

4. The marina shall be limited to 104 slips;
Applicant revision: The marina shall be limited to 104 slips and the marina shall no longer allow full-time liveaboards except for two slips for security purposes only/i.e. dockmaster (proposed condition #5).
5. No more than 50 of the slips may be utilized as full-time liveaboards;
Applicant revision: The marina shall be limited to 104 slips and the marina shall no longer allow full-time liveaboards except for two slips for security purposes only/i.e. dockmaster (proposed condition #5).
6. No hardening or bulkheading of the basin wall unless all applicable permits are obtained from regulating authorities;
Applicant agreed in proposed condition #7.
7. No expansion of the basin unless all applicable permits are obtained from regulating authorities;
Applicant agreed in proposed condition #9.
8. Any expansion must meet all fire and safety codes;
Applicant agreed in proposed condition #10.
9. The owner shall be responsible for cleaning of the basin culvert and baffles on the northern portion of the basin marina property;
Applicant agreed in proposed condition #16.
10. The owner shall install a private sewer system connected to the county system for marina use only. Any continued use of the old bathrooms shall be connected to the sewer system unless the old bathrooms are removed;
Applicant revisions:

A new bath/laundry facility will be constructed on the north end of the basin next to the main dock (proposed condition #8).

The owner shall maintain the private sewer system currently in place, which is for marina use only, and any bathroom or laundry facility will be connected to private sewer system; Additionally, the owner shall maintain all existing pump out sites currently on site (proposed condition #11).

11. The owner will be required to pay all applicable impact fees upon submission of an application for a building permit if required;
Applicant agreed in proposed condition #12.

Staff's comments: House Bill 207, effective July 1, 2019, prohibits local governments from requiring payment of impact fees before the date of building permit issuance. Therefore, this condition should be deleted.

12. The owner shall either remove the existing laundry facility upon the installation of the new facility or connect the existing laundry facility to the private sewer system;
Applicant revisions:

A new bath/laundry facility will be constructed on the north end of the basin next to the main dock (proposed condition #8).

The owner shall maintain the private sewer system currently in place, which is for marina use only, and any bathroom or laundry facility will be connected to private sewer system; Additionally, the owner shall maintain all existing pump out sites currently on site (proposed condition #11).

13. The hours of operation of the marina office if moved to the CUP property shall be from 6:00 a.m. to 9:00 p.m. and shall be posted;
Applicant revisions:

The hours of operation of the marina office shall be from 6:00 a.m. to 9:00 p.m. and said hours shall be posted (proposed condition #17).

The existing boatyard to remain for service and maintenance of boats during the hours of 8:00 a.m. to 5:00 p.m (proposed condition #15).

14. The owner shall require that all activities comply with county performance standards. The owner shall post that no motor repairs shall be performed after 9:00 p.m.;
Applicant agreed in proposed condition #18.

15. The owner shall maintain the adjacent bascule bridge owned and operated by the owner in good working condition, and shall cooperate with any requests by the County and/or Florida Department of Transportation to inspect the bridge;
Applicant agreed in proposed condition #19.

16. The owner shall provide educational information, including in-water signs and an educational kiosk regarding manatee protection and no wake zones as coordinated with appropriate State and County agencies;
Applicant agreed in proposed condition #20.

17. The Board further stipulated that the trash dumpster remain in its current location.

Applicant revision: Relocation of existing dumpster shall be southeast of marina office (proposed condition #21).

Land Use Compatibility

The subject property retains the RES 4 (Residential 4) FLU (Future Land Use) designation. The RU-1-11 (Single-Family Residential) zoning is consistent with the RES 4 FLU designation.

Future Land Use Element Policy 1.7 addresses the RES 4 land use designation that affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to 4 units per acre, except as otherwise may be provided for within the Future Land Use Element.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element, outlined in the Administrative Policies.

Environmental Considerations

Natural Resources Management (NRM) recommends that the following be added to Condition 13 of the proposed CUP conditions, "No boat docking shall be permitted on the boardwalk."

NRM recommends that Condition 14 of the proposed CUP conditions be modified to read, "A new one-lane boat ramp will be constructed next to marina office. The new boat ramp shall not increase capacity, and shall not be constructed until after the existing ramp is removed."

NRM did not review the landscaping plan provided by the applicant. Consistency with Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection, will be completed at the time of application for development order or permit.

If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan, or permit submittal. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Preliminary Transportation Concurrency

The subject property is within the concurrency management segment of South Banana River Drive lying south of State Road 520, which has a Maximum Acceptable Volume (MAV) of 12,480 trips per day, a Level of Service (LOS) of E, and currently operates at 20.16% of capacity daily. The maximum development potential from the proposed rezoning does not increase the proposed trip generation with a current number of 308 trips per day and 20 trips during the PM Peak hour. There is no deficiency in LOS.

Applicable Land Use Policies

This site was approved under **13PZ-00008**, which encompassed an area of 8.88 +/- acres and was adopted September 2013. The site had a prior SUP (Special Use Permit) approved under

Z-2398 that allowed a marina to include sales of gasoline, groceries, bait, tackle, and sundries provided that an approved fence was erected on the north line and on the west line south to Jaren Avenue. The subject property was approved for marina use through the approval of an SUP for a marina in February 1969. Subsequently, all SUP provisions were removed from the County Code in August of 1973. At that time, any legal, active use pursued under the SUP became a nonconforming use by definition pursuant to section 62-1181.

The surrounding properties are zoned RU-1-11 (Single-Family Residential) to the north, south and west, with BU-2 (Retail, Warehousing, and Wholesale Commercial) to the east across South Banana River Drive. The RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet, and a 1,100 square-foot minimum house size. The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. This area of Merritt Island is characterized by detached single-family residential uses and an existing commercial marina located east of South Banana River Drive.

There have not been any zoning changes in the last 5 years within a half-mile radius of the subject property.

The Zoning Code defines a marina as a facility or structure which provides mooring, docking, anchorage, fueling, repairs or other services for watercraft. Docks accessory to single-family uses are exempt from this definition. A commercial/recreational marina is defined further as facilities having greater than 30 slips or any marina which has fueling, wastewater pump-out or repair facilities serving recreational interests.

Special Considerations for Conditional Use Permit

The Board should consider the compatibility of the proposed CUP (Conditional Use Permit) pursuant to Section 62-1151(c) and to Section 62-1901. Section 62-1901 provides that the approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. **The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved.** Applicant responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1937, Marinas.

This request should be evaluated in the context of **Section 62-1937** which governs marina uses which states in, specifically 62-1937 (1) through (4):

All applications for a marina must meet the following conditions:

- (1) The site for a marina must be at least one acre in size.

- (2) When a site abuts a residential zone, it shall be screened by a masonry wall with a minimum height of six feet.
- (3) The applicant shall verify with the Natural Resources Management Department that the site meets all locational criteria outlined in Objective 5 of the Coastal Element of the Comprehensive Plan.
- (4) The application shall include a conceptual layout of the marina indicating the maximum allowable number of slips. The layout shall include the applicant's statement of affirmation indicating that the final site design must comply with all applicable land development and natural resource regulations.

The Board may wish to consider whether any additional operational requirements should be imposed as a part of this request.

The staff comments for **13PZ-00008** reported the following nonconforming conditions:

1. Given the single-family residential character of the area, the Board may wish to limit the subject property to a commercial marina use, and only the uses included in the request, with no additional BU-1 (General Retail Commercial) commercial development or uses not associated with the primary marina use and to specifically exclude additional retail, hotel, bar and restaurant uses on the site.
2. In 1969 when the property was granted an SUP (Special Use Permit) for the marina, it was stipulated that a "fence is erected on the north line and on the west line south of Jaren Avenue". Current land development regulations would require a commercial marina to construct a masonry wall where commercial uses abut residentially zoned property. The existing fence was erected and has been maintained; however, the Board may wish to stipulate that the addition of a masonry wall would address any concerns that might become a nuisance to the surrounding residential neighborhood. Alternatively, if a wall is not desired by the neighborhood and the existing fence is adequately maintained, the Board could require that the site be improved with current required landscaping buffers along the property lines, buffering the neighborhood from any potential nuisances.
3. The site is developed with wet and dry slips as well as a metal building that is approximately 1,478 square feet, an approximately 5,300 square-foot roof-covered boat slip, a boat ramp and a boat lift with associated asphalt parking and storage. Under current parking standards for a marina, the property does not have enough parking. However, any improvements allowed under the approval of this conditional use permit can require parking be brought into conformance with County parking regulations. Buffering, screening, waste disposal and stormwater management are also areas where the existing marina does not conform to current county land development regulations. The applicant has submitted a conceptual plan of the proposed improvements and associated parking. The applicant has provided 45 parking spaces, only 36 are proposed to be paved. Based on the 104 wet/dry slips, the boat hoist/ramp, two liveaboards and the proposed 2,214 square feet of building, 44 parking spaces would be required. Recognition of the existing nonconforming condition of the parking should be noted.

4. Sign mitigation shall not be permitted in any circumstance. Any new signage would require permitting and compliance with the County's sign regulations.

Section 62-1901(c)(1)(a): The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.

Applicant Response: The proposed conditional use will not result in an adverse impact on nearby properties. It is a significant improvement from the previous years and status of the property will enhance property values nearby.

Staff Observation: Any noise generated in conjunction with the operation of the business would need to comply with the performance standards of Section 62-2251 through 62-2272, including the noise regulations of Section 62-2271.

Section 62-1901(c)(1)(b): The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

Applicant Response: The proposed use will be compatible with the historical use and character of nearby properties.

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant Response: The proposed use will cause a substantial increase in the value of abutting residential property.

Section 62-1901(c)(2)(a): Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed

traffic, or to maintain the road through a maintenance bond or other means as required by the board of county commissioners.

Applicant Response: Ingress and egress to the property and proposed structures shall be adequate to serve the proposed uses without burdening adjacent and nearby uses and will be built to applicable standards.

Staff Observation: Staff has requested, but not received a traffic analysis. The four residential lots proposed on the east side of the marina separate the northerly parking area, access to the existing docks, and restrooms from the remainder of the marina, necessitating an additional driveway access to Banana River Drive along the northerly boundary of the site and four new driveways for the residential lots. There is no internal vehicular access shown from the northerly portion of the marina to the southerly portion of the new plan.

Section 62-1901(c)(2)(b): The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.

Applicant Response: The noise, glare, order, smoke or other emissions from the conditional use shall be consistent with the previously approved conditional use and shall not interfere with the use of nearby property.

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

Applicant Response: Noise levels shall comply with section 62-2271.

Section 62-1901(c)(2)(d): The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.

The conditional use shall not cause the adopted level of service to be exceeded.

Section 62-1901(c)(2)(e): The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.

Applicant Response: The conditional use shall not cause the adopted level of service to be exceeded.

Section 62-1901(c)(2)(f): The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

Applicant Response: The proposed conditional use shall have existing screening and buffering to eliminate and reduced substantially sight, noise or adverse impacts the nearby properties. There are no adverse impacts to nearby properties.

Staff Observation: The proposed CUP (Conditional Use Permit) conceptual plan indicates areas of buffering. NRM has not had an opportunity to review these changes to the application. A

waiver request **19WV00009**, has been submitted for the 15' perimeter buffer tract, allowing for an easement and potential stormwater within the easement.

Section 62-1901(c)(2)(g): Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to, traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

Applicant Response: Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety or nearby properties.

Section 62-1901(c)(2)(h): Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.

Applicant Response: Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community and they shall not adversely affect the use and enjoyment of the Residential character of the area.

Staff Observation: The previously approved CUP limited marina office hours from 6 a.m. to 9 p.m. with no motor repairs after 9 p.m. The existing boatyard is proposed to remain in use from 8 a.m. to 5 p.m.

Section 62-1901(c)(2)(l): The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

Applicant Response: No additional request in height shall exceed 35 feet and the proposed height shall be consistent with the current use of the property.

Section 62-1901(c)(2)(j): Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Applicant Response: Section 62-1901(c)(2)(j) shall be complied with and actual/anticipated parking shall not be greater than that which is currently approved.

*Staff Observation: In the previous zoning application, **13PZ-00008**, the plan provided 67 parking spaces, the proposed plan indicates 45 spaces and 44 would be required given the associated uses for this CUP.*

For Board Consideration

The applicant is seeking a modification to an approved CUP (Conditional Use Permit) for mitigating a nonconforming use for a 104-berth marina. The new request contemplates the southeast corner of the site for dry storage and marina services and removal of two areas in the northeast and western portions of the site, totaling 2.91± acres, for incorporation into residential

subdivision. Consequently, the proposed CUP would apply to 5.97± acres, reduced from 8.88± acres.

This new CUP application accounts for the use of 104 slips (18 dry and 86 wet), expansion of an existing commercial building from 1,478 square feet to a 2-story 2,214 square-foot building, 45 parking spaces (combination of paved and stabilized), a relocated dumpster pad southeast of the commercial building, a parking lot, an approximate 5,300 square-foot covered boat slip area, a pump-out station located at the north end of the north/south marina dock, proposed relocation of the boat ramp to be constructed next to the marina office, a new fuel dock to be installed to provide fuel to marina tenants and community boaters, the retention of a boat lift at the southeast area of the marina, the creation of a proposed five foot wide wooden boardwalk along the eastern basin's edge, a proposed five foot wide sidewalk easement and 10 foot wide right-of-way easement along S Banana River Drive east of the four residential lots being removed from the CUP, and continuation of a proposed site plan to develop a bath/restroom facility in the northwest portion of the site.

Such CUP (Conditional Use Permit) may be: 1) approved subject to the conditions of Section 62-1937; 2) approved subject to the conditions of 62-1937 and conditions imposed by the Board above and beyond the requirements of Section 62-1937; or 3), denied.

Sec. 62-3606 (b)(1)(b) requires that building expansions meet parking requirements for additional floor area. Under the prior review of **13PZ-00008**, the applicants stated they would provide 67 parking spaces. The Board may wish to consider whether the currently proposed 45 parking spaces are sufficient to meet the proposed needs of the project or whether the previously approved conditions of 67 spaces should be retained. Nine of the proposed parking spaces appear to be in an area that may be typically gated and locked. Parking lot layout and drive aisle width will need to be evaluated during the site plan process. Forty-four spaces would be required for the uses described in the proposed CUP. Staff has requested, but not received a traffic analysis.

The Board may also wish to consider timing for required conditions in relation to proposed uses and site planning, permitting, and certificates of occupancy issuance for those improvements prior to allowed use.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Conditional Use Permit (CUP) Review & Summary
Item # 19PZ00080

Applicant: Yane Zand and Peter Black

CUP Request: Revise CUP for mitigating a non-conforming use

Note: Applicant wants to remove proposed residential subdivision from marina zoning action and update conditions

P&Z Hearing Date: 08/05/19

BCC Hearing Date: 09/05/19

Tax ID No: 3018251

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Substantial Natural Resources Land Use Issues:

NRM recommends that the following be added to Condition 13 of the proposed CUP conditions, "No boat docking shall be permitted on the boardwalk."

NRM recommends that Condition 14 of the proposed CUP conditions be modified to read, "A new one-lane boat ramp will be constructed next to marina office. The new boat ramp shall not increase capacity, and shall not be constructed until after the existing ramp is removed."

NRM did not review the landscaping plan provided by the applicant. Consistency with Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection, will be completed at the time of application for development order or permit.

If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan, or permit submittal. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Summary of Mapped Natural Resources Present on the Subject Property:

- Surface Waters of the State
- Floodplain
- Indian River Lagoon Septic Overlay

- Hydric Soils

Land Use Comments:

Surface Waters of the State

The dredged marina basin on the property on the west side of Banana River Drive is classified as a Class III water body. The basin is connected to the Banana River (Aquatic Preserve) to the east. A 25-foot surface water protection buffer is required along the marina basin. Development within the shoreline protection buffer is subject to criteria within Conservation Objective 3, its subsequent policies, and the Surface Water Protection Ordinance.

The site plan depicts the addition of paved parking in the marina facility. Per Chapter 62, Article X, Division 3, entitled Surface Water Protection, Section 62-3666(17), for impervious areas that existed prior to September 8, 1988, and exceed the allowable impervious area, redevelopment which does not increase the amount of impervious surfaces within or threaten the integrity of the surface water protection buffer will be allowed. Proposed redevelopment may occur in the existing vertical envelope or may be relocated within the surface water protection buffer to achieve a net impact reduction. At a minimum, staff will assess the following mitigating factors:

- a. The applicant shall not increase the amount of impervious surfaces within the surface water protection buffer, regardless of location within the buffer.
- b. New impervious areas shall be located parallel with, or landward of, the waterward-most pre-existing impervious areas.
- c. Stormwater management is required in accordance with subsection 62-3666(3).

Per Section 62-3668(5), for projects or parcels with mangroves, mangrove alteration shall be in compliance with applicable federal and state regulations.

Manatee Protection Plan

Condition 14 of the applicant's proposed conditions states, "Existing private boat ramp will be removed and a new private boat ramp will be constructed adjacent to the marina office." Marker 24 Marina (f.k.a. Banana River Marina) is an existing facility as defined in the MPP. The marina currently has a one-lane boat ramp located on the east side of the marina basin, approximately 110 feet north of the covered boat slip.

The marina is located adjacent to the Banana River Aquatic Preserve (Boat Facility Siting Zone A). Per MPP Section II.C.3., Boat Ramps, facilities located within Boat Facility Siting Zone A are not considered preferable for additional boat ramp siting due to the high number of habitat features present. However, the applicant proposes to remove the existing boat ramp; and a new ramp will be constructed to the south adjacent to the marina office.

The relocation of the boat ramp to the south is consistent with the MPP. The new ramp cannot increase boat launching capacity (i.e., must be one lane). The construction of the new ramp is not permissible until the existing ramp is removed. NRM recommends that Condition 14 of the proposed CUP conditions be modified to read, "A new one-lane boat ramp will be constructed adjacent to the marina office. The new boat ramp shall not increase capacity, and shall not be constructed until after the existing ramp is removed."

The applicant proposes to construct a five-foot sidewalk along the east side of the marina basin. NRM recommends that the following be added to Condition 13 of the proposed CUP conditions, "No boat docking shall be permitted on the boardwalk."

Basin Dredging

Per Brevard County Comprehensive Plan (Comp Plan), Conservation Element, Policy 3.7, Maintenance dredging on existing navigational channels or within existing marinas may be allowed upon review by the County. Dredging activities may require US Army Corps, State and/or local permits, and all agencies shall be contacted prior to any dredging or sedimentation/muck removal activities.

Indian River Lagoon Septic Overlay

The site is mapped within the Indian River Lagoon Septic Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. The use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required, if applicable.

Floodplain

The marina basin is mapped as being within a Special Flood Hazard Area as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. The basin is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Additionally, the marina basin is located within the Coastal High Hazard Area. Impervious area increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Hydric Soils

The subject parcel has mapped hydric soils, Wabasso sand, as shown on the USDA Soil Conservation Service Soils Survey map; an indicator that wetlands may exist. However, wetlands have not been identified on the parcel.

Landscape Requirements

Condition 8 states, "A new bath/laundry facility will be constructed on the north end of the basin next to main dock." Please note that the approved site plan for the bathroom facility (18SD00017) included a landscaping plan. Landscaping shall be installed at time of bathroom construction.

The CUP Exhibit dated August 5, 2019, shows additional parking areas that will require heat islands for parking spaces and vehicular use areas.

NRM did not review the landscaping plan provided by the applicant dated February 4, 2019 for Marker 24 Development common areas. Consistency with Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection, will be completed at the time of application for development order or permit.

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation, canopy coverage requirements, and vegetative buffering requirements that provide visual and physical screening between incompatible uses to reduce the effects of glare, noise and incompatible activities from commercial [marina] uses when they abut existing residential uses.

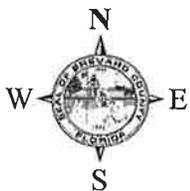
Protected Species

Federally and/or state protected species may be present on properties with aquifer recharge soils. Should any protected species be present, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service prior to any plan, permit submittal, or development activity, including land clearing, as applicable.

LOCATION MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC

19PZ00080



1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/13/2019

— Buffer

■ Subject Property

ZONING MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC

19PZ0080



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels
-  Zoning

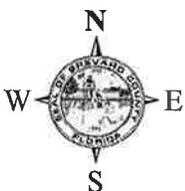
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/13/2019

FUTURE LAND USE MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC

19PZ00080



1:4,800 or 1 inch = 400 feet

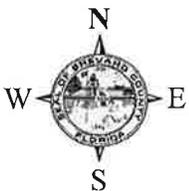
- Subject Property
- Parcels

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Produced by BoCC - GIS Date: 8/13/2019

AERIAL MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC
19PZ00080



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2019

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

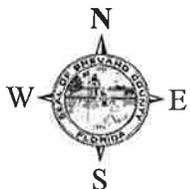
Produced by BoCC - GIS Date: 8/13/2019

 Subject Property
 Parcels

NWI WETLANDS MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC

19PZ00080



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/13/2019

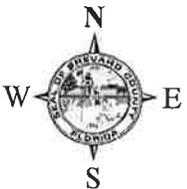
National Wetlands Inventory (NWI)

- | | |
|--|---|
|  Estuarine and Marine Deepwater |  Freshwater Pond |
|  Estuarine and Marine Wetland |  Lake |
|  Freshwater Emergent Wetland |  Other |
|  Freshwater Forested/Shrub Wetland |  Riverine |
|  Subject Property | |
|  Parcels | |

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC

19PZ00080



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/13/2019

SJRWMD FLUCCS WETLANDS

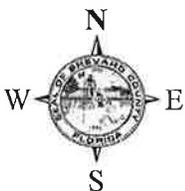
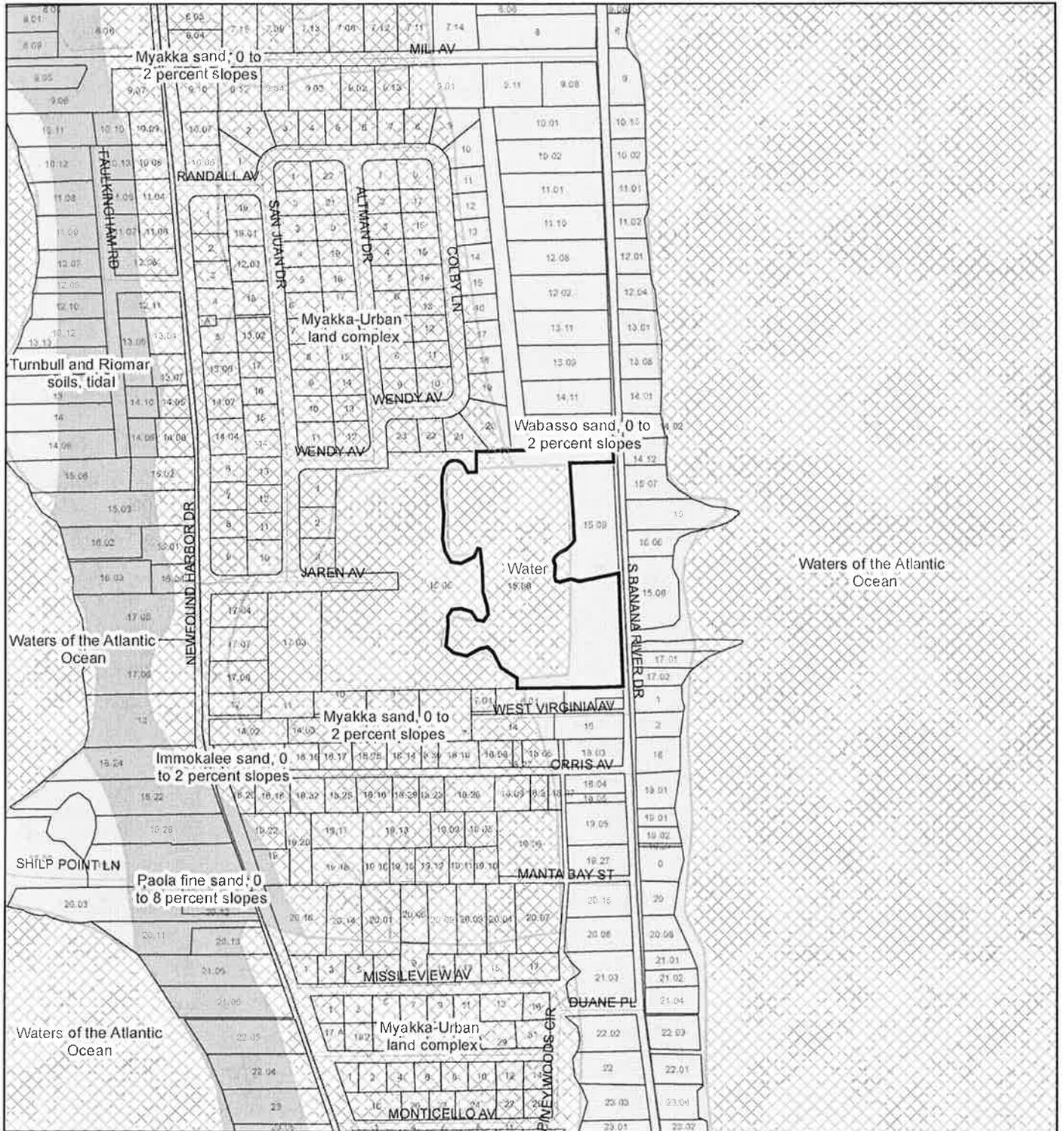
-  Wetland Hardwood Forests - Series 6100
-  Wetland Coniferous Forest - Series 6200
-  Wetland Forested Mixed - Series 6300
-  Vegetated Non-Forested Wetlands - Series 6400
-  Non-Vegetated Wetland - Series 6500

 Subject Property  Parcels

USDA SCSSS SOILS MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC

19PZ00080



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/13/2019

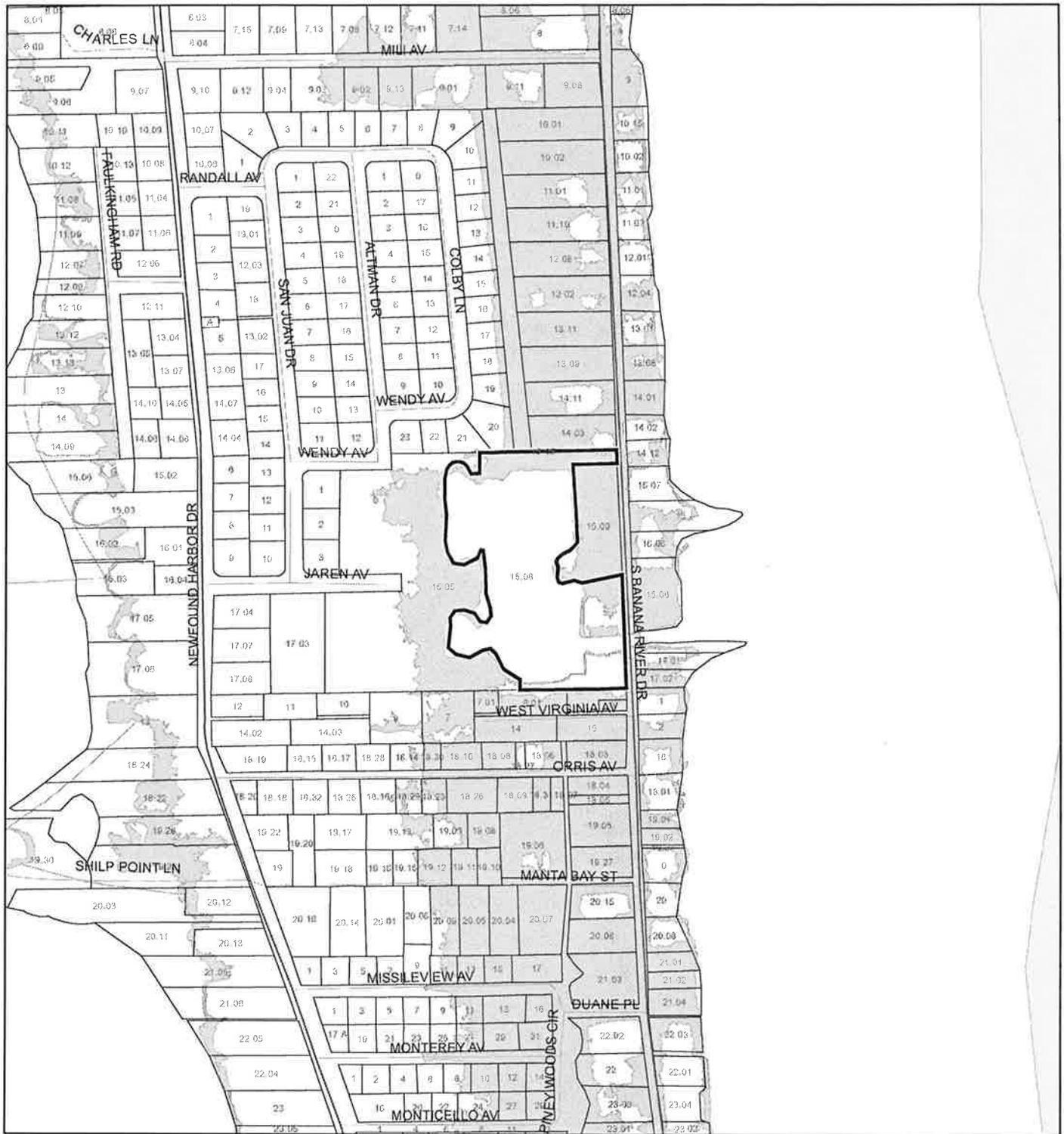
USDA SCSSS Soils

-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None
-  Subject Property
-  Parcels

FEMA FLOOD ZONES MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC

19PZ00080



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/13/2019

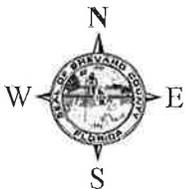
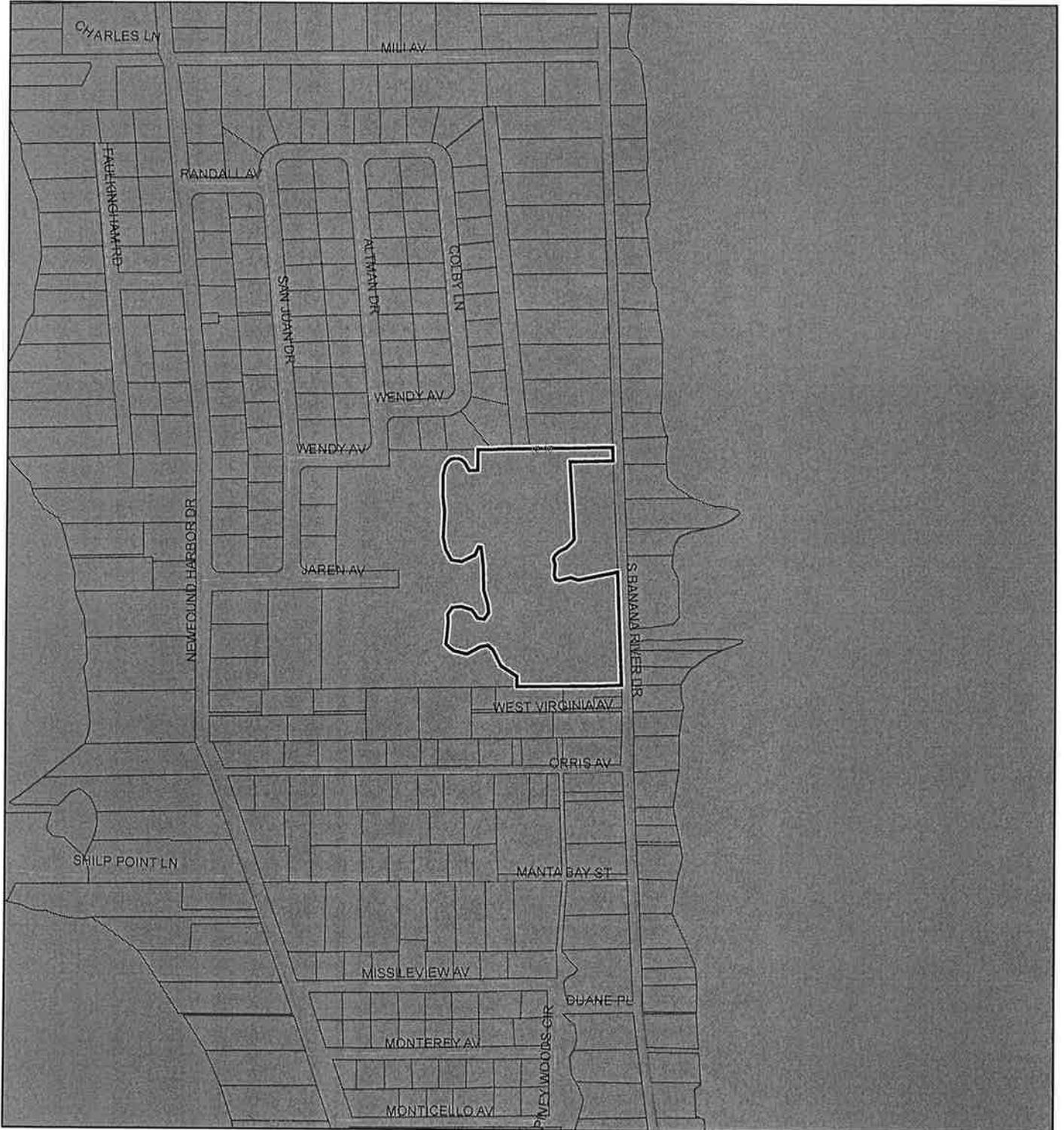
FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| A | AO | X |
| AE | Open Water | X Protected By Levee |
| AH | VE | |
| 0.2 Percent Annual Chance Flood Hazard | | |
| 0.2 Percent Annual Chance Flood Hazard Contained in Channel | | |
| Subject Property | | |
| | Parcels | |

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC

19PZ00080



1:4,800 or 1 inch = 400 feet

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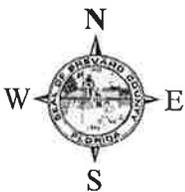
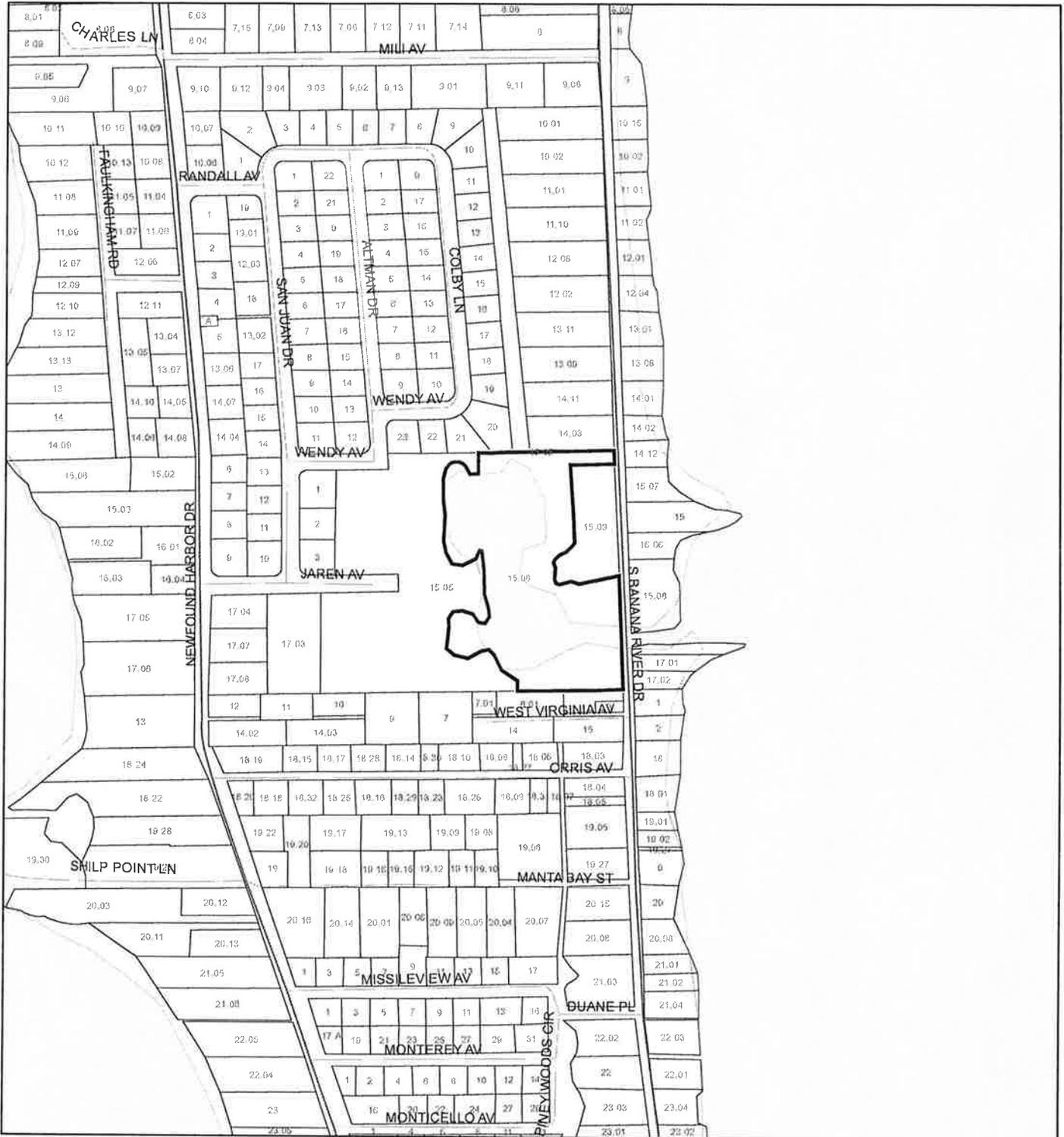
Produced by BoCC - GIS Date: 8/13/2019

-  Subject Property
-  Parcels
- Septic Overlay**
-  40 Meters
-  60 Meters
-  All Distances

EAGLE NESTS MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC

19PZ00080



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/13/2019

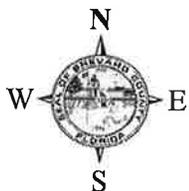
 Subject Property

 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC
19PZ00080



1:4,800 or 1 inch = 400 feet

- Subject Property
- Parcels
- Scrub Jay Occupancy

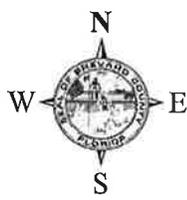
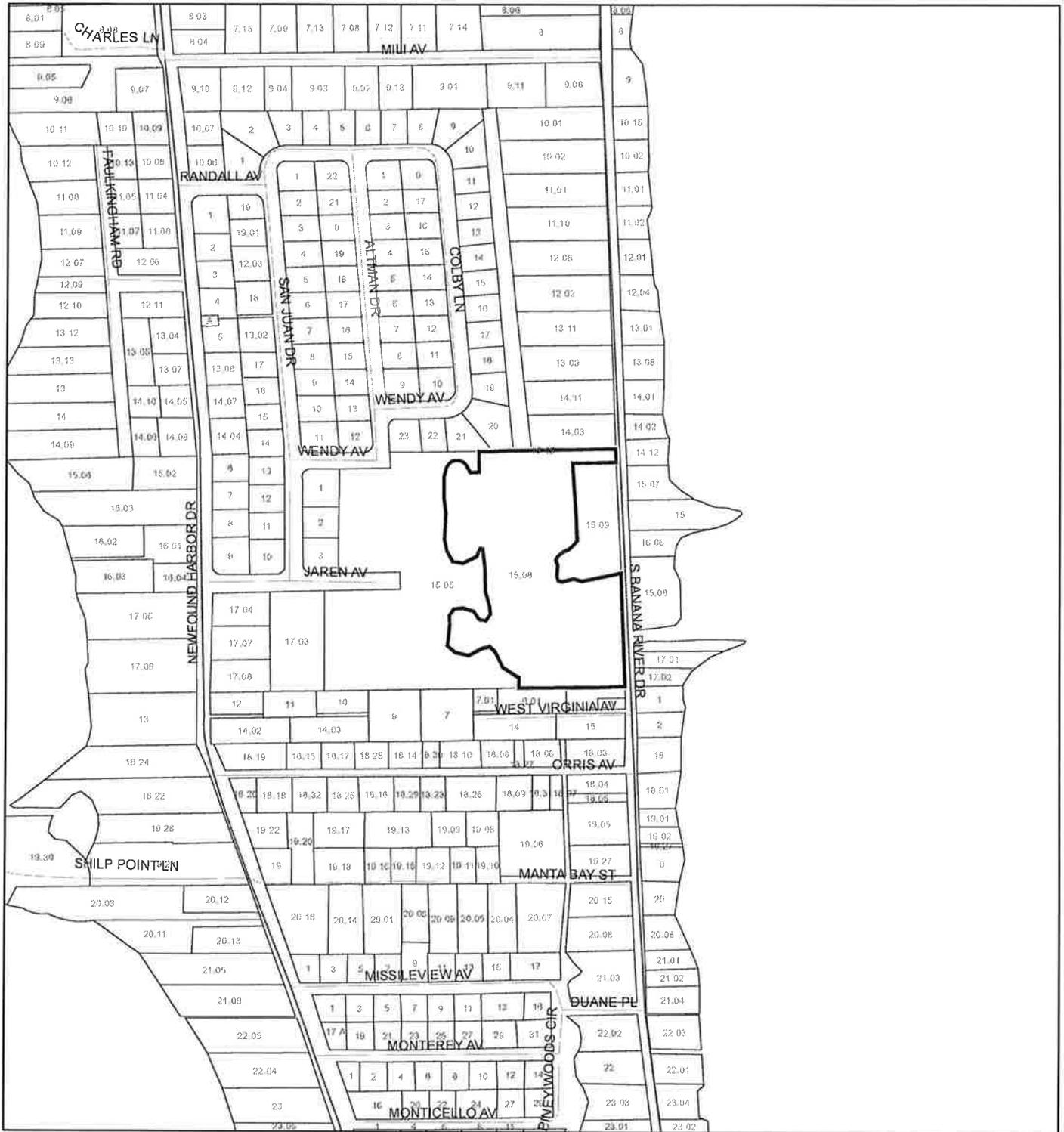
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/13/2019

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MARKER 24 MARINA, LLC; AND MARKER 24 DEVELOPMENT, LLC

19PZ00080



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/13/2019

SJRWMD FLUCCS Upland Forests

- Upland Coniferous Forest - 4100 Series
- Upland Hardwood Forest - 4200 Series
- Upland Mixed Forest - 4300 Series
- Tree Plantations - 4400 Series

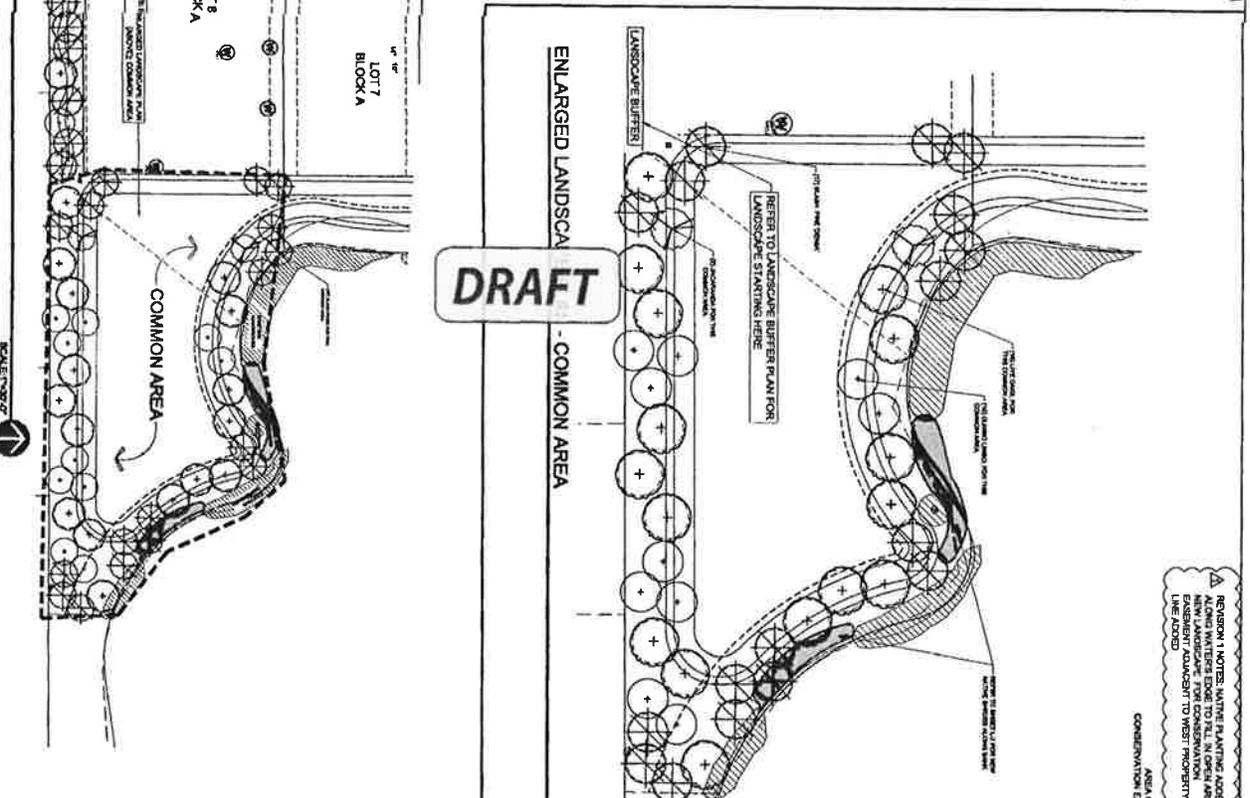
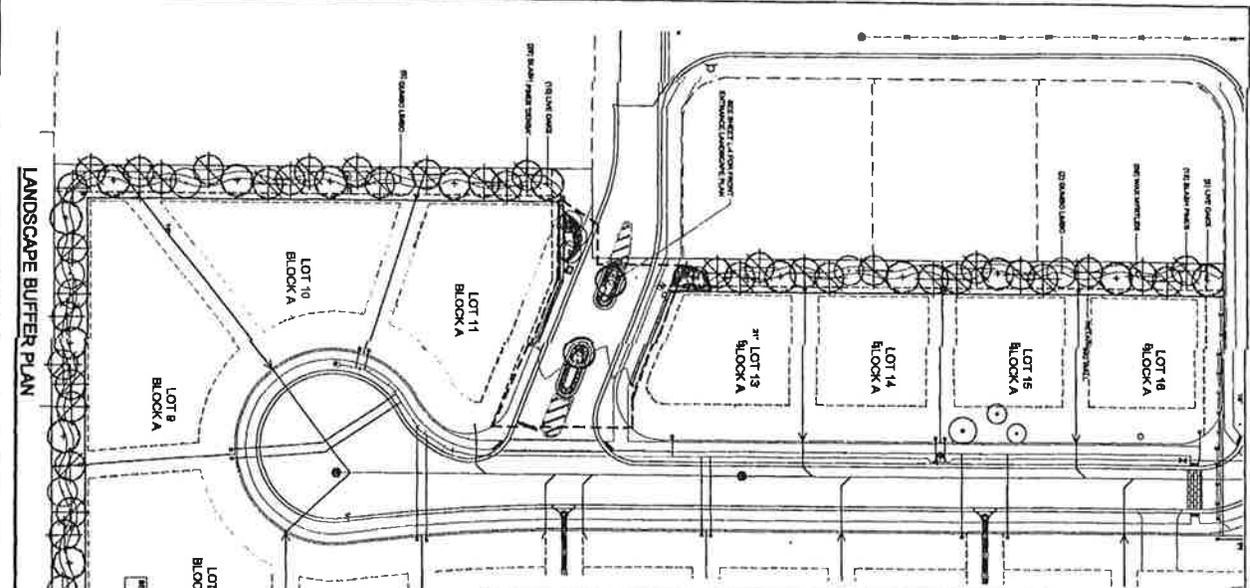
Subject Property

Parcels

Proposed Conditional Use Permit 6/5/2019

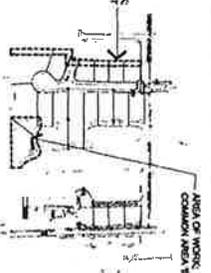
Marker 24 Marina LLC

CUP for the existing historical use of a commercial/recreational marina; and approved the following conditions agreed to by the applicant. 1) Remove all portions of the residential lots and portions of Marker 24 Community from the scope of CUP; 2) The use of the property shall be limited as described herein; 3) The use of the property shall be limited to office space with light retail and bathroom/laundry facility, its existing use as a commercial/recreational marina; 4) Existing six foot masonry wall located on the North property line as depicted on sketch will remain in place and shall be maintained; 5) The marina shall be limited to 104 slips and the Marina shall no longer allow full-time liveaboards except for 2 slips for security purposes only/i.e. dockmaster; 6) Existing South privacy fence will be maintained by owner; 7) No hardening or bulkheading of basin walls unless all applicable permits are obtained from regulating authorities; 8) a new bath/laundry facility will be constructed on the north end of the basin next to main dock; 9) No expansion of the basin unless all applicable permits are obtained from regulating authorities; 10) Any expansion must meet all fire and safety codes; 11) The owner shall maintain the private sewer system currently in place, which is for marina use only, and any bathroom or laundry facility will be connected to private sewer system; Additionally, the owner shall maintain all existing pump out sites currently on site; 12) The owner will be required to pay all applicable impact fees upon submission of any application for a building permit if required; 13) A five foot wide wooden boardwalk will be installed along the East side of basin to connect the main dock parking to the marina office facility ; 14) Existing private boat ramp will be removed and a new private boat ramp will be constructed adjacent to the marina office; 15) The existing boatyard will remain for service and maintenance of boats during the hours of 8:00 a.m. to 5:00 p.m; 16)The owner shall be responsible for cleaning and maintenance of the basin culverts and baffles on the northern portion of the basin marina property; 17) The hours of operation of the marina office shall be from 6:00 a.m. to 9:00 p.m. and said hours shall be posted; 18) The owner shall require that all activities comply with County performance standards. The owner shall post that no motor repairs shall be performed after 9:00pm; 19) The owner shall maintain the adjacent bascule bridge owned and operated by the owner in good working condition, and shall cooperate with any requests by the County and/or FDOT to inspect the bridge; 20) The owner shall provide educational information, including in-water signs and an educational kiosk regarding manatee protection and no wake zones as coordinated with appropriate State and County agencies; 21) Relocation of existing dumpster shall be Southeast of marina office;



DRAFT

REVISION 1 NOTES: WHITE PLANTING ADDED ALONG INTERIOR EDGE TO FILL IN OPEN AREAS. FURNISHMENT ADJUSTMENT TO WEST PROPERTY LINE ADDED.



TREE LEGEND

⊕	EXISTING PINE TO REMAIN
R ⊕	RELOCATED EXISTING OAK FROM LOT #2 SOUTH BANANA RIVER (N = RELOCATED)
⊕	NEW PLANTED SOUL WHITE MAJESTIC & NEW PLANT CONDORES ALONG INTERIORS EDGE
⊕	EXISTING NATIVE CONDORES TO BE PRESERVED

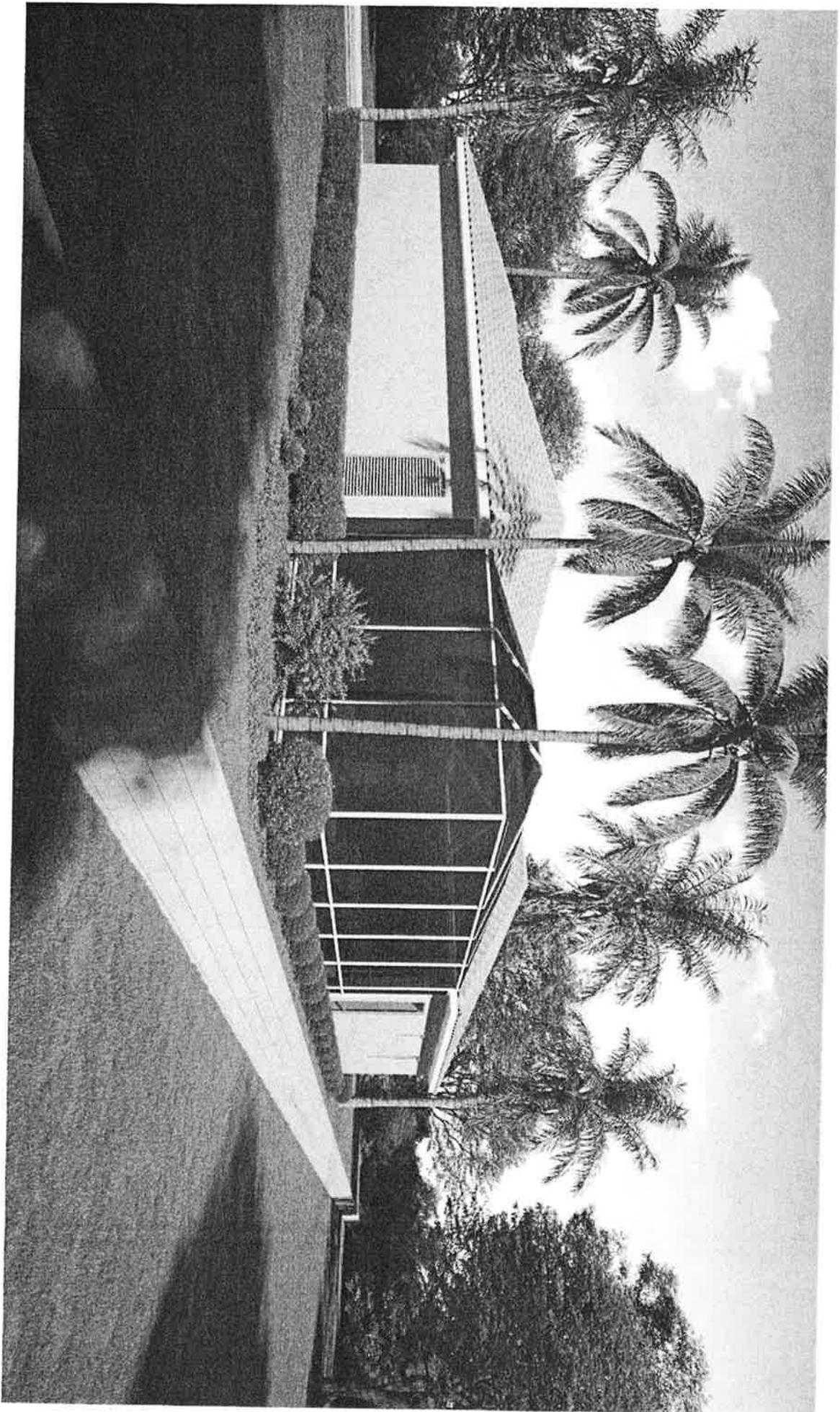
ABBREVIATIONS

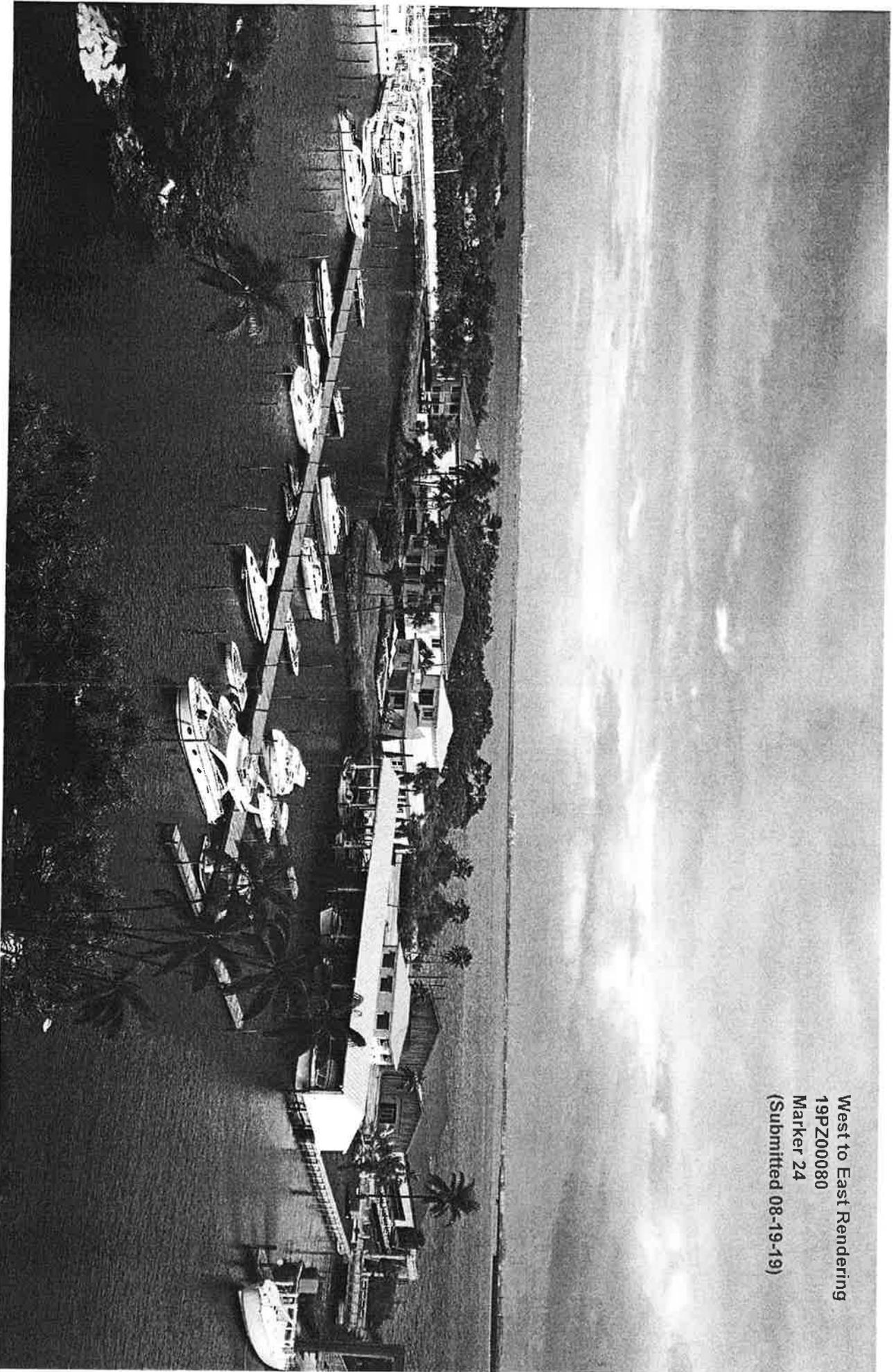
CONC.	CONCRETE
CIV.	CIVIL ENGINEER
EX.	EXISTING
FIN.	FINISHED FLOOR ELEVATION
FR.	FLOOR FINISH
FTL	FULL TO MAKE
9"	9" WALL
CONC.	CONCRETE
HT.	HEIGHT
LT.	LENGTH
OK.	OKAYED
PLT.	PLANTING
RF.	ROOF FINISH
TR.	TRUCK

DATE	02-04-19
DESIGNER	S.H.
CHECKER	S.K.
PROJECT	MARKER 24 DEVELOPMENT
SCALE	AS SHOWN

Marker 24 Development
1200 South Banana River Drive
Merritt Island, FL 32952

Stuart Hall ASLA
LANDSCAPE ARCHITECTS
4425 GORRISON ROAD
MERRITT ISLAND, FL 32952
TEL: (321) 449-1222
WWW.SHALL.COM





West to East Rendering
19PZ00080
Marker 24
(Submitted 08-19-19)

- Average daily trip reduction from proposed revised CUP

The current CUP allowed for 50 liveaboards even though there were as many as 62 liveaboards upon our taking title to the marina.

Although there is no specific average daily trip allocation for liveaboards, the closest comparable we find is for a mobile home, which specifies 4.99 average daily trips.

This 4.99 daily trip allocation x 50 previously allowed liveaboards comes to 249.50 daily trips off and on South Banana River Drive based on the existing CUP allocation.

The proposed CUP application, which removes the 50+ liveaboards, but also adds 4 single family residences along south banana river drive represents an additional 38 daily trips on and off South Banana River Drive. That is based on an average daily trip of 9.52 per single family residence

Therefore, the proposed CUP application represents an overall reduction in average daily trips of 211 trips (from 249.5 daily trips to 38 daily trips), which is a significant reduction in overall traffic impact along South Banana Drive.

Thank you

Yane Zana

Managing Member

Marker 24 Development LLC



st to West Rend
19P200680
Marker 24
(Submitted 08-19-19)

August 11, 2019

Brevard County Planning and Development
Commission
Building A, Room 114
2725 Judge Fran Jaimeson Way
Viera, Florida 32940

jennifer.jones@brevardfl.gov (for inclusion in Meeting Packet: Local Planning Agency/Planning and Zoning Board)

Re: ID# 19PZ00080

Application for Conditional Use Permit
Marker 24 Marina, LLC and Marker 24 Development, LLC

Dear Commissioners:

We, the neighbors of Marker 24 Marina, do unequivocally and irrevocably **oppose that certain portion of the Marina's Conditional Use Permit Application, that seeks to obtain a conditional use permit to use the residentially zoned property known as 1385 South Banana River Drive, Merritt Island, Florida 32952, for boat storage.**

The purpose of this petition is to present a **two-fold request:**

1. We request that our honorable Brevard County Commissioners **deny that portion of the Conditional Use Permit that seeks to use 1385 South Banana River Drive to expand the Marina's boat storage.**
2. We further request that if our honorable Brevard County Commissioners were to approve the CUP request to incorporate 1385 South Banana River Drive into the Marina Property, that said **approval will include the requirements as listed below. That as a condition of granting the CUP, Marker 24 Marina LLC and Marker 24 Development LLC:**

- a. Will build a **street side block wall**, along the perimeter of **South Banana River Drive, extending southward from the south end of the Marina's draw bridge to the south end of 1385 South Banana River Drive** to shield nearby residents from the excess noise and pollutants generated by 1) marina staff and boat owners, 2) the acts of lifting and moving of boats by boat lifts, and 3) the acts of repairing and painting of boats as an inevitable result of storage expansion;
- b. Will be **prohibited from changing its intent and using** (in part or in whole) **the 1385 South Banana River drive property for automobile parking**, unless such parking is limited to a driveway for a residence built on that same property;
- c. Will **move its current boat storage further back on its current property** (where boat storage once was done by a previous Marina owner);
- d. Will **modify the site plans for some of the currently planned residences and continue to build homes on the street side of Banana River Drive, where current boat storage exists;**
- e. Will **build a scenic buffer between the boat storage area and any planned, or to be planned, residences. A similar park-like buffer is being maintained and improved upon by Marker 24 for the houses being built on the north end of the Marina**, and the residents on the south end of the Marina, who are **long-term residents, deserve no less.** Moving the boat storage area and utilizing that current storage area for building residences as requested, would vastly improve the Marina's relationship with the community, and immensely improve this area's quality of life.

Marker 24 currently has plenty of commercial space onto which they can expand or create boat storage, but their desire to turn additional street frontage to the south into boat storage demonstrates a flagrant disregard for us, their neighbors to the south.

Certainly, even Marker 24 recognizes the negative impact of expanded storage onto residential property; otherwise they would have expanded their boat storage northward. Instead, Marker 24, on the north end of their property has created a park-like setting into which they are building high-priced single-family housing on both sides of the street, and that park-like setting with water views adds to the value of property they are developing. The potential dwellers of those homes will enjoy, unencumbered by boat movement and boat repairs, a water view of the Banana River as well as a park-like buffer that creates a pleasing view of the Marina. Since Marker 24 recognizes that expanding boat storage northward would greatly harm the value of the homes they are constructing, they have applied for a CUP to expand their boat storage southward – without regard for the impact on their neighbors to the south.

If Marker 24 is granted a CUP of 1385 South Banana River Drive, in order to expand its boat storage on that site, they will do to us, their neighbors on the south end, what they aptly avoided doing to themselves on the north end; i.e. additional boat storage on 1385 not only will do irreparable damage to our property values, but disrupt the unencumbered, peaceful enjoyment of all our homes – many of which at great cost have equally beautiful (full or partial) Banana River water views.

On numerous occasions the neighborhood has already witnessed first-hand, the negative impacts of the current street-side storage, and we readily understand that expansion of that boat storage along the street to include 1385 South Banana River Drive, will destroy the peaceful enjoyment of our homes, severely reduce our property values, and permanently disrupt our way of life - for ourselves and for our posterity. We, the neighbors whose properties would be devalued, would 1) awake each day to the sight of a boat (whatever the condition) staring us in the face, 2) hear, as we have in the past, party revelers on those boats well into the night, and 3) even if promised (as we were on the past) that such would not take place, we will experience not only the noise of repairs and parties, but the unhealthy and dangerous chemical fumes of boat cleaners and paints. Those paint and repair fumes are dangerous to everyone – especially over time – and if occurring on 1385, those dangers would be an even shorter distance away. The fumes are especially dangerous to some of the residents who suffer from cancer and other auto-immune diseases.

Certainly, we would not object if the Marina intended to build a residence on 1385 South Banana River Drive, with conformity to its current residential zoning. We also do not object to Marker 24's wishes to build additional housing on their property. However, it is **our request that our honorable Brevard County Commissioners will deny that portion of the Conditional Use Permit that seeks to use 1385 South Banana River Drive to expand the Marina's boat storage.** It is also requested that our honorable Commissioners will encourage Marker 24, to accomplish their boat storage objectives without commercially encroaching on the residential areas adjacent to, across from, and down the street from the current Marina. **To expand boat storage southward on 1385 South Banana River Drive would irreparably harm us, (all the Marina's good neighbors to the south), economically, physically, and civilly.**

While we have tried to be good neighbors to the Marina, and even supported their goal to build additional housing, it is unfortunately evident that by the Marina's request to expand their boat storage south, that the Marina ownership may not share that same neighborly respect.

Finally, we hope that, if the CUP is granted, that our Honorable Commissioners will include the conditions and restrictions requested in this letter.

Sincerely,
David E. Tate
1380 South Banana River Drive
Merritt Island, Florida 32952

David E. Tate 1380 S. Banana River Dr. Merritt Island 32952

W J Dudley

W Poston 1389 S Banana River Dr

J Nelson 1410 S. Banana River Dr.

John Sells 1870 W. VIRGINIA AVE MI

Jessie Dale 1395 S Banana River Dr. MI

LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Brevard County Local Planning Agency/Planning & Zoning Board met in regular session on Monday, August 19, 2019, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by Vice Chair Peter Filiberto, at 3:00 p.m.

Board members present were: Ian Golden; Ron Bartcher; Rochelle Lawandales; Brian Hodgers; Ben Glover; Ron McLellan; Mark Wadsworth; Peter Filiberto, Vice Chair; and Bruce Moia.

Rochelle Lawandales was present to vote on Item 1 only; and Ron McLellan was present to vote on Items 1 and Plan Amendment 2.1 only.

Staff members present were: Amanda Elmore, Interim Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; George Ritchie, Planner III; Steve Swanke, Program Manager; Darcie McGee, Assistant Director, Natural Resources Management; Cheryl Campbell, Comprehensive Planner; and Jennifer Jones, Special Projects Coordinator III.

Excerpt of Complete Minutes

1. Marker 24 Marina, LLC; and Marker 24 Development, LLC (Yane Zana and Peter Black)

A request a CUP (Conditional Use Permit) for Mitigating a Non-Conforming Commercial Marina, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 5.97 acres, located on the west side of South Banana River Drive, approximately 200 feet north of Orris Avenue. (1357, 1360, and 1385 South Banana River Drive; and 1880 West Virginia Avenue, Merritt Island) (19PZ00080) (District 2)

(All documents submitted to the board can be found in file 19PZ00080, located in the Planning and Development Department)

Peter Black, 1200 South Banana River Drive, Merritt Island, stated there is an existing Conditional Use Permit on the property, which they have been advised by the County to revise and define the operation, as well as remove the residential property from the marina.

Todd Foley, 2390 Friday Road, Cocoa, handed out proposed conditions to the board and explained there is an existing CUP for which the highlighted areas signify the changes to; all of the conditions were done with as much of the neighbors' input as possible, and staff's input, to make sure the CUP is in line with not only the development of the single-family homes to be built in the future under a separate site plan, but conforming with the neighborhood, property values, low impact on noise, and also the trips back and forth.

Peter Black stated of the proposed conditions, anything highlighted in yellow is different from the existing CUP (Conditional Use Permit) on the property. He advised that Condition 1 is to remove all portions of residential lots and portions of Marker 24 Community from the scope of the CUP, leaving just the commercial marina parcel.

Yane Zana, 956 Surf Lane, Vero Beach, stated one intent of the proposed CUP was to segregate the residential portion from the remaining CUP; the CUP is to govern the operation of the marina, and it was staff's recommendation that we take out the four residential lots to simplify the separation so that the CUP will only be on the marina itself, which was the intent to begin with. He said the original CUP allowed residential development, and now that they are segregating that portion out of the CUP, they

are removing the possibility of doing more residential development, and the CUP will only be on the marina property itself.

Mark Wadsworth asked the total acreage. Amanda Elmore replied the acreage would be reduced from 8.88 acres to 5.97 acres if approved.

Rochelle Lawandales asked if the applicants have met with the neighbors. Mr. Black replied he lives in the neighborhood, so some of them have approached him. Ms. Lawandales asked if the applicants received a copy of a letter from one of the neighbors. Mr. Black replied yes, from Mr. Tate, but the piece of property Mr. Tate was concerned with is no longer part of the CUP.

Ron Bartcher asked since nine parking spaces appear to be in a limited access area, will the remaining 36 spaces be sufficient for the 104 boat slips. He said the spaces to the south look like they are in an area that might be locked and protected. Mr. Black replied yes, the area is locked and protected after hours. Mr. Bartcher stated it seems 36 spaces is not enough for 104 boats. Mr. Black replied the previous CUP allowed for liveaboards, which created a lot of traffic; the proposed CUP eliminates liveaboards except for one or two for security purposes.

Ron Bartcher asked if the existing driveway to the northern parking is going to come off of the road rather than going through the property as it used to. Mr. Black replied yes. Mr. Bartcher asked if there will be two or three accesses to the marina itself from the road. Mr. Black replied there will be one access to the main pier on the north end of the property, which is existing; there is going to be the parking by the marina office that's existing in the middle of the property; and there will be the existing drive into the boatyard that will remain.

Ian Golden asked if there are 36 or 45 parking spaces. Ms. Elmore replied 44 spaces are required; 45 spaces have been proposed, but only 36 are paved. She noted a traffic analysis was submitted today by one of the applicants, and a landscape plan was submitted last week regarding some of the buffering, but staff has not had an opportunity to review them.

Mr. Golden asked, of the 45 spaces proposed, would they not be accessible after a certain time. Mr. Zana replied the unpaved spaces would be closed off after marina operation hours, which is 6:00 p.m. He said the small analysis they did on the trip generations, there is no definitive daily trip average they could find for liveaboards; the closest one they could find was mobile homes; at one time there were as many as 62 liveaboards before he took title to the marina. The residential portion that has been carved out calls for four lots along South Banana River Drive; an engineer provided them with a 9.52 trip per single-family residence average daily trips, so the overall difference they came up with is a reduction in 211 average daily trips.

Mr. Hodgers asked if there is an entryway into the property on the northeast corner that cannot be seen on the aerial map. Mr. Black replied yes, it has been utilized by the fire department for years for access to the neighborhood. Mr. Hodgers asked if three houses are proposed to be built directly south of that entryway. Mr. Zana replied it is four houses; the rendering shows three, but it is just a potential rendering. Mr. Hodgers asked if the driveway behind the marina building is where the cut off will be when the houses are built. Mr. Black replied yes. Mr. Hodgers asked if the houses on the west side will have access from Newfound Harbor Drive. Mr. Black replied yes. Mr. Hodgers asked if that driveway is going to remain on the northwest corner once those houses are built. Mr. Zana replied there is no connectivity between the proposed homes to the west of the basin, versus the little parking

area, that's not a drive-through driveway, it is purely for the marina, and the lots will have their own internal street, which is gated and comes off of Jaren Avenue.

Mr. Foley stated it is important to remember there will be a boardwalk that connects the pedestrian side of the parking from the marina office to the pier, and it's shown on the site plan as well.

Mr. Hodggers clarified there is not going to be any access point on the northwest corner; the only access point to the pedestrian bridge to go out to the boats is going to be to that northeast corner. Mr. Black stated that is correct. Mr. Hodggers clarified the parking is there and there are 36 spaces. Mr. Black stated there may be more than 36 spaces.

Ms. Lawandales stated some of the board members have one rendering with four houses on the west side, and one with three houses on the east side. Mr. Black stated it is the same piece of property; one is oriented looking from east to west, and one is oriented looking from west to east. Ms. Lawandales asked if there will be seven new homes on the property. Mr. Black replied no, the only thing that pertains to the CUP (Conditional Use Permit) property is the rendering that pertains to the four residential lots.

Mr. Zana pointed out that the other rendering is to give an overall sense of what's happening with the whole property; it shows the community to the west of the basin, which is not part of the CUP, but they submitted it for the benefit of the board to see what the community will look like. Ms. Lawandales asked if the eastern side of the residential lots are being removed from the CUP. Mr. Black replied yes.

Ms. Lawandales stated the proposed conditions include removing residential lots, asking for boat storage, dropping from 67 to 44 parking spaces, maintaining a privacy fence, maintaining the private sewer system that's in place, a five-foot wooden boardwalk that will be on the northeast side, no access on the west side, the private boat ramp is to be removed and a new boat ramp will be constructed adjacent to the marina office, the boatyard will operate from 8:00 a.m. to 5:00 p.m.; and the dumpster will be relocated southeast of the marina office.

Mr. Black asked Ms. Lawandales to repeat the first two highlighted conditions to make sure they are clarified properly, compared to the existing CUP. Ms. Lawandales reiterated the conditions are to remove all portions of the residential lots and portions of Marker 24 Community from the scope of the CUP; an existing six-foot masonry wall located on the north property line as depicted on the sketch will remain in place and shall be maintained; the marina shall be limited to 104 slips and the marina shall no longer allow full-time liveaboards except for 2 slips for security purposes.

Mr. Black stated the masonry wall was part of the existing CUP (Conditional Use Permit), and what was added is just to continue to maintain that wall, and it will not be de-constructed for any reason. The third condition is that the boat slips remain consistent with the existing CUP, and that was also a large part of Natural Resources' wishes, to maintain the same amount of slips.

Ms. Lawandales asked Ms. McGee to comment on the proposed CUP.

Darcie McGee stated Natural Resources Management had a couple of minor clarifications for Conditions 13 and 14: Condition 13, that no boat docking shall be permitted on the boardwalk; and on 14, to clarify that a new one-lane boat ramp will be constructed next to the marina office, and the new

boat ramp shall not increase capacity and shall not be constructed until after the existing ramp is removed.

Mr. Zana stated they agree with those modifications.

Peter Filiberto stated one of the conditions states the marina shall no longer allow full-time liveaboards except for two slips, and noted the existing CUP allows 50 liveaboards. He stated he has a concern for the displaced residents. Mr. Black advised those liveboard residents moved out of the marina eight or nine months ago.

Mr. Golden asked staff to clarify what is being suggested with the masonry wall versus what the applicant is requesting. Mr. Ritchie stated previously there was concern with the north property line as far as what should be buffering the residents to the north of the project, so there was some construction out there for a wall, and since that previous approval, the applicant is saying they are going to maintain that wall; what was not at issue but is noted in the code for a marina CUP is that when a site abuts a residential zone, it shall be screened by masonry wall with a minimum height of six feet. The concern at the previous zoning approval for the nonconforming marina was for residents on the north part of the site. He said staff didn't hear from the residents on the south property line of this site, and he doesn't think there's any mention of a wall that's existing or is part of a condition; however, it is noted in the CUP criteria for marinas.

Mr. Wadsworth asked if the applicants would be opposed to a wall on the south side. Mr. Black replied no.

Public comment:

David Tate, 1380 South Banana River Drive, stated he wanted to be sure that he heard correctly that the 1385 address is being taken out of the CUP request. He said he would like for that to happen because he is very much opposed to having boat storage expanded onto that area. He stated he would like to request that as a condition in granting the CUP, that there is protection on the south end similar to the protection on the north end. He said he is very much against any parking lot being constructed in the area known as 1385 South Banana River Drive. He noted it's very important to the neighbors that property values be preserved and augmented by the marina rather than the other way around. He said the applicants have done an excellent job on the north end invigorating the neighborhood, and he'd like to see them have that much concern for the south end of the marina as well. He noted in the past, there have been difficult times with regard to toxic fumes from the boats, and that's one of the reasons he's asking that the boat storage be moved. He said he has no objection to the marina, but he would just like it to be livable for the neighbors.

Catherine Baldwin, 1850 West Virginia Avenue, stated her only concern is in regards to the level that seems to be rising in the marina; her house flooded during Hurricane Irma, and the marina's base elevation is currently 16 inches to her backyard, and she seems to be the retention pond. She stated the houses are great, and the marina is great, but she needs some kind of protection for the overflow.

Ron McLellan asked Ms. Baldwin if she has filed a complaint with the County, because stormwater cannot overflow onto her property. Ms. Baldwin replied she sent an email in January and Ms. McGee visited the site and told her the owners would create some kind of berm. Mr. McLellan asked if it is a problem that she has always had. Ms. Baldwin replied she has lived there since 1988; during Tropical

Storm Fay she had an inch of water in one of her rooms; during Hurricane Irma she had a foot and a half of water, so in the course of 20 years they seem to be growing and she seems to be shrinking.

Ms. Lawandales asked if it is correct that they will not be allowed to overflow anything from their site to anyone else's site. Ms. Elmore replied yes, that is correct.

John Sadle, 1870 West Virginia Avenue, stated he is not clear on if 1880 West Virginia Avenue has been removed from the CUP.

Mr. Black stated it was 1885 West Virginia Avenue that was removed. Mr. Sadle said it was formerly 1880 West Virginia Avenue, and he shares a fence with that property and that's why he is concerned.

Ms. Elmore stated 1385 South Banana River Drive has been removed. Mr. Black stated the number is correct, but the street is West Virginia Avenue.

Charles Billias, 119 Chipola Road, Cocoa Beach, stated he has had his sailboat at the marina for the past 25 years, and the guy who manages the marina does an excellent job of maintaining the facility. He pointed out that marinas are hard to get permitted and as more boats come into the area it's hard to find a place to dock.

William Porter, 1389 South Banana River Drive, stated most of his issues are with credibility; he's been dealing with them directly and they are very friendly to start, but their credibility seems to change regularly. He said the applicant moved his lot south with the survey they had done by Campbell Surveying, and they had a fence put up before getting a permit. He said they had two businesses operating on the property that were not registered to operate. Now the telephone pole is in the road because when they moved his lot south they moved the pole. He said he doesn't want the marina close to him because commercial and residential do not mix well together.

Greg Loggins, 1366 South Banana River Drive, stated overall, the owners of the marina are doing a good job of getting rid of the problems with the liveaboards. He said to the south, separated by a small canal, there is a 25-foot strip owned by them, but he doesn't know exactly where, and asked if it is southeast by dumpster, next to the marina office, or will it be next to his house? He reiterated overall, they have done a wonderful job and he appreciates the extra things they have volunteered to do.

Mr. Black stated he appreciates the community's input and respects and values their concerns, which he will try to address one at a time.

Mr. Wadsworth asked Ms. McGee to repeat the conditions from Natural Resources.

Ms. McGee stated on Condition 13, Natural Resources recommended that no boat docking shall be permitted on the boardwalk that connects the bathroom facilities to the office, and then the dock access. The second was to modify Condition 14 to read that a new one-lane boat ramp is to be constructed next to the marina office; the new boat ramp shall not increase capacity and shall not be constructed until after the existing ramp is removed. She noted that the recommendations were based on the Manatee Protection Plan.

Mr. Wadsworth asked if the applicant agrees with those two items. Mr. Black replied yes.

Mr. Wadsworth asked about the 25-foot strip of property on the south side. Mr. Black stated Mr. Loggins is concerned the dumpster will be located close to his house, but it will be on the west side of South Banana River Drive next to the marina office.

Mr. Wadsworth asked if the applicant is opposed to building a wall on the south side. Mr. Black replied no, he will agree to a wall along the south side along the boatyard. He said Ms. Baldwin voiced concerns regarding the water flooding her property, but they do not intend to let any water onto her property. He noted after Ms. McGee met them on site they constructed a small berm behind the property and it will be refined and improved as construction improvements progress. He stated Mr. Sadle wanted to confirm that the piece of property was removed from the CUP (Conditional Use Permit), and it has been. Mr. Porter has multiple concerns; a permit was obtained to fence off the property, and the property was fenced off because Mr. Porter used the marina property as a parking lot and he was advised by his insurance company to secure the property to reduce any liability. He said Mr. Porter's drainfield is on the marina property and his attorney recommended that he send Mr. Porter a letter of options, and that letter was sent, but Mr. Porter didn't care for any of the options. There was a permit received for the maintenance dredging, and Ms. McGee guided them on that as well.

Ms. Lawandales stated there was one more item in the staff comments she would like to validate that the applicant is in agreement, which is to make sure that the use of the property under the BU-1 (General Retail Commercial) zoning is limited to the marina only and the uses that are currently on the site.

Mr. Black stated there is no BU-1 zoning on the portion of property requesting the CUP. He noted there is a separate parcel on the river that is outside of the CUP request. Ms. Lawandales asked if staff would change its position on that condition. Ms. Elmore stated staff was okay that the use of the property be limited as described herein, and that the use of the property shall be limited to office space with light retail and bathroom/laundry facility, and its existing use as a commercial/recreational marina.

Ms. Lawandales stated the current CUP is limited to office space with light retail and a bathroom/laundry facility, and its existing use as a commercial/recreational marina, and that is not being proposed to be changed. Mr. Ritchie stated the property doesn't have commercial zoning; it does have RU-1-11 (Single-Family Residential); the previous zoning action was for mitigating a nonconforming use to allow the marina operations that were ongoing and nonconforming to be able to be maintained, and that's how they tried to equate how the marina was operating previously. So, it does not have commercial zoning, but they did have some uses to that marina that were commercial in nature that they wanted to maintain. He stated the purpose of this CUP was because they were adding area to the southeast, and it is being re-heard as mitigating a nonconforming marina use and to add additional items the applicant was requesting under the original application presented to staff. Some of these things have changed since that initial submittal, so now that southeast lot is being removed from the application and they're going back to the original area of the CUP that was heard several years ago.

Ms. Lawandales stated some of the conditions outlined have been either addressed or fixed by virtue of what was submitted today. Mr. Ritchie stated the existing building is proposed to increase in size, and that is addressed in the comments.

Mr. Black clarified the footprint of the building will remain the same, but they are adding two small offices upstairs, which will increase the square footage.

Motion by Rochelle Lawandales, seconded by Bruce Moia, to approve the modifications to the CUP for mitigating a nonconforming use for Marker 24 Marina, LLC, and Marker 24 Development, LLC, based on the proposed conditions submitted by the applicant with the additions of the existing privacy fence to be replaced, and the modifications to Conditions 13 & 14 that there be no docking of boats on the boardwalk, and that a new one-lane boat ramp be constructed. The motion passed unanimously.



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

ADDENDUM TO STAFF COMMENTS - 19PZ00080

Marker 24 Marina, LLC; and Marker 24 Development, LLC

CUP (Conditional Use Permit) for Mitigating a Non-Conforming Use (Commercial Marina) in an RU-1-11 (Single-Family Residential) Zoning Classification

Tax Account Number: 3018251
Parcel I.D.: 25-37-06-CX-00-15.08
Location: 1357, 1360, and 1385 South Banana River Avenue; and 1880 West Virginia Avenue, Merritt Island (District 2)
Acreage: 6.24 acres

Planning and Zoning Board: 08/19/19
Board of County Commissioners: 09/05/19

Background and Purpose of Request

The applicant is seeking a modification to an approved CUP for mitigating a nonconforming use for a 104-berth marina. The purpose of the request is to allow for a new residential subdivision design, with 15 lots on the west side of the marina (1.86± acres), and four proposed lots on the east side fronting Banana River Drive (1.05± acres). These residential areas are proposed for removal from the previously approved 2013 CUP for marina. The overall CUP (Conditional Use Permit) area would be reduced from 8.88± acres to 5.97± acres.

This new CUP application originally requested the use of 104 slips (18 dry and 86 wet), expansion of an existing commercial building from 1,478 square feet to a 2-story 2,214 square-foot building, 45 parking spaces (combination of paved and stabilized), a relocated dumpster pad southeast of the commercial building, a parking lot, an approximate 5,300 square-foot covered boat slip area, a pump-out station located at the north end of the north/south marina dock, proposed relocation of the boat ramp to be constructed next to the marina office, *a new fuel dock to be installed to provide fuel to marina tenants and community boaters*, the retention of a boat lift at the southeast area of the marina, the creation of a proposed five foot wide wooden boardwalk along the eastern basin's edge, a proposed five foot wide sidewalk easement and 10 foot wide right-of-way easement along S Banana River Drive east of the four residential lots being removed from the CUP, and continuation of a proposed site plan to develop a bath/restroom facility in the northwest portion of the site.

Since the previous staff report, the applicant has clarified that no new fuel dock will be installed. There is an existing fuel dock that will be retained. Therefore, the new fuel dock is not part of this CUP request.

For Board Consideration

This CUP (Conditional Use Permit) may be: 1) approved subject to the conditions of Section 62-1937; 2) approved subject to the conditions of 62-1937 and conditions imposed by the Board above and beyond the requirements of Section 62-1937; or 3), denied.



Item H(4)
9/5/2019

Proposed Conditional Use Permit

Marker 24 Marina LLC

CUP for the existing historical use of a commercial/recreational marina; and approved the following conditions agreed to by the applicant. 1) Remove all portions of the residential lots and portions of Marker 24 Community from the scope of CUP; 2) The use of the property shall be limited as described herein; 3) The use of the property shall be limited to office space with light retail and bathroom/laundry facility, its existing use as a commercial/recreational marina; 4) Existing six foot masonry wall located on the North property line as depicted on sketch will remain in place and shall be maintained; 5) The marina shall be limited to 104 slips and the Marina shall no longer allow full-time liveboards except for 2 slips for security purposes only/i.e. dockmaster; 6) Existing South privacy fence will be replaced with six foot concrete masonry wall; 7) No hardening or bulkheading of basin walls unless all applicable permits are obtained from regulating authorities; 8) a new bath/laundry facility will be constructed on the north end of the basin next to main dock; 9) No expansion of the basin unless all applicable permits are obtained from regulating authorities; 10) Any expansion must meet all fire and safety codes; 11) The owner shall maintain the private sewer system currently in place, which is for marina use only, and any bathroom or laundry facility will be connected to private sewer system; Additionally, the owner shall maintain all existing pump out sites currently on site; 12) The owner will be required to pay all applicable impact fees upon submission of any application for a building permit if required; 13) A five foot wide wooden boardwalk will be installed along the East side of basin to connect the main dock parking to the marina office facility, No boat docking shall be permitted on the boardwalk; 14) A new one-lane boat ramp will be constructed next to marina office. The new boat ramp shall not increase capacity, and shall not be constructed until after the existing ramp is removed; 15) The existing boatyard will remain for service and maintenance of boats during the hours of 8:00 a.m. to 5:00 p.m; 16) The owner shall be responsible for cleaning and maintenance of the basin culverts and baffles on the northern portion of the basin marina property; 17) The hours of operation of the marina office shall be from 6:00 a.m. to 9:00 p.m. and said hours shall be posted; 18) The owner shall require that all activities comply with County performance standards. The owner shall post that no motor repairs shall be performed after 9:00pm; 19) The owner shall maintain the adjacent bascule bridge owned and operated by the owner in good working condition, and shall cooperate with any requests by the County and/or FDOT to inspect the bridge; 20) The owner shall provide educational information, including in-water signs and an educational kiosk regarding manatee protection and no wake zones as coordinated with appropriate State and County agencies; 21) Relocation of existing dumpster shall be Southeast of marina office;