



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.5.

2/4/2021

Subject:

Marker 24 Marina, LLC (Peter Black) requests a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a private club, in a BU-2 zoning classification. (20Z00010) (Tax Account 3018251) (District 2)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a private club, in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification.

Summary Explanation and Background:

The applicant is requesting a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) in conjunction with a private club located on the east side of S. Banana River Drive. According to the applicant's proposal and depicted upon the CUP's concept plan, the request will allow the guests of the marina to enjoy alcoholic beverages from within the areas designated as the private club and deck.

Zoning Resolution 20Z00009 adopted on August 6, 2020, relocated 17-slips of the approved 104-slip marina to that portion of the site lying east of S. Banana River Drive. Additionally, the applicant identified the following uses to be performed from this location east of S. Banana River Drive: ship store, power boat: repair, washing, detailing and rentals; 17-wet power boat slips; 4-parking spaces for transient (trailered) boats; fuel (gas and diesel) sales at designated fuel dock; live bait sales; wholesale and retail seafood sales; short-term rentals; and, a private club with tiki bar/grille with pool. The current concept plan submitted for this Alcoholic Beverage CUP review replaces the pool area with a deck.

The recent code change to allow Administrative Approval for on-premise consumption only applies to restaurants serving more than 51% in food sales.

The surrounding properties are zoned RU-1-11 (Single-Family Residential) to the south and west. To the north, BU-2 (Retail, Warehousing, and Wholesale Commercial).

The Board may wish to consider the compatibility of the proposed CUP with the surrounding development. The Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to

mitigate potential impacts to the abutting properties.

On January 11, 2021, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

Once resolution is received, please execute and return to Planning and Development.

Resolution 20Z00010

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

WHEREAS, Marker 24 Marina, LLC have requested a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a private club, in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classifications, on property described as that portion of the S. 85 ft. Tract 16 that lies east of the east right-of-way line of S. Banana River Drive and that portion of N. 194.99 ft. of the S. 294.99 ft. of Tract 17 that lies east of the east right-of-way line of S. Banana River Drive, all lying and being in Banana River Drive subdivision, according to the plat thereof, recorded in Plat Book 3, Page 11, of the Public Records of Brevard County, Florida. Section 06, Township 25, Range 37. (1.04 +/- acres). Located on the east side of S. Banana River Dr., approx. 160 ft. north of West Virginia Ave. (1360 S. Banana River Dr., Merritt Island); 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; 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 and with the condition of no exterior speakers or other devices designed primarily to produce audible sounds of no more than 55 decibels at the property line; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested CUP (full liquor) for On-Premises Consumption in conjunction with a private club, in a BU-2 zoning classifications be approved with the condition of no exterior speakers or other devices designed primarily to produce audible sounds of no more than 55 decibels at the property line. 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 February 4, 2021.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida



Rita Pritchett, Chair

Brevard County Commission

As approved by the Board on February, 2021.

ATTEST:



RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – January 11, 2021

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs 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.**

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.



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

20Z00010

Marker 24 Marina, LLC

Conditional Use Permit (CUP) for Alcoholic Beverages (Full Liquor) for On-premises Consumption in Conjunction with a Private Club in a BU-2 zoning classification

Tax Account Number: 3018251
Parcel I.D.: 25-37-06-CX-00-15.08
Location: 1360 South Banana River Drive, Merritt Island (District 2); East side of roadway
Acreage: 1.04 acres

Planning and Zoning Board: 01/11/2021

Board of County Commissioners: 02/04/2021

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	BU-2 with a CUP for a marina	BU-2 retaining CUP for Commercial/recreational and Commercial/industrial marina and adding a CUP for Alcoholic Beverage (full liquor) in conjunction with a private club
Potential*	9,600 square foot existing building	9,600 square foot existing building
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. **BU-2 zoning is an existing use pursuant to Section 62-1188 (9) of Brevard County Code and vested against the Comprehensive Plan.

Background and Purpose of Request

The applicant is requesting a Conditional Use Permit (CUP) for Alcoholic Beverage (full liquor) in conjunction with a private club located on the east side of S. Banana River Drive. According to the applicant's proposal and depicted upon the CUP's concept plan, the request will allow the guests of

the marina to enjoy alcoholic beverages from within the areas designated as the private club (covered tiki deck) and deck.

Regarding the existing development, the Property Appraiser's Office states the site was developed in 1949. On May 22, 1958, Brevard County adopted its first Zoning Code. At that time, the property east of S. Banana River Drive was zoned BU-2. The 1958 aerials identified the lot as Jaren Boat Works.

Zoning Resolution **20Z00009** adopted on August 6, 2020, relocated 17-slips of the approved 104-slip marina - approved under Zoning Resolution **19PZ00080** to that portion of the site lying east of S. Banana River Drive. Additionally, the applicant's intent of **20Z00009** as stated in the application identified the following uses to be performed from this location east of S. Banana River Drive. Those uses are: ship store, power boat: repair, washing, detailing and rentals; 17-wet power boat slips; 4-parking spaces for transient (trailered) boats; fuel (gas and diesel) sales at designated fuel dock; live bait sales; wholesale and retail seafood sales; short-term rentals; and, a private club with tiki bar/grille with pool. The current concept plan submitted for this Alcoholic Beverage CUP review replaces the pool area with a deck.

Land Use

The subject property retains the RES 4 (Residential 4) FLU (Future Land Use) designation. The Retail, warehousing and wholesale commercial, BU-2 zoning is non-conforming to the RES 4 FLU designation as this use predates the adoption of the 1988 Brevard County Comprehensive Plan. Previous zoning action **20Z00009** mitigated the nonconforming use of the marina.

Environmental Constraints

No formal review by the Natural Resources Management Department is required for a CUP for on-premises consumption of alcoholic beverages. Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development, including any land alteration permits or landscape restoration plans.

Preliminary Concurrency

The closest concurrency management segment to the subject property is S. Banana River Drive which lies to the south of Highway 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 percentage of MAV utilization. The corridor is anticipated to continue to operate at 20.16% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the proposed marina development does not create any residential development.

The subject property is served by potable water by the City of Cocoa. No sewer service has been extended to the portion lying east of S. Banana River Drive. The owner intends to remain on septic.

Applicable Land Use Policies

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. The entire area is under the FLUM designation of Residential 4. To the south, this site is bordered by a developed single-family residential lot zoned Single-family residential (RU-1-11). To the west, lies an established marina with 87-slips. To the north, is an undeveloped commercial lot zoned BU-2.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The character of the area is residential. The marina use, west-side of S. Banana River Drive established under Zoning Resolution **Z-2398**, was adopted February 27, 1969 and has possibly been in operation for over 50 years. The previous zoning actions since adoption of **20Z00009** were **19PZ00080** adopted on September 5, 2019 and **13PZ-00008** adopted on September 12, 2013. The marina (west side of S. Banana River Drive) encompassed an area of 8.88 +/- acres. 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.

Surrounding Area

The surrounding properties are zoned RU-1-11 (Single-Family Residential) to the south and west. To the north, BU-2 (Retail, Warehousing, and Wholesale Commercial). 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.

Except for the recent zoning approval for the Marina CUP approved under **20Z00009** adopted on August 6, 2020, and **19PZ00080** adopted on September 5, 2019 and **13PZ-00008** adopted on September 12, 2013, there have not been any zoning changes in the last 5 years within a half-mile radius of the subject property.

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. 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.** The applicant's 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 62-1906, on-premises consumption of alcohol.

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for on-premises consumption which states in, specifically 62-1906 (3) and (5):

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

Staff analysis: The owner/applicant has provided a survey which states that there are no churches or schools within 400 feet of the area within this CUP request.

- 5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for alcoholic beverages for on-premises consumption. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

Staff analysis: Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing building until depicted upon the CUP concept plan and reviewed as part of a site plan submittal. The proposed concept plan limits the alcohol consumption to the tiki deck and deck areas.

General Standards of Review

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's Response: The proposed conditional use will not adversely impact neighboring properties.

Staff analysis: The owner/applicant has not addressed the adverse impacts such as noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use nor has the number of patrons been identified nor has the traffic parameters been addressed.

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's Response: Compatible with marina operations.

Staff analysis: This parcel is a developed commercial property that is bounded by S. Banana River Drive right-of-way to the west, a canal to the south and the river along its eastern edge. The northern boundary is adjacent to an unimproved lot. The proposed alcoholic beverage consumption will occur within the building envelope.

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 reputable 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 a MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant's Response: Improvements to current marina operations will only help the value of abutting properties.

Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.

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.

Note: 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's Response: Will be adequate and consistent with marina operations.

Staff analysis: The property has both car and boat access points identified on the concept plan. The proposed use will not substantially increase parking and traffic needs for this site.

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's Response: Will not interfere.

Staff analysis: This project must be compliance with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. Any proposed outdoor lighting and noise standards should remain within code parameters or a violation will be created.

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

Applicant's Response: Will comply.

Staff analysis: The concept plan's "noise standards" will be reviewed as part of the site plan review process. Any proposed outside seating must comply with noise ordinance.

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.

Applicant's Response: Current dumpster will be sufficient and will not exceed.

Staff analysis: The adopted level of service for solid waste disposal will be reviewed as part of the site plan review process.

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's Response: Existing potable water and wastewater system on site is sufficient and will not be exceeded.

Staff analysis: The adopted level of service for potable water or wastewater will be reviewed by utilities as part of the site plan review process.

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's Response: Additional landscaping will be installed.

Staff analysis: As the project is buffered by right-of-way (roadway/canal), minimal screening or buffering has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request additional conditions for approval.

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's Response: Will not.

Staff analysis: No signage or exterior lighting has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

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's Response: Will not be open past 10:00 pm.

Staff analysis: Should the Board determine that additional measures become necessary, the Board may wish to request additional conditions for approval.

Section 62-1901(c)(2)(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.

Applicant's Response: Will not be greater than 35 feet.

Staff analysis: The existing building appears to be constructed as a single-floored structure with a high bay work/storage area.

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.

Note: 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's Response: Parking shown on CUP exhibit.

Staff analysis: The CUP concept plan currently depicts 24 standard parking spaces (5-uncreditable due to being grassed) and 17 boat slips totaling 36 spaces. The existing 9,600 square foot building requires 32 parking spaces based upon current parking criteria.

For Board Consideration

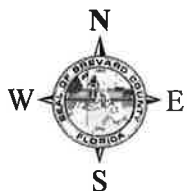
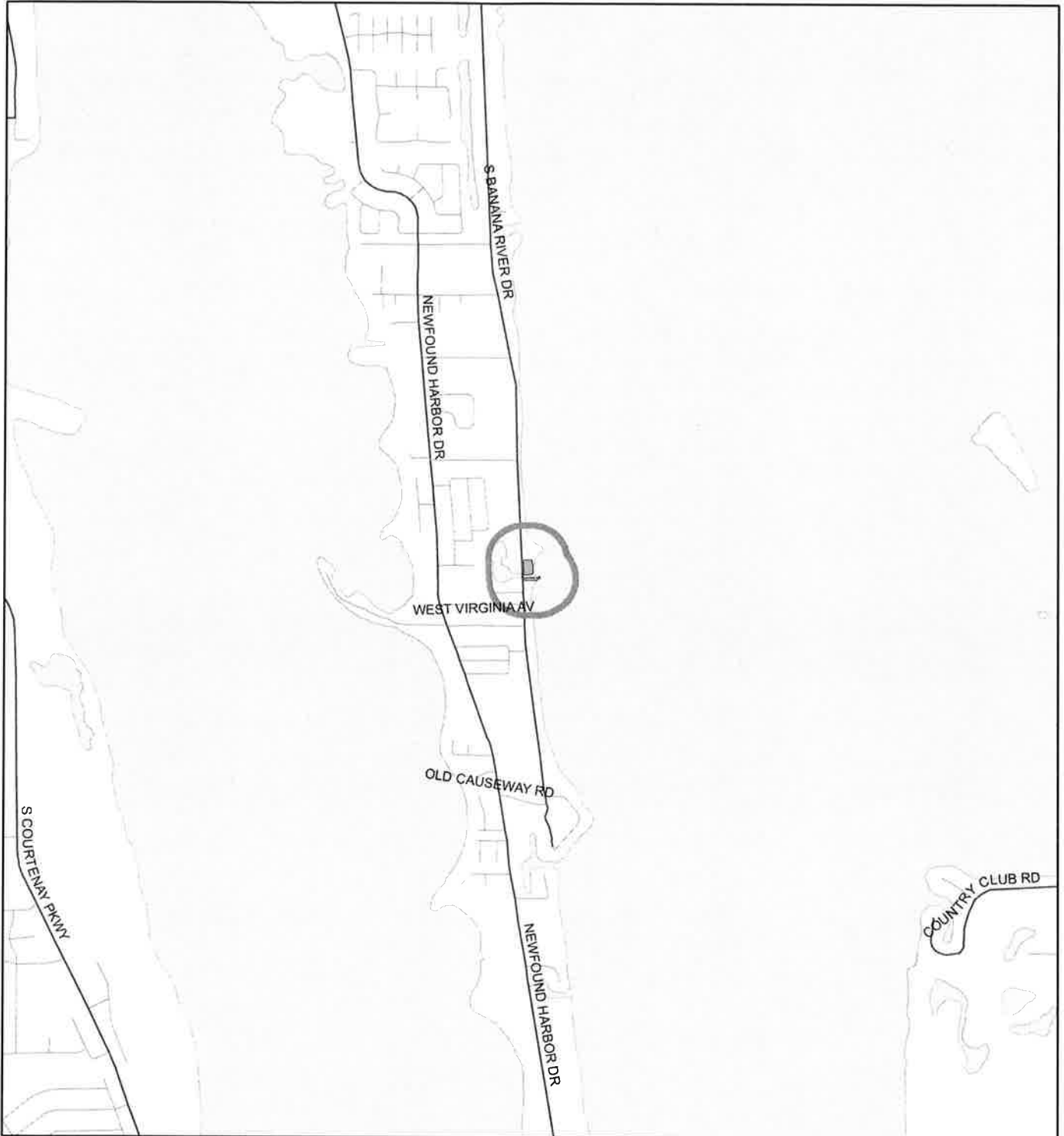
The Board may wish to consider the compatibility of the proposed CUP with the surrounding development. The Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting properties such as:

- Additional visual buffering and/or acoustically screen to adjacent residential lot.
- Limit the hours of operation for the alcoholic consumption.
- Prohibit or limit outdoor music or sound systems.
- Limit the number of patrons based on available parking (boats and cars).

LOCATION MAP

MARKER 24 MARINA, LLC

20Z00010



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: 11/16/2020

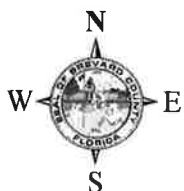
Buffer

Subject Property

ZONING MAP

MARKER 24 MARINA, LLC

20Z00010



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

— Subject Property

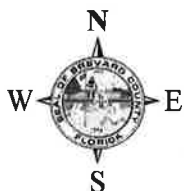
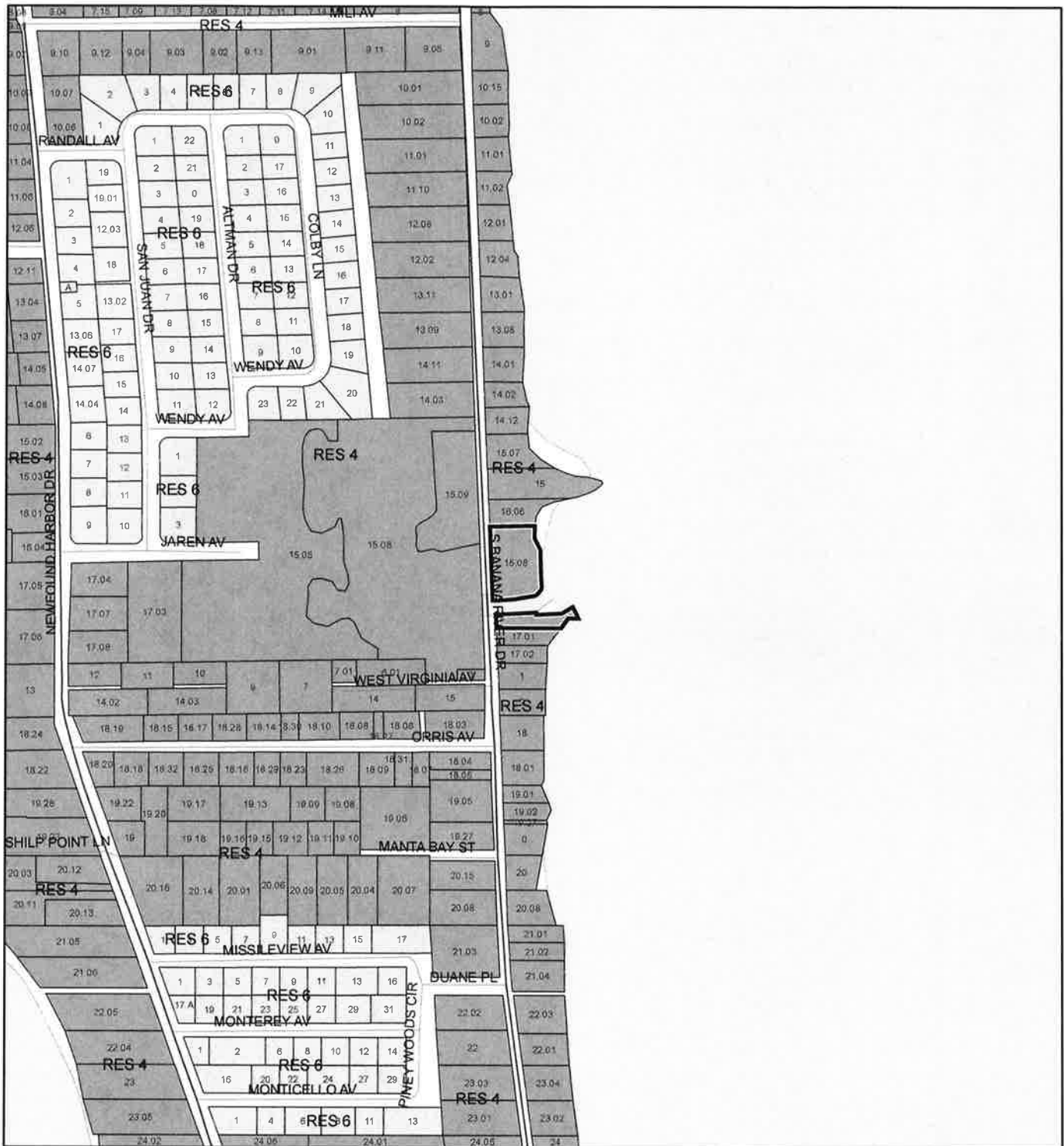
□ Parcels

□ Zoning

FUTURE LAND USE MAP

MARKER 24 MARINA, LLC

20Z00010



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

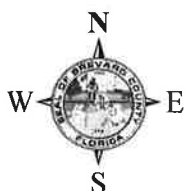
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Produced by BoCC - GIS Date: 11/16/2020

AERIAL MAP

MARKER 24 MARINA, LLC

20Z00010



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2020

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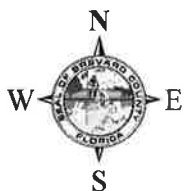
— Subject Property

□ Parcels

NWI WETLANDS MAP

MARKER 24 MARINA, LLC

20Z00010













1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

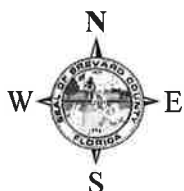
National Wetlands Inventory (NWI)

 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

20Z00010



1:4,800 or 1 inch = 400 feet

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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

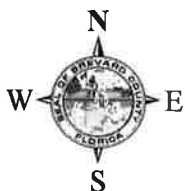
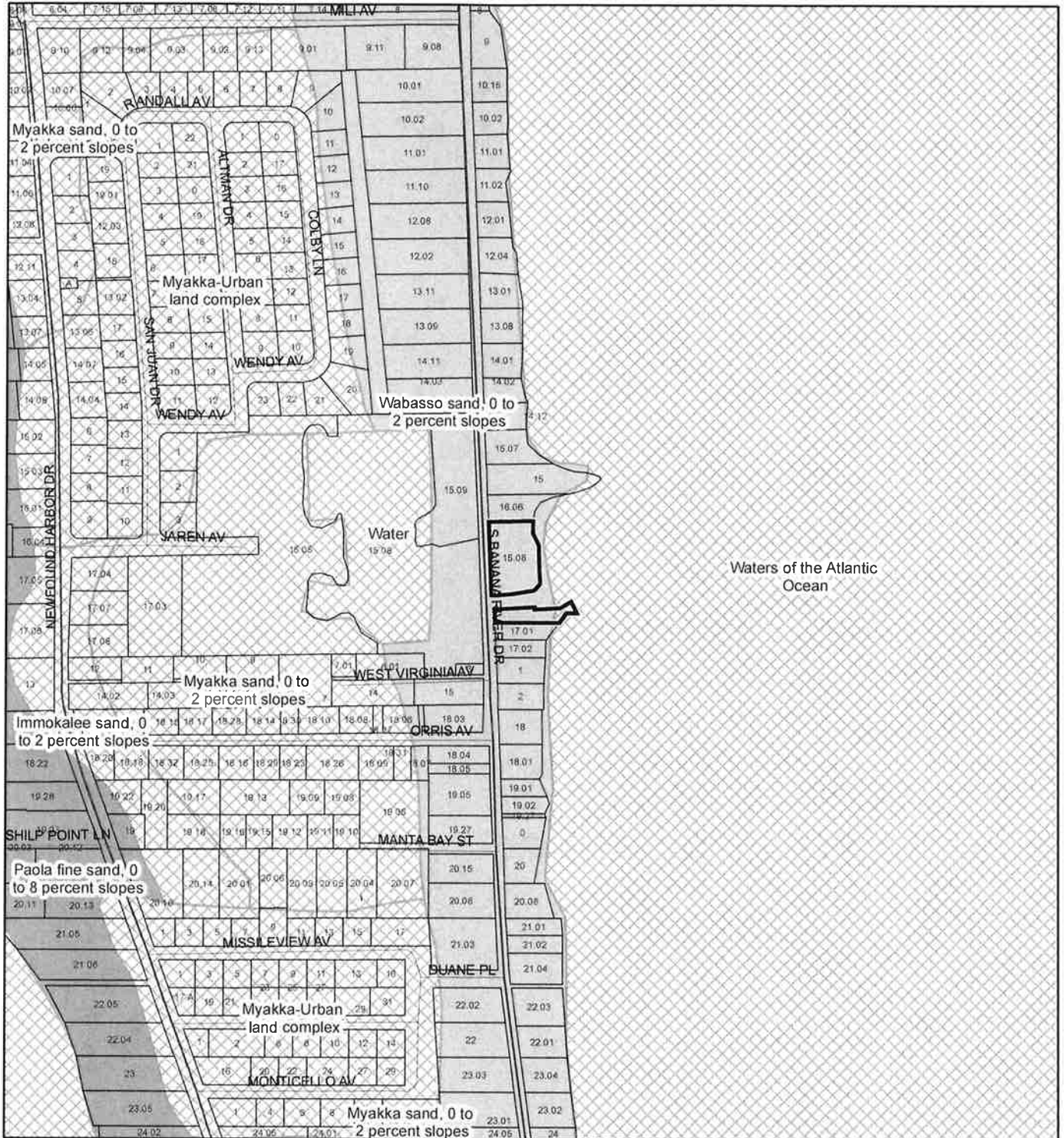
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

MARKER 24 MARINA, LLC

20Z00010



1:4,800 or 1 inch = 400 feet

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USDA SCSSS Soils

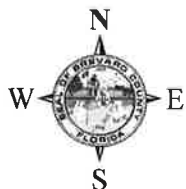
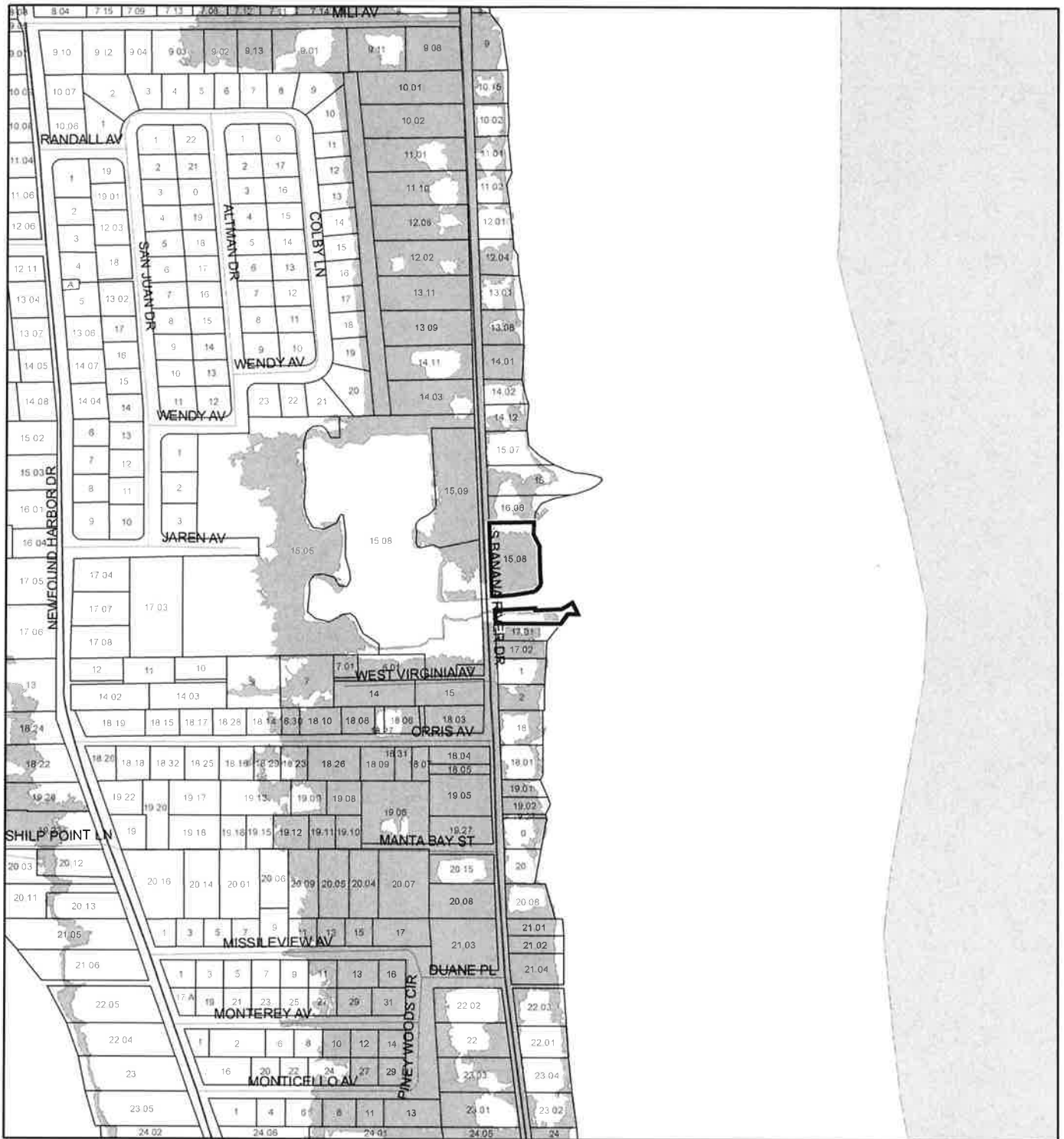
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

MARKER 24 MARINA, LLC

20Z00010



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

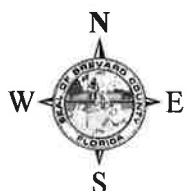
FEMA Flood Zones

- | | | |
|--|---|----------------------|
| 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 | |

COASTAL HIGH HAZARD AREA MAP

MARKER 24 MARINA, LLC

20Z00010



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

— Subject Property

□ Parcels

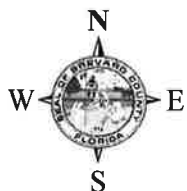
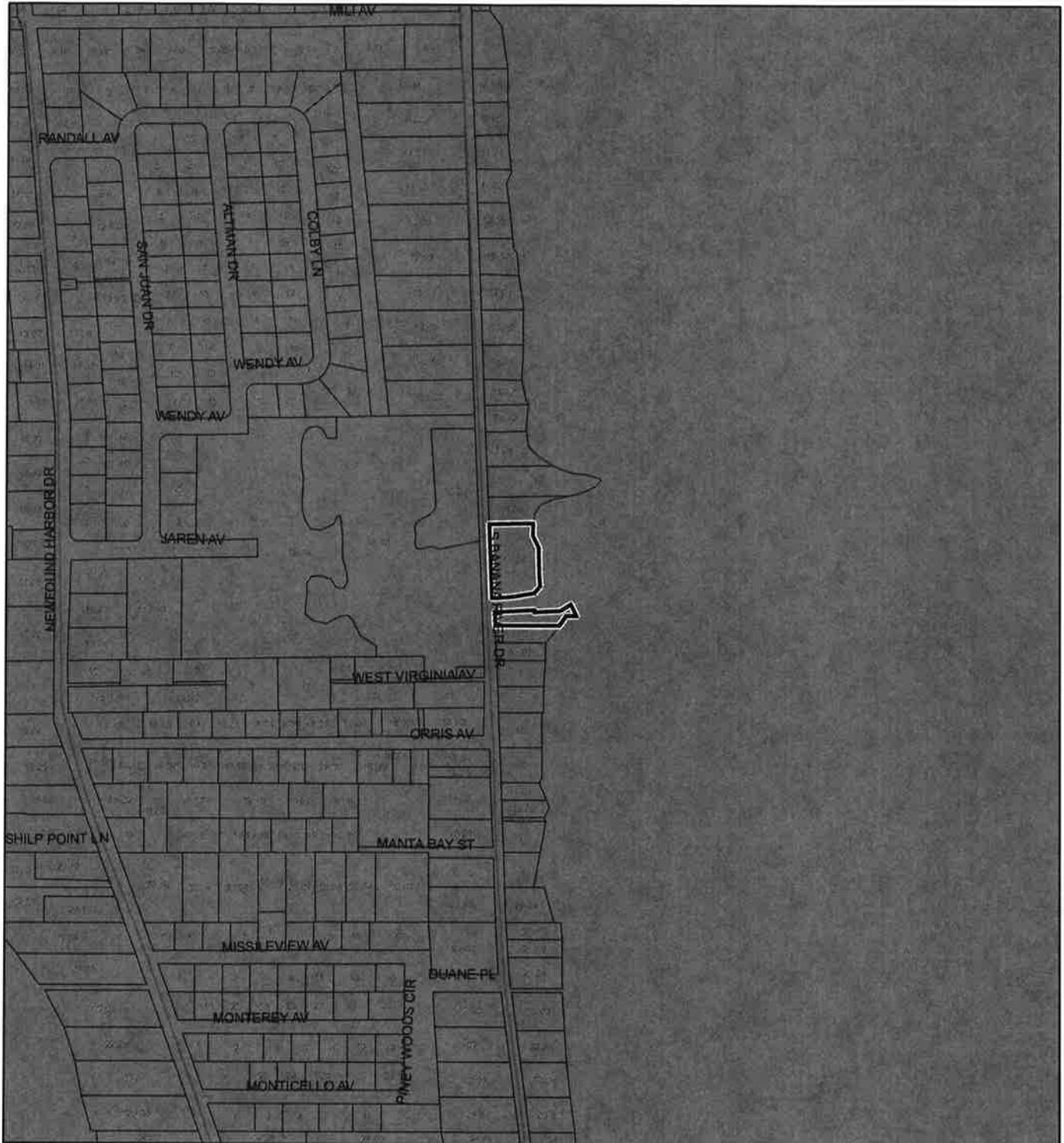
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MARKER 24 MARINA, LLC

20Z00010



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

— Subject Property

□ Parcels

Septic Overlay

■ 40 Meters

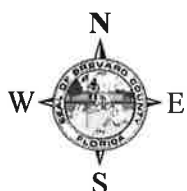
■ 60 Meters

■ All Distances

EAGLE NESTS MAP

MARKER 24 MARINA, LLC

20Z00010



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

 Subject Property

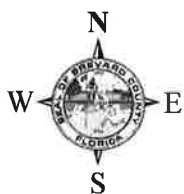
 Parcels

 Eagle Nests
FWS 2010




SCRUB JAY OCCUPANCY MAP

MARKER 24 MARINA, LLC

20Z00010



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

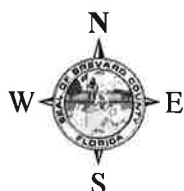
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 11/16/2020

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MARKER 24 MARINA, LLC

20Z00010



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

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

Planning and Development
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
321-633-2070

Name(s)		Company	
Street	City	State	Zip Code
Email	Phone	Cell	

APPLICATION NAME

- ☐ Large Scale Comprehensive Plan Amendment (CP) (greater than 10 acres)
- ☐ Small Scale Comprehensive Plan Amendment (CP) (less than 10 acres)
- ☐ Text Amendment (CP): Element _____
- ☐ Other Amendment (CP): _____
- ☐ Rezoning Without CUP (RWOC)
- ☐ Combination Rezoning and CUP (CORC)
- ☒ Conditional Use Permit (CUP)
- ☐ Binding Development Plan (BDP)
- ☐ Binding Development Plan (BDP) (Amendment)
- ☐ Binding Development Plan (BDP) (Removal)
- ☐ Variance(s) (V)
- ☐ Administrative Approval of Setbacks, Lot Size, or Accessory Structures
- ☐ Administrative Approval of Flag Lot or Easement
- ☐ Other Action: _____


Acreage of Request: 1.04

Reason for Request:

Consumption/Sales of Alcohol on site at Marker 24 Marina LLC. river front parcel.

The undersigned understands this application must be complete and accurate prior to advertising a public hearing:

- ☐ I am the owner of the subject property, or if corporation, I am the officer of the corporation authorized to act on this request.
- ☐ I am the legal representative of the owner of the subject property of this application. (Notarized Authorization to Act must be submitted with application)
- ☐ An approval of this application does not entitle the owner to a development permit.
- ☐ I certify that the information in this application and all sketches and data attached to and made part hereof are true and accurate to the best of my knowledge.

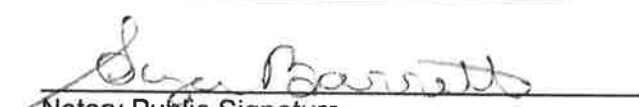

Signature of Property Owner or
Authorized Representative

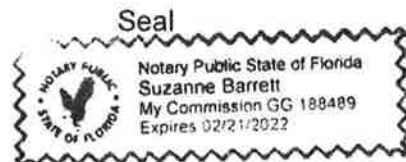
5/29/2020
Date

State of Florida

County of Brevard

Subscribed and sworn to me before me this 29 day of May, 2020,
personally appeared Peter Black, who is personally known to me or
produced _____ as identification, and who did / did not take an oath.


Notary Public Signature



Office Use Only:

Accela No. 20200010 Fee: 447.00 Date Filed: 6/3/2020 District No. 2

Tax Account No. (list all that apply) 3018251

Parcel I.D. No.

25 37 06 CX 15.08
Twp Rng Sec Sub Block Lot/Parcel

Planner: GCR Sign Issued by: SM Notification Radius: 500'

MEETINGS

DATE

TIME

☒ P&Z

11/1/2021

3:00 pm

☐ PSJ Board

☐ NMI Board

☐ LPA

☐ BOA

☒ BCC

2/04/2021

5:00 pm

Wetland survey required by Natural Resources ☐ Yes ☒ No Initials _____

Is the subject property located in a JPA, MIRA, or 500 feet of the Palm Bay Extension?

☐ Yes

☒ No

If yes, list _____

Location of subject property:

River side (East) of S. Berran
River Drive 160 feet north of
West Virginia Ave.

Description of Request:

CUP originalise alcoholic beverage consumption
asking for beer/wine/liquor in conjunction
with a private club

Notice to Applicants for Change of Land Use

The Planning and Zoning Office staff will be preparing a package of written comments concerning your request. These comments will be provided to the Planning and Zoning Board and Board of County Commissioners. The comments will address the following:

The current zoning of the property along with its current development potential and consistency with the Brevard County Comprehensive Plan use and density restrictions.

The proposed zoning of the property along with its development potential and Consistency with the Board County Comprehensive Plan use and density restrictions.

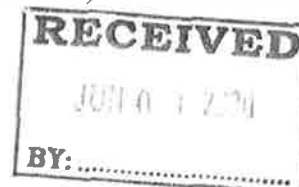
The proposal's impact on services, such as roads and schools.

The proposal's impact upon hurricane evacuation, if applicable.

Environmental factors.

Compatibility with surrounding land uses.

Consistency with the character of the area.



You may place your own written comments regarding these items into the record. Up to two typewritten pages can be included in the package if received 10 working days prior to the Planning and Zoning Board hearing. You are not required to provide written comments. *An Applicant presentation to the Planning and Zoning Board is required regardless of written submittals.* The board may approve the requested classification or a classification which is more intensive than the existing classification, but less intensive than the requested classification.

Staff comments will be available approximately one week prior to the Planning and Zoning Board hearing. These comments will be made available to you at that time. In order to expedite receipt of staff's comments, please provide an e-mail address or fax number below. Alternatively, a copy of staff's comments will be mailed via the U.S. Postal Service.

NOTES:


- ☐ If your application generates public opposition, as may be expressed in letters, petitions, phone calls, testimony, etc., you are advised to meet with concerned parties in an effort to resolve differences prior to the BCC taking final action on the request; therefore, you are encouraged to meet with affected property owners prior to the public hearing by the Planning & Zoning Board/Local Planning Agency (P&Z/LPA). During the course of conducting the public hearing, if the P&Z/LPA finds the application is controversial, and the applicant has not met with affected property owners, the item shall be tabled to the next agenda to allow such a meeting to take place. If the item is controversial, despite the applicant's efforts to meet with affected property owners, the P&Z/LPA may include, in their motion, a requirement to meet with interested parties again prior to the BCC public hearing. The BCC may also table your request in order for you to meet with interested parties, if this has not occurred prior to the public hearing before the BCC. If you need assistance to identify these parties, please contact the Planning & Zoning Office.
- ☐ BCC approval of a zoning application does not vest a project nor ensure issuance of a permit. At the time of permit application, land development regulations and concurrency-related level of service standards must be met.

Please transmit staff's comments via:

Marker 24 Marion or 321 453-2120 or U.S. Mail
e-mail address @gmail.com fax number

Yes (No)

I have received a copy of this notice:


(APPLICANT SIGNATURE)

(11)

ID # 20Z00010

Conditional Use Permit (CUP) Application Worksheet

- 1) Owner(s): Marker 24 Marina LLC
Applicant(s): _____
- 2) Property Location: 1360 South Banana River Dr
- 3) Type of CUP requested: Consumption on Premise
- 4) If CUP is for Alcoholic Beverages for On-Premises Consumption, is it in conjunction with a restaurant? No
- 5) Type of Plan Required by Section 62-1901[b] (refer to attached CUP Checklist):
☐ Reproducible Site Plan signed by a registered engineer, land surveyor or architect
☒ Scaled Dimensional Sketch Plan

NOTE: IF FULL SIZE DRAWINGS ARE SUBMITTED, PLEASE SUBMIT ONE COPY OF A REDUCED SIZE VERSION OF THE PLANS (8 1/2" X 11", 8 1/2" X 14" OR 11" X 17").

Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable: 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.** Prepare responses to address how the requested CUP will meet these standards and submit this completed worksheet along with your application for public hearing for a CUP. You may attach additional pages or documentation, if needed.

General Standards of Review

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.

The proposed Conditional Use will not adversely impact neighboring properties

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.

Compatible with Marina operations

Section 62-1901(c)(1)(c) The proposed use will not cause a substantial diminution in value of abutting residential property.

Note: 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.

Improvements to current marina operations will only help the value of abutting properties

Specific Standards

Section 62-1901(c)(2)(a) Ingress and egress to the property and proposed structures (including vehicular and pedestrian safety and convenience, traffic flow and control, and emergency response access) shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any.

Note: Burdening adjacent and nearby uses is defined as 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 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.

Will be adequate and consistent with marina operation

ID # 20200010

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.

Will not interfere

Section 62-1901(c)(2)(c) Noise levels for a conditional use shall comply with Section 62-2271 of the Code, which includes the following:

Maximum Permissible Time Averaged (Leq)
A-Weighted Sound Pressure Limits for Receiving Uses

Type of Use	Time Period	Maximum Allowable Sound Pressure Level
Residential	7:00 a.m. to 10:00 p.m.	60 dB(A)
	10:00 p.m. to 7:00 a.m.	55 dB(A)
Commercial	7:00 a.m. to 10:00 p.m.	65 dB(A)
	10:00 p.m. to 7:00 a.m.	55 dB(A)
Industrial	7:00 a.m. to 10:00 p.m.	75 dB(A)
	10:00 p.m. to 7:00 a.m.	65 dB(A)

Note: Additional requirements may apply. Refer to Section 62-2271 for full noise specifications.

Will comply

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

Current dumpster will be sufficient and will not exceed

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

Existing potable water and wastewater system on site is sufficient and will not be exceeded

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

Additional landscaping will be installed

ID # 20200010

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.

Will not

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.

Will not be open past 10:00pm

Section 62-1901(c)(2)(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 thirty-five (35) feet higher than the highest residence within 1000 feet of the property line.

Note: A survey of building heights within 1000 feet of the property lines should be furnished for applications requesting a CUP for additional building height.

Will not be greater than 35 feet

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.

Note: 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.

Parking shown on CUP exhibit

Note to Applicant: Per Section 62-1901(f), *Expiration*, Conditional use permits approved after the effective date of Ordinance No. 99-43 (8/3/99) shall expire within three years from the date of approval if the approved use is not constructed or under substantial and continuous construction.

I HAVE READ THE ABOVE NOTE TO APPLICANT. ALL THE ANSWERS TO THE STANDARDS ADDRESSED BY THIS WORKSHEET AND ALL ACCOMPANYING PLANS AND DOCUMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.

Applicant Signature

Date

11/6/2020

Submittal checked by:

LIMITED LIABILITY COMPANY OPERATING AGREEMENT FOR

Marker 24 Marina

A Single Member-Managed Limited Liability Company

ARTICLE I **Company Formation**

1.1 **FORMATION.** The Member hereby does form a Limited Liability Company ("Company") subject to the provisions of the Limited Liability Company Act as currently in effect as of this date. Articles of Organization shall be filed with the Secretary of State.

1.2 **NAME.** The name of the Company shall be: Marker 24 Marina.

1.3 **REGISTERED AGENT.** The name and location of the registered agent of the Company shall be:

Peter Black

1205 S. Banana River Drive
Merritt Island, Florida 32952

1.4 **TERM.** The Company shall continue for a perpetual period unless,

(a) The Member votes for dissolution; or

(b) Any event which makes it unlawful for the business of the Company to be carried on by the Member; or

(c) Any other event causing dissolution of this Limited Liability Company under the laws of the State of Florida.

1.5 **CONTINUANCE OF COMPANY.** Notwithstanding the provisions of ARTICLE 1.4, in the event of an occurrence described in ARTICLE 1.4(c), if there is at least one remaining Member, said remaining Member shall have the right to continue the business of the Company. Such right can be exercised by the written vote of the remaining Member within ninety (90) days after the occurrence of an event described in ARTICLE 1.4(c). If not so exercised, the right of the Member to continue the business of the Company may expire if that member desires.

- 1.6 **BUSINESS PURPOSE.** The purpose of the Company is to operate Marker 24 Marina

- 1.7 **PRINCIPAL PLACE OF BUSINESS.** The location of the principal place of business of the Company shall be:

1360 & 1357 S. Banana River Drive
Merritt Island, Florida 32952

The principal place of business may be changed to a location the Member may select. The Member may also choose to store company documents at any address the Member chooses.

- 1.8 **MEMBER.** The name and place of residence of the member are contained in Exhibit 1 attached to this Agreement.
- 1.9 **ADMISSION OF ADDITIONAL MEMBERS.** Except as otherwise expressly provided in the Agreement, additional members may be admitted to the Company through issuance by the company of a new interest in the Company or a sale of current a percent of current Member's interest.

ARTICLE II

Capital Contributions

- 2.1 **INITIAL CONTRIBUTIONS.** The Member initially shall contribute to the Company capital as described in Exhibit 2 attached to this Agreement. The total value of such property and cash is \$1,500,000.00
- 2.2 **ADDITIONAL CONTRIBUTIONS.** Except as provided in ARTICLE 6.2, no Member shall be obligated to make any additional contribution to the Company's capital.

ARTICLE III

Profits, Losses and Distributions

- 3.1 **PROFITS/LOSSES.** For financial accounting and tax purposes the Company's net profits or net losses shall be determined on an annual basis and shall be allocated to the Members in proportion to each Member's relative capital interest in the Company as set forth in Exhibit 2 as amended from time to time in accordance with Treasury Regulation 1.704-1.

- 3.2 **DISTRIBUTIONS.** The Member shall determine and distribute available funds annually or at more frequent intervals as the Member sees fit. Available funds, as referred to herein, shall mean the net cash of the Company available after appropriate provision for expenses and liabilities, as determined by the Member. Distributions in liquidation of the Company or in liquidation of a Member's interest shall be made in accordance with the positive capital account balances pursuant to Treasury Regulation 1.704-1(b)(2)(ii)(b)(2). To the extent a Member shall have a negative capital account balance, there shall be a qualified income offset, as set forth in Treasury Regulation 1.704-1(b)(2)(ii)(d).
- 3.3 **C CORPORATION ELECTION.** The Member may elect to be treated as a C corporation at any time to keep the profits of the LLC at the company level and not be forced to distribute profits to the Member.

ARTICLE IV **Management**

- 4.1 **MANAGEMENT OF THE BUSINESS.** The management of the business is invested in the Member.
- 4.2 **MEMBER.** The liability of the Member shall be limited as provided pursuant to applicable law. The Member is in control, management, direction, and operation of the Company's affairs and shall have powers to bind the Company with any legally binding agreement, including setting up and operating a LLC company bank account.
- 4.3 **POWERS OF THE MEMBER.** The Member is authorized on the Company's behalf to make all decisions in accordance with ARTICLE 4.2 as to (a) the sale, development lease or other disposition of the Company's assets; (b) the purchase or other acquisition of other assets of all kinds; (c) the management of all or any part of the Company's assets; (d) the borrowing of money and the granting of security interests in the Company's assets; (e) the pre-payment, refinancing or extension of any loan affecting the Company's assets; (f) the compromise or release of any of the Company's claims or debts; and, (g) the employment of persons, firms or corporations for the operation and management of the company's business. In the exercise of its management powers, the Member is authorized to execute and deliver (a) all contracts, conveyances, assignments leases, sub-leases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting the Company's assets; (b) all checks, drafts and other orders for the payment of the Company's funds; (c) all promissory notes, loans, security agreements and other similar documents; and, (d) all other instruments of any other kind relating to the Company's affairs, whether like or unlike the foregoing.
- 4.7 **NOMINEE.** Title to the Company's assets shall be held in the Company's name or in the name of any nominee that the Member may designate. The Member shall have power to enter into a nominee agreement with any such person, and such agreement may contain provisions indemnifying the nominee, except for his willful misconduct.

- 4.8 **COMPANY INFORMATION.** Upon request, the Chief Executive Member shall supply to any member information regarding the Company or its activities. Each Member or his authorized representative shall have access to and may inspect and copy all books, records and materials in the Chief Executive Member's possession regarding the Company or its activities.
- 4.9 **EXCULPATION.** Any act or omission of the Member, the effect of which may cause or result in loss or damage to the Company or the Member if done in good faith to promote the best interests of the Company, shall not subject the Member to any liability to the Member.
- 4.10 **INDEMNIFICATION.** The Company shall indemnify any person who was or is a party defendant or is threatened to be made a party defendant, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a Member of the Company, Manager, employee or agent of the Company, or is or was serving at the request of the Company, for instant expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the Member acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal action proceeding, has no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of "no lo Contendere" or its equivalent, shall not in itself create a presumption that the person did or did not act in good faith and in a manner which he/she reasonably believed to be in the best interest of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was lawful.
- 4.11 **RECORDS.** The Member shall cause the Company to keep at its principal place of business or other location the following:
- (a) A copy of the Certificate of Formation and the Company Operating Agreement and all amendments;
 - (b) Copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;
 - (c) Copies of any financial statements of the limited liability company for the three most recent years.

ARTICLE V
Compensation

- 5.1 **MEMBER MANAGEMENT FEE.** Any Member rendering services to the Company shall be entitled to compensation commensurate with the value of such services.
- 5.2 **REIMBURSEMENT.** The Company shall reimburse the Member for all direct out-of-pocket expenses incurred by the Member in managing the Company.

ARTICLE VI
Bookkeeping

- 6.1 **BOOKS.** The Member shall maintain complete and accurate books of account of the Company's affairs at the Company's principal place of business or other agreed location. Such books shall be kept on such method of accounting as the Member shall select. The company's accounting period shall be the calendar year.
- 6.2 **MEMBER'S ACCOUNTS.** The Member shall maintain separate capital and distribution accounts for each member. Each member's capital account shall be determined and maintained in the manner set forth in Treasury Regulation 1.704-1(b)(2)(iv) and shall consist of his initial capital contribution increased by:
- (a) Any additional capital contribution made by him/her;
 - (b) Credit balances transferred from his distribution account to his capital account; and decreased by:
 - (a) Distributions to him/her in reduction of Company capital;
 - (b) The Member's share of Company losses if charged to his/her capital account.
- 6.3 **REPORTS.** The Member shall close the books of account after the close of each calendar year, and shall prepare and send to each member a statement of such Member's distributive share of income and expense for income tax reporting purposes.

ARTICLE VII

Transfers

- 7.1 **ASSIGNMENT.** According to the appropriate Court, should the Member have a creditor with a judgment that was issued an assignment of the membership interest, the creditor shall only obtain an assignment of the membership interest, not the actual transfer of Membership in the LLC. The new assignee does not have any rights of the Member or have the ability to be involved in management of the LLC or the right to dissolve the LLC. The new assignee is only granted rights of the distributions of the Member's interests, if the Member decides to distribute at all, not the rights of membership. The assignee must release the Member's interests back to Member upon payment of the judgment in accordance with the appropriate Court.

ARTICLE VIII

Dissolution

- 8.1 **DISSOLUTION.** The Member may dissolve the LLC at any time. The Member may NOT dissolve the LLC for a loss of membership interests. Upon dissolution the LLC must pay its debts first before distributing cash, assets, and/or initial capital to the Member or the Members interests. The dissolution may only be ordered by the Member, not by the owner of the Members interests.

CERTIFICATE OF FORMATION

This Company Operating Agreement is entered into and shall become effective as of the Effective Date by and among the Company and the person executing this Agreement as Member. It is the Member's express intention to create a limited liability company in accordance with applicable law, as currently written or subsequently amended or redrafted.

The undersigned hereby agree, acknowledge, and certify that the foregoing operating agreement is adopted and approved by each member, the agreement consisting of ____ pages, constitutes, together with Exhibit 1, Exhibit 2 and Exhibit 3 (if any), the Operating Agreement of Marker 24 Marina, LLC _____, adopted by the member as of June _____, 4 _____ 2020.

Member:


Signature

Printed Name Peter T. Black

Percent: 100 %

EXHIBIT 1

LISTING OF MEMBERS

As of the 4th day of June, 2020 the following is a list of Members of the Company:

Name



Percent 100 %

Address 1200 S. Banana River Drive Merritt Island Florida 32952

EXHIBIT 2

CAPITAL CONTRIBUTIONS

Pursuant to ARTICLE 2, the Member's initial contribution to the Company capital is stated to be \$ 1,500,000.00. The description and each individual portion of this initial contribution are as follows:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

SIGNED AND AGREED this 4th day of June, 2020.



Member

Concept Plan
01000206
Marker Set
(Submitted 12/17/19)



- NOTE:** THE PURPOSE OF THIS PLAN IS TO DERIVE PROPOSED RIG SLIPS AND OTHER RELATED SITE IMPROVEMENTS ASSOCIATED WITH A PROPOSED CONDITIONAL USER PLAN FOR THE EXISTING MARINA. THIS PLAN IS NOT TO BE USED FOR CONSTRUCTION PERMITS.

1000 - 1000000 (CAR)

NOTE: THE PURPOSE OF THIS PLAN IS TO DETECT PROPOSED ROAT SLIPS AND OTHER RELATED SITE IMPROVEMENTS ASSOCIATED WITH A PROPOSED CONDITIONAL USER PERMIT FOR THE EXISTING MARINA. THIS PLAN IS NOT TO BE USED FOR CONSTRUCTION PERMITS.

[illegible]

10.1111/j.1365-3113.2011.00541.x

SECTION PARCEL
AT PORTION OF THE SOUTH BAY LLE PARC 16 THAT LIES EAST OF THE (LAST
PORTION OF WAY LINE OF SOUTH BAYAN RIVER DRIP AND THAT PORTION OF NORTH
PORTION OF THE SOUTH BAY LLE PARC 17 THAT LIES EAST OF THE EAST
PORTION OF WAY LINE OF SOUTH BAYAN RIVER DRIVE, ALL LYING AND BEING IN
BAYAN RIVER DRIP SURVEY, ACCORDING TO THE PLAT JULIUS C. H. CORDELL
IN BOOK 3 AT PAGE 13, PUBLIC RECORDS OF HAVARD COUNTY, FLORIDA

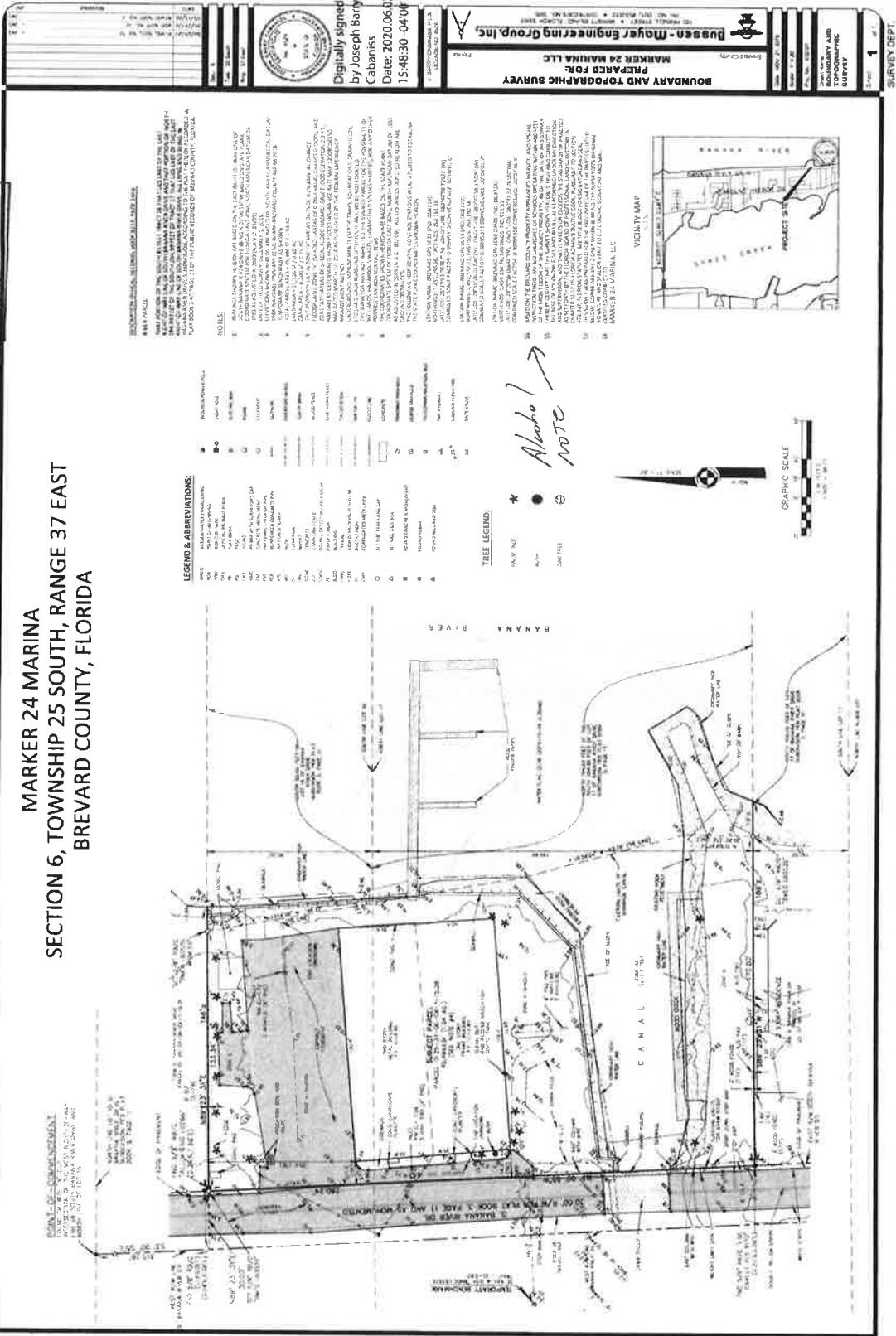
Survey
20Z00010
Marker 24

RECEIVED

JUN 03 2020

BY: [Signature]

MARKER 24 MARINA
SECTION 6, TOWNSHIP 25 SOUTH, RANGE 37 EAST
BREVARD COUNTY, FLORIDA



LEGEND & ABBREVIATIONS:

- 1. BOUNDARY LINE
- 2. EASEMENT
- 3. EASEMENT
- 4. EASEMENT
- 5. EASEMENT
- 6. EASEMENT
- 7. EASEMENT
- 8. EASEMENT
- 9. EASEMENT
- 10. EASEMENT

TREE LEGEND:

- 1. LIVE OAK
- 2. PALM TREE
- 3. LIVE OAK
- 4. PALM TREE
- 5. LIVE OAK
- 6. PALM TREE
- 7. LIVE OAK
- 8. PALM TREE
- 9. LIVE OAK
- 10. PALM TREE

GRAPHIC SCALE



VICINITY MAP



SURVEY DEPT.

Ritchie, George C

From: Craven, Tim
Sent: Thursday, November 12, 2020 11:43 AM
To: marker24marina@gmail.com; Ritchie, George C
Cc: 'Peter Black'; Ball, Jeffrey; Calkins, Tad
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

Good morning:

The code for marina parking is located in Section 62-3206(d)(19):

Marinas: Marinas and boat ramps:

a. Wet slips: One parking space per three wet slips.

b. Dry slips and moorings: One parking space per four dry slips or moorings for facilities up to 50 dry slips or moorings, or one parking space per five dry slips or moorings for facilities with over 50 dry slips or moorings.

c. Live-aboard: One parking space per boat slip.

d. Boat ramps: 25 parking spaces per boat ramp or hoist available to the general public.

In addition to the aforementioned requirements, one parking space per each 300 square feet devoted to sales and service shall be provided. The county manager or designee may require that the applicant submit a parking study, signed and sealed by a professional engineer, to determine the number of additional parking spaces necessary to support ancillary uses, including, but not limited to, charter boats, ecotourism vessels, boat-yards and party-boats.

I was using the 1/300 s.f. calculation shown on your exhibit for the entire building. Breaking down the square footage of each use in the building and applying the parking requirement per use could potentially lower the number of required spaces (or raise them). Restaurants and seating (including decks) are 1/100 s.f. Warehouses are 1/500. Retail is 1/200.

I also did not include the required 1 space for each 4 slips for mooring, which is what those 14 slips would be if they are rented to tenants.

But a CUP application is not the mechanism to evaluate or address parking issues. That would be done with a site plan submittal and review.

I apologize, I thought I had previously addressed your questions from the earlier email, but I will respond to them directly now:

The 6 boat slips on the fuel dock will not be rented to a tenant, so we can use those towards our parking calculations as shown on CUP exhibit. There are only 3 slips shown at the fuel dock on the exhibit. Those 3 can be counted.

The new dock with 17 slips will be rented to a tenant, and we have not included these in our parking calculation. The exhibit shows 14 slips, with 4 of those being 'Transient.' 14 mooring slips (rented) require 4 parking spaces.

It looks like your site is deficient in parking. You will need to submit a site plan if you wish to add parking to your site in order to comply with the Code.

Thank you,

Tim

Tim Craven, Planner I
Land Development Section
Brevard County Planning & Development Department
(321) 350-8266
Tim.Craven@brevardfl.gov

This office can only provide information regarding the Site Plan Section (Chapter 62, Article VIII) of the Brevard County Code of Ordinances. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

From: marker24marina@gmail.com <marker24marina@gmail.com>
Sent: Tuesday, November 10, 2020 5:07 PM
To: Craven, Tim <Tim.Craven@brevardfl.gov>; Ritchie, George C <George.Ritchie@brevardfl.gov>
Cc: 'Peter Black' <Peter@bluebelllandscaping.com>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>; Calkins, Tad <tad.calkins@brevardfl.gov>
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tim,

I see the section you're referring to regarding the parking spaces Except for single-family residences and duplexes, all off-street parking, loading areas and maneuvering space and associated driveway aisles, shall be paved (i.e., asphalt, concrete, or paver blocks).

Can you please site the code that refers to the 1/300, and does this apply to a marina.

Please answer the questions from the previous email and the provide above code.

Thank you for your continued help with this,

Jordon Rogers

General Manager
Marker 24 Marina
(W) 321.453.7888
(C) 321.750.2424

From: Craven, Tim <Tim.Craven@brevardfl.gov>
Sent: Tuesday, November 10, 2020 3:56 PM

To: marker24marina@gmail.com; Ritchie, George C <George.Ritchie@brevardfl.gov>
Cc: 'Peter Black' <Peter@bluebelllandscaping.com>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>; Calkins, Tad <tad.calkins@brevardfl.gov>
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

Good afternoon:

The parking calculations shown on the attached CUP exhibit only account for 4800 of a 9600 square-foot building. You are required to provide parking for the entire building. A 9600 s.f. building at 1/300 will require 32 spaces. The 5 spaces of grass parking cannot be included in the number of spaces provided per Sec. 62-3206(b)(5). Please remove those spaces from the calculation.

Your previous email indicates 6 slips on the fuel dock, but only three are shown on the exhibit. The email also states 17 spaces on the new dock will be rented, but the exhibit shows 14 spaces on the dock, and 4 of those are labeled 'Transient Slips'. Please rectify.

I count 19 parking spaces in the parking lot, plus three slips on the fuel dock, which leaves the property 10 spaces short of the required parking.

Thank you,

Tim

Tim Craven, Planner I
Land Development Section
Brevard County Planning & Development Department
(321) 350-8266
Tim.Craven@brevardfl.gov

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From: marker24marina@gmail.com <marker24marina@gmail.com>
Sent: Tuesday, November 10, 2020 12:30 PM
To: Craven, Tim <Tim.Craven@brevardfl.gov>; Ritchie, George C <George.Ritchie@brevardfl.gov>
Cc: 'Peter Black' <Peter@bluebelllandscaping.com>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tim and George,

The 6 boat slips on the fuel dock will not be rented to a tenant, so we can use those towards our parking calculations as shown on CUP exhibit.

The new dock with 17 slips will be rented to a tenant, and we have not included these in our parking calculation. Just want to make sure that we're all in agreement with this item.

Regarding my previous email, yesterday at 4:42, are we in agreement with the code and that parking has been met?

Thank you,

Jordon Rogers

General Manager
Marker 24 Marina
(W) 321.453.7888
(C) 321.750.2424

From: Craven, Tim <Tim.Craven@brevardfl.gov>

Sent: Monday, November 9, 2020 5:04 PM

To: marker24marina@gmail.com; Ritchie, George C <George.Ritchie@brevardfl.gov>

Cc: 'Peter Black' <Peter@bluebelllandscaping.com>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>

Subject: RE: Consumption on Premise for 1360 South Banana River Dr

I was asked by Mr. Ritchie to look at the attached exhibit and evaluate the parking, and whether wet slips could count for credit towards the overall parking requirement of a marina. I stated that it could if the slips were for the use of the general public and not rented to a tenant. So in this situation, if they are for private use, they cannot be counted towards parking credit.

Thank you,

Tim

Tim Craven, Planner I
Land Development Section
Brevard County Planning & Development Department
(321) 350-8266
Tim.Craven@brevardfl.gov

This office can only provide information regarding the Site Plan Section (Chapter 62, Article VIII) of the Brevard County Code of Ordinances. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

From: marker24marina@gmail.com <marker24marina@gmail.com>

Sent: Monday, November 9, 2020 4:42 PM

To: Craven, Tim <Tim.Craven@brevardfl.gov>; Ritchie, George C <George.Ritchie@brevardfl.gov>

Cc: 'Peter Black' <Peter@bluebelllandscaping.com>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>

Subject: RE: Consumption on Premise for 1360 South Banana River Dr

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good Afternoon, George and Tim,

I have a few questions regarding parking based on the codes attached below. It was always my understanding that parking requirements for a non liveaboard marina was 1 space per 3 slips. I thought the parking requirements were met and satisfied during the last CUP hearing. The private club area is for people who keep a boat in a slip at our marina.

Sec. 62-3661. - Definitions.

Marina means all boating facilities with three or more wet and/or dry slips (consistent with current County definition). A marina is a facility or structure, which provides mooring, docking, anchorage, fueling, repairs, launching, or other related services for watercraft. Private boat docks associated with single-family lots are exempt from this category.

Commercial/recreational marina means public or private facilities which provide dockage and other related amenities not exclusively associated with a subdivision, condominium, duplex or other multifamily development.

Sec. 62-3206. – Parking and loading requirements.

(19) Marinas: Marinas and boat ramps:

(a) Wet slips: One parking space per three wet slips.

Thank you,

Jordon Rogers

General Manager
Marker 24 Marina
(W) 321.453.7888
(C) 321.750.2424

From: Craven, Tim <Tim.Craven@brevardfl.gov>

Sent: Friday, November 6, 2020 4:22 PM

To: marker24marina@gmail.com; Ritchie, George C <George.Ritchie@brevardfl.gov>

Cc: 'Peter Black' <Peter@bluebelllandscaping.com>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>

Subject: RE: Consumption on Premise for 1360 South Banana River Dr

Good afternoon:

The parking calculations shown on the CUP exhibit only account for 4800 of a roughly 9600 square-foot building. Also, the 5 spaces of grass parking cannot be included per Sec. 62-3206(b)(5). Please remove those spaces.

We could consider the slip spaces at a one-to-one ratio based on Section 62-2956(b)(3) allowing for parking reduction for sites that incorporate multi-modal transportation. However, those would have to be slips that are used on a strictly temporary basis for customers of the marina, not rented out to a tenant for storing boats long-term.

Please reconfigure the parking calculation for the entire building. If you intend to use the 17 wet slip spaces in your calculation, that is acceptable, but please make a note on the plan that the slip spaces are for temporary boat parking only, and that no spaces shall be rented. If you intend to rent a space to a boat owner, you cannot include that space in the parking calculation.

Thank you,

Tim

Tim Craven, Planner I
Land Development Section
Brevard County Planning & Development Department
(321) 350-8266
Tim.Craven@brevardfl.gov

This office can only provide information regarding the Site Plan Section (Chapter 62, Article VIII) of the Brevard County Code of Ordinances. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

From: marker24marina@gmail.com <marker24marina@gmail.com>
Sent: Friday, November 6, 2020 3:41 PM
To: Ritchie, George C <George.Ritchie@brevardfl.gov>
Cc: 'Peter Black' <Peter@bluebelllandscaping.com>; Craven, Tim <Tim.Craven@brevardfl.gov>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

George and Tim,

This area is for tenants of the marina. Would that still cause parking insufficiencies?

Thank you,



Jordon Rogers

General Manager
Marker 24 Marina
(W) 321.453.7888
(C) 321.750.2424

From: Ritchie, George C <George.Ritchie@brevardfl.gov>
Sent: Friday, November 6, 2020 3:37 PM
To: marker24marina@gmail.com
Cc: 'Peter Black' <Peter@bluebelllandscaping.com>; Craven, Tim <Tim.Craven@brevardfl.gov>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

There may be a problem with sufficient parking. Please contact Tim Craven for possible remedies.

This office can only provide zoning and comprehensive plan information. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

George C. Ritchie, Planner III, Zoning Office
Brevard County Planning & Development Department
2725 Judge Fran Jamieson Way Bldg. A-114
Viera, FL 32940

Phone # (321-350-8272)

From: Ritchie, George C
Sent: Friday, November 6, 2020 3:16 PM
To: marker24marina@gmail.com
Cc: 'Peter Black' <Peter@bluebelllandscaping.com>; Craven, Tim <Tim.Craven@brevardfl.gov>
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

I've asked Tim Craven to verify sufficient parking is available. Will advise once I receive a response.

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From: marker24marina@gmail.com <marker24marina@gmail.com>
Sent: Friday, November 6, 2020 2:59 PM
To: Ritchie, George C <George.Ritchie@brevardfl.gov>
Cc: 'Peter Black' <Peter@bluebelllandscaping.com>
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

Attached you will find

1. A signed and sealed survey describing tract with legal description. You will also see on Note 10 the 400 foot certified alcohol survey
2. CUP Worksheet
3. CUP Exhibit showing parking, landscaping, etc.
4. Listing of Locations of Consumption.

Please let me know if you need any additional information for the Consumption on Premise CUP

Jordon Rogers

General Manager
Marker 24 Marina
(W) 321.453.7888
(C) 321.750.2424

From: Ritchie, George C <George.Ritchie@brevardfl.gov>
Sent: Thursday, November 5, 2020 10:33 AM
To: marker24marina@gmail.com
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

See attached forms and code section for alcoholic beverages.

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Phone # (321-350-8272)

From: marker24marina@gmail.com <marker24marina@gmail.com>
Sent: Thursday, November 5, 2020 10:06 AM
To: Ritchie, George C <George.Ritchie@brevardfl.gov>
Cc: Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

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Good Afternoon,

Can you please send over the CUP application for the consumption on premise. We will have this filled out and sent back to you on Friday, along with the Alcohol Survey from Bussen-Mayer.
Do we need a CUP Exhibit/Site plan for this as well?

Thank you,

Jordon Rogers

General Manager
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(W) 321.453.7888
(C) 321.750.2424

From: Ritchie, George C <George.Ritchie@brevardfl.gov>
Sent: Monday, November 2, 2020 9:50 AM
To: marker24marina@gmail.com
Cc: Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

Application deadline is Friday November 6th at 4pm. Will you have an application complete for this application cycle? Please call and setup a meeting for application submittal. Will need alcohol survey, CUP paperwork, notarized and signed forms.

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Phone # (321-350-8272)

From: Ritchie, George C
Sent: Thursday, October 22, 2020 2:17 PM
To: marker24marina@gmail.com
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

I'll be back in the office Tuesday. Will need full application same as previous request with CUP paperwork as well.

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Subject: Consumption on Premise for 1360 South Banana River Dr

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Thank you for your help,

Jordon Rogers

General Manager

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Ritchie, George C

From: marker24marina@gmail.com
Sent: Friday, November 6, 2020 3:25 PM
To: Ritchie, George C
Cc: 'Peter Black'
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

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Full Liquor please

Thank you,

Jordon Rogers

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From: Ritchie, George C <George.Ritchie@brevardfl.gov>
Sent: Friday, November 6, 2020 3:19 PM
To: marker24marina@gmail.com
Cc: 'Peter Black' <Peter@bluebelllandscaping.com>
Subject: RE: Consumption on Premise for 1360 South Banana River Dr

Was this for full liquor or just beer and wine? Please advise.

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Jordon Rogers

General Manager
Marker 24 Marina
(W) 321.453.7888
(C) 321.750.2424

20200010

Owner's Name: Marker 24 Marina LLC
Hearing Date: 1/11/2021

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

AFFIDAVIT

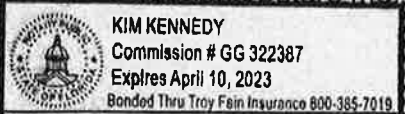
STATE OF FLORIDA
COUNTY OF BREVARD

Before me, this undersigned authority, personally appeared, Brian Lark,
to me well known and known to me to be the person described in and who executed the foregoing
affidavit, after being first duly sworn, says:

1. That the affiant posted the notice provided by the Brevard County Planning & Zoning Office, which contains the time(s) and date(s) of the Public Hearing(s) involved.
2. Said posted notice contains the name of the applicant, the total acreage of the property in question, the existing land use classification, special use classification or conditional use designation, and the requested amendment to the official zoning maps. Said notice also contains the time and place of the public hearing on the consideration of said application by the Board of County Commissioners of Brevard County, if applicable.
3. The said notice has been posted in a conspicuous place on the subject property not more than twenty-five (25) days, nor less than fifteen (15) days prior to the first public hearing before the applicable board (as indicated on notice). If the property abuts a public road right-of-way, the notice has been posted within ten (10) feet of the road right-of-way in such a manner as to be visible from the road right-of-way.
4. The affiant understands that this affidavit is intended to be submitted as a requirement for a public hearing, and as such, will be officially filed with the Government of Brevard County, Florida.

Brian Lark
Signature

Sworn and Subscribed before me, this 27th day of December.



(Print, type, or Stamp Commissioned Name of Notary Public)

[Signature]
Notary Public, State of Florida

Personally known OR Produced Identification

Type of I.D. Produced: _____

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING





PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 11, 2021**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Ron Bartcher; Harry Carswell; Brian Hodggers; Ben Glover; Joe Buchanan; and Peter Filiberto, Vice Chair.

Staff members present were: Tad Calkins, Planning and Development Director; George Ritchie, Planner III; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

Marker 24 Marina, LLC (Peter Black)

A CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a private club, in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The property is 1.04 acres +/-, located on the east side of S. Banana River Dr., approx. 160 ft. north of West Virginia Ave. (1360 S. Banana River Dr., Merritt Island) (20Z00010) (Tax Account 3018251) (District 2)

Peter Black stated he is requesting the CUP to add to the many improvements he's done to the marina to create an atmosphere that's consistent with a marina, which is giving tenants of the marina, along with homeowners in the Marker 24 HOA, a place to gather and enjoy a drink on the river.

Peter Filiberto asked if people need memberships to be in the private club. Mr. Black replied yes, members would have to have a boat in the marina or live in the community. He noted there are 20 houses in the community and 124 boat slips.

Ron Bartcher asked if there will be an outdoor deck. Mr. Black replied, yes, there will be a deck and covered tiki bar. Mr. Bartcher asked if the bar would close at 10:00 p.m. Mr. Black replied it will probably close before 10:00 p.m. Mr. Bartcher asked if there will be outdoor music. Mr. Black replied he would like to have some ambiance music, but he does not need to have loud music. Mr. Bartcher asked if the music could be limited to inside the building and not have speakers outside. Mr. Black replied yes. Mr. Bartcher asked about the additional landscaping that is proposed. Mr. Black replied he is working with a landscape architect to incorporate some silver buttonwood trees, natives, coconut palms, and others.

Mr. Filiberto stated there are a total of 24 parking spaces, but with it being only open to the HOA members and tenants it shouldn't be a problem. Mr. Black said he understands there is a parking situation, so he wanted to limit it to people who would already be at the marina or in the surrounding community.

Public comment.

John McDonald, 950 S. Banana River Drive, stated he does not have a problem with the proposed bar, but his major concern is traffic. He said S. Banana River Drive needs more speed bumps and a lot more lights because it gets dark there.

Mr. Filiberto stated he had the same concern which is why he wanted to know about the private club and who will be part of it, and since it's the HOA members he imagines people will be walking to it, or get there by boat.

Mr. McDonald pointed out that not every household has just one car, and there are no sidewalks either, so people walk in the road and it could be a dangerous situation.

End of public comment.

Motion by Brian Rodgers, seconded by Joe Buchanan, to approve the request for a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a private club, in a BU-2 zoning classification. The motion passed unanimously.